



Ministry of Housing,
Communities &
Local Government

Our ref: APP/Q1445/W/24/3353409
Your ref: BH2021/04167

22 September 2025



**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY ST WILLIAM HOMES LLP
BRIGHTON GASWORKS, LAND BOUNDED BY ROEDEAN ROAD (B2066), MARINA
WAY AND BOUNDARY ROAD, BRIGHTON AND HOVE, BN2 5TG
APPLICATION REF: BH2021/04167**

This decision was made by Minister of State for Housing and Planning, Matthew Pennycook MP, on behalf of the Secretary of State

1. I am directed by the Secretary of State to say that consideration has been given to the report of D M Young JP BSc (Hons) MA MRTPI MIHE, who held a public local inquiry which sat for 6 days between the 18 and 26 March 2025 into your client's appeal against the decision of Brighton and Hove Council to refuse your client's application for planning permission for a comprehensive mixed-use redevelopment comprising site preparation and enabling works, demolition of existing buildings and structures; provision of new buildings comprising residential use (Use Class C3) and flexible non-residential floorspace (Use Class E), new private and communal amenity space, public realm, landscaping; car and cycle parking, highway works, access and servicing arrangements; associated plant, infrastructure and other associated works including interim works in accordance with application Ref. BH2021/04167, dated 24 November 2021.
2. On 20 January 2025, 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 (TCPA) 1990.

Inspector's recommendation and summary of the decision

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

Ministry of Housing Communities & Local Government Email: PCC@communities.gov.uk
Emma Hopkins, Decision Officer
Planning Casework Unit
3rd Floor Fry Building
2 Marsham Street
London SW1P 4DF

to allow the appeal and grant planning permission. The Inspector's Report (IR) is attached. 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. Having taken account of the Inspector's comments at IR1.7, the Secretary of State is satisfied that the Environmental Statement 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. A list of representations which have been received since the inquiry is at **Annex A**. The Secretary of State is satisfied that the issues raised do not affect his decision, and no new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties. Copies of these letters may be obtained on request to the email address at the foot of the first page of this letter.
7. An application for a full award of costs was made by the appellant against the Council (IR1.10). This application is the subject of a separate decision letter.

Policy and statutory considerations

8. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act (PCPA) 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
9. In this case the development plan consists of the Brighton & Hove City Plan Part One (CPP1) March 2016, the Brighton & Hove City Plan Part Two (CPP2) October 2022, East Sussex, the South Downs and Brighton & Hove Waste and Minerals Local Plan February 2013 and the East Sussex, South Downs and Brighton & Hove Waste and Minerals Sites Plan February 2017. The Secretary of State considers that relevant development plan policies include those set out at IR5.13-5.14, IR5.17 - IR5.21, IR13.8 and IR13.52.
10. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework) published on 12 December 2024 and updated on 7 February 2025, and associated planning guidance (the Guidance) and the documents at IR5.15-5.16.
11. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act (LBCA) 1990, 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.

Emerging plan

12. The emerging plan comprises the City Plan 2041. The first stage of public consultation on key issues ran from 4 November 2024 to 20 January 2025 with a second public

consultation planned for winter 2025/26. Paragraph 49 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. The Secretary of State considers that due to the early stage of preparation, the policies in the emerging plan carry little weight.

Main issues

13. The Secretary of State agrees with the Inspector that the main issues to be addressed are those set out at IR13.2.

Character and appearance

14. For the reasons given at IR13.3-IR13.15 and IR13.56, the Secretary of State agrees that concerns that the appeal scheme would represent over development, being too tall and too dense and out of keeping with the urban grain of the surrounding area must be viewed in the context of: 1) a development plan which allocates the site for significant development, and 2) the national and local planning policy imperative to maximise development on previously developed brownfield sites such as the appeal site (IR13.3). The Secretary of State agrees that the site has a history of large structures and is adjacent to existing buildings of significant scale (IR13.5-IR13.6 and IR13.56). The Secretary of State agrees with the Inspector that the fact the appeal site accommodated large industrial structures over such a long period is a relevant material consideration which further supports the principle of tall buildings on the site (IR13.6). He further agrees that the introduction of tall buildings is inevitable if the Council is to make good on its own development plan policies which require the development potential of sites such as this to be 'maximised' (IR13.7).

15. He further agrees that the underused and despoiled site has a negative effect on the varied and robust urban townscape of east Brighton (IR13.4).

16. The Secretary of State agrees that the appeal scheme comfortably meets the minimum 100 dwellings per hectare set by the development plan. He has taken into account that Policy DA2 recognises the potential for higher densities to 'optimise development on brownfield sites' (IR13.10), and that national policy emphasises the efficient use of land (IR13.11). He further agrees that the redevelopment of the appeal site for a lower number of units is unlikely to be viable given the high cost of remediation (IR13.12).

17. The Secretary of State agrees that while the proposed development would represent a major change to the appeal site, its immediate surroundings and east Brighton more generally, this is what the development plan expects (IR13.13). He further agrees that in longer distance views such as from the South Down National Park or seafront, the development would be seen against a general backdrop of east Brighton which already contains tall buildings of varying age and design (IR13.14), and that the essential components which make Brighton special such as views of the rural landscape to the north and to the sea to the south would remain intact (IR13.14).

18. The Secretary of State agrees that from locations closer to the site, the proposed development would radically transform a site that detracts from its surroundings into a vibrant, attractive and fitting transition between Marine Gate and the remainder of Brighton (IR13.15). He agrees that the scheme would establish a strong sense of place

and positively contribute to its varied surroundings providing a cohesive and attractive urban environment in accordance with policies DA2 and CP12(2) of CPP1, and DM18 of CPP2. Like the Inspector, he is satisfied that the design has been carefully considered and would be high quality as required by the development plan and the Framework.

Heritage Assets

19. For the reasons set out at IR13.16-IR13.23 the Secretary of State agrees that the appellant's heritage assessment, which conforms to Historic England's guidance, is to be preferred (IR13.23).
20. For the reasons set out at IR13.24-IR13.36 and IR13.56, the Secretary of State agrees that the proposed changes to the setting of Kemp Town Conservation Area would not harm its key features, the individual buildings within it or the Registered Park and Garden (IR13.28); that there would be no harm to the setting of the East Cliff Conservation Area (IR13.31); and there would be no harm to the setting of the Church of St. Mark (IR13.34).
21. The Secretary of State further agrees the proposals would fail to preserve the setting of the French Convalescing Home (FCH) and that there would be a low level of less than substantial harm to the significance of the FCH (IR13.33). In line with paragraph 212 of the Framework he gives great weight to this harm.
22. The Secretary of State agrees that there would be a very low level of harm to the non-designated heritage asset (NDHA) of Marine Gate (IR13.35). The Inspector considers at IR13.36 that although the compromised and degraded flint boundary wall would be removed, any harm to this on site NDHA could be mitigated by a suitable scheme of recording. However, the Secretary of State does not consider that the loss of the flint wall can be fully mitigated by recording, and considers that a low level of harm would arise from the loss of the wall. Overall, he gives limited weight to the identified harm to the NDHAs.
23. In line with the heritage balance set out at paragraph 215 of the Framework, the Secretary of State has considered whether the identified less than substantial harm to the significance of the Grade II listed FCH is outweighed by the public benefits of the proposal. His conclusion is set out at paragraph 42 below.

Living conditions

24. For the reasons set out at IR13.38-IR13.48, the Secretary of State agrees that all the proposed 495 residential units would meet the minimum space requirements in the NDSS, include private amenity space and have convenient access to communal gardens as well as external areas of public open space. The Secretary of State therefore agrees that adequate outdoor space would be available to occupiers of the new dwellings for their everyday informal recreational needs (IR13.39).
25. The Secretary of State has taken into account the Council's view at the inquiry that the daylight/sunlight impacts would result in sub-optimal rather than unacceptable living conditions for a relatively modest number of future residents (IR13.43). He agrees that while a small number of rooms would fail non-binding BRE targets for daylight and sunlight (IR13.43), overall the appeal scheme would benefit from good levels of

daylight/sunlight including areas of public open space on, or close to, the appeal site (IR13.44).

26. The Secretary of State further agrees that while there will be some harm to occupiers on Arundel Street and the west facing flank of Marine Gate, given the appeal site is allocated for significant development, it is almost inevitable that there would be some change to the living conditions of neighbouring occupiers. Overall, he agrees that the degree of change would not result in unacceptable living conditions for neighbouring occupiers (IR13.46). He gives the identified harm to living conditions of existing neighbouring occupiers limited weight.
27. The Secretary of State further agrees that concerns regarding separation distances and privacy between occupiers of opposing flats in some of the taller buildings would be addressed by the proposed directional outlook between blocks F-G and Block G-H as well as planning conditions relating to privacy screens and oriel windows (IR13.47).
28. Overall, the Secretary of State agrees at IR13.48 that there would be no unacceptable daylight/sunlight or other amenity effects and that the appeal scheme would accord with CPP2 Policies DM20 and DM18.

Other matters

29. For the reasons given at IR13.49-13.50, the Secretary of State agrees that the matters raised by local residents can be adequately addressed by planning conditions and/or obligations (IR13.49), and that any risk arising from unknown contamination can be adequately mitigated by planning conditions (IR13.50).
30. The Secretary of State notes that it is common ground between the Council and Appellant that the development cannot provide affordable housing given the high cost of remediating the site and that the Unilateral Undertaking (UU) contains obligations which would require the Appellant to use 'reasonable endeavours' and a review mechanism to try and secure grant funding for the affordable housing (IR13.51 and IR12.4). He considers that these obligations meets the Community Infrastructure Levy (CIL) tests as set out below. However, given there is no guarantee that affordable housing would be provided, he does not consider that this weighs in favour of the proposal.
31. For the reasons set out at IR13.52 the Secretary of State agrees that the effect on the landscape and scenic beauty of the South Downs National Landscape would be neutral and these would therefore be conserved. He therefore agrees there would be no conflict with the legal duty under Section 85 of the Countryside and Rights of Way Act 2000 or CPP1 Policy SA5.
32. For the reasons given at IR13.53 the Secretary of State agrees that the Appellant undertook appropriate consultation with the local community.
33. The Secretary of State agrees with the Inspector's conclusions at IR13.54-IR13.55 in respect of the proposed housing serving a local need.

Benefits of the proposal

34. For the reasons given at IR13.58, the Secretary of State agrees that the benefits of the scheme include the redevelopment of an unsightly, underused and contaminated brownfield site in a highly sustainable urban location, the delivery of 495 energy efficient homes in an area of acute need in accordance with an agreed housing mix. While the

Inspector gives a collective very substantial weight to these benefits, the Secretary of State, taking into account the provisions of paragraph 125(c) of the Framework, considers the value of using suitable brownfield land within settlements for homes and other identified needs should be given separate substantial weight. In the context of the Council's 1.7 years housing land supply (IR5.4), he considers that delivery of energy efficient homes in a sustainable location should carry substantial weight.

35. For the reasons given at IR13.59 the Secretary of State agrees that a significant enhancement to the townscape of east Brighton, a bio-diversity net gain of nearly 2,000%, the delivery of 2,791m² of commercial floorspace providing up to 195 new jobs and 11,276m² of new public realm, open space and new walking routes collectively carry significant weight.

Planning conditions

36. The Secretary of State had regard to the Inspector's analysis at IR11.1-IR11.8, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 57 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 57 of the Framework and that the conditions set out at **Annex B** should form part of his decision.

Planning obligations

37. The Secretary of State has had regard to the Inspector's analysis at IR12.1-IR12.5, the planning obligation dated 8 April 2025 and the UU dated 8 April 2025, paragraph 58 of the Framework, the Guidance and the CIL Regulations 2010, as amended. For the reasons given at IR12.1-IR12.5, he agrees with the Inspector's conclusion at IR12.5, and further agrees that the obligations comply with Regulation 122 of the CIL Regulations 2010 and the tests at paragraph 58 of the Framework.

Planning balance and overall conclusion

38. No conflicts with development plan policies have been identified, and the Secretary of State considers that the appeal scheme is 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 line with the development plan.
39. As the Council cannot demonstrate a five year supply of housing, 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 strong 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, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.
40. Weighing in favour of the proposal is the redevelopment of a brownfield site within a settlement for homes and other identified needs which carries substantial weight, and the delivery of energy efficient homes in a sustainable location which also carries substantial weight. The significant enhancement to the townscape of east Brighton, a biodiversity net

gain (BNG) of nearly 2,000%, the delivery of 2,791m² of commercial floorspace, provision of up to 195 jobs, provision of 11,276m² of new public realm and new walking routes collectively carry significant weight.

41. Weighing against the proposal is the less than substantial harm to the significance of the FCH which carries great weight; the harm to the setting of Marine Gate NDHA and the removal of the flint wall NDHA which collectively carry limited weight; and the harm to the residential amenity of the occupants of neighbouring dwellings which carries limited weight.
42. In line with the heritage balance set out at paragraph 215 of the Framework, the Secretary of State has considered whether the identified less than substantial harm to the significance of the designated heritage asset is outweighed by the public benefits of the proposal. Taking into the account the public benefits of the proposal as identified in this decision letter, overall the Secretary of State considers that the benefits of the appeal scheme are collectively sufficient to outbalance the identified less than substantial harm to the significance of the FCH. He considers that the balancing exercise under paragraph 215 of the Framework is therefore favourable to the proposal.
43. The Secretary of State considers that the identified harm does not meet the 'substantial' threshold, and therefore paragraph 125(c) of the Framework indicates that this proposal, which uses suitable brownfield land within settlements for homes and other identified needs, should be granted.
44. The Secretary of State considers that there are no protective policies which provide a strong reason for refusing the development proposed. He further considers that the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits when assessed against policies in the Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination. The presumption in favour of sustainable development therefore applies.
45. Overall, in applying s.38(6) of the PCPA 2004, the Secretary of State considers that the accordance with the development plan and the material considerations in this case indicate that permission should be granted.
46. The Secretary of State therefore concludes that the appeal should be allowed and planning permission granted.

Formal decision

47. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission, subject to the conditions set out in **Annex B** of this decision letter, for a comprehensive mixed-use redevelopment comprising site preparation and enabling works, demolition of existing buildings and structures; provision of new buildings comprising residential use (Use Class C3) and flexible non-residential floorspace (Use Class E), new private and communal amenity space, public realm, landscaping; car and cycle parking, highway works, access and servicing arrangements; associated plant,

infrastructure and other associated works including interim works in accordance with application Ref. BH2021/04167, dated 24 November 2021.

48. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the TCPA 1990.

Right to challenge the decision

49. 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 TCPA 1990.

50. A copy of this letter has been sent to Brighton and Hove Council and Brighton Gasworks Coalition, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Emma Hopkins

Decision officer

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

Annex A Schedule of Post Inquiry representations

Party	Date
David Williams	22 April 2025

Annex B List of conditions

- 1 The development hereby permitted shall be commenced before the expiration of three years from the date of this permission.
- 2 The development hereby permitted shall be carried out in strict accordance with the following approved drawings: 11268-EPR-01-00-TP-A-03-100, 11268-EPR-01-01-TP-A-03-102, 11268-EPR-01-02-TP-A-03-104, 11268-EPR-01-03-TP-A-03-106, 11268-EPR-01-04-TP-A-03-108, 11268-EPR-01-05-TP-A-03-110, 11268-EPR-01-06-TP-A-03-112, 11268-EPR-01-07-TP-A-03-114, 11268-EPR-01-08-TP-A-03-116, 11268-EPR-01-09-TP-A-03-118, 11268-EPR-01-10-TP-A-03-120, 11268-EPR-01-11-TP-A-03-122, 11268-EPR-01-12-TP-A-03-124, 11268-EPR-02-00-TP-A-03-101, 11268-EPR-02-01-TP-A-03-103, 11268-EPR-02-02-TP-A-03-105, 11268-EPR-02-03-TP-A-03-107, 11268-EPR-02-04-TP-A-03-109, 11268-EPR-02-05-TP-A-03-111, 11268-EPR-02-06-TP-A-03-113, 11268-EPR-02-07-TP-A-03-115, 11268-EPR-02-08-TP-A-03-117, 11268-EPR-02-09-TP-A-03-119, 11268-EPR-02-10-TP-A-03-121, 11268-EPR-02-11-TP-A-03-123, 11268-EPR-BA-ZZ-TP-A-04-100, 11268-EPR-BB-ZZ-TP-A-04-101, 11268-EPR-BC-ZZ-TP-A-04-102, 11268-EPR-BD-ZZ-TP-A-04-103, 11268-EPR-BH-ZZ-TP-A-04-107, 11268-EPR-BE-ZZ-TP-A-04-104, 11268-EPR-BF-ZZ-TP-A-04-105, 11268-EPR-BG-ZZ-TP-A-04-106, 11268-EPR-BI-ZZ-TP-A-04-108, 11268-EPR-ZZ-00-TP-A-01-100, 11268-EPR-ZZ-00-TP-A-01-101, 11268-EPR-ZZ-00-TP-A-01-102, 11268-EPR-ZZ-03-TP-A-03-001, 11268-EPR-ZZ-14-TP-A-01-103, 11268-EPR-ZZ-EL-TP-A-01-400, 11268-EPR-ZZ-EL-TP-A-01-401, 11268-EPR-ZZ-EL-TP-A-01-402, 11268-EPR-ZZ-EL-TP-A-01-403, 11268-EPR-ZZ-GS-TP-A-01-500, 11268-EPR-ZZ-XX-TP-A-05-100, 11268-EPR-ZZ-XX-TP-A-05-101, 11268-EPR-ZZ-XX-TP-A-05-102, 11268-EPR-ZZ-XX-TP-A-05-103, 11268-EPR-ZZ-XX-TP-A-05-104, 11268-EPR-ZZ-XX-TP-A-05-105, 11268-EPR-ZZ-XX-TP-A-05-106, 11268-EPR-ZZ-XX-TP-A-05-107, 11268-EPR-ZZ-XX-TP-A-05-110, 11268-EPR-ZZ-ZZ-TP-A-04-109, 11268-EPR-ZZ-ZZ-TP-A-04-110, 11268-EPR-ZZ-XX-TP-A-05-108, 11268-EPR-ZZ-XX-TP-A-05-109.
3. Unless otherwise agreed in writing with the Local Planning Authority the development hereby permitted shall be carried out in accordance with the following reports including any specified recommendations and mitigation measures: Energy Statement Rev 02, Arboricultural Impact Assessment Rev 01, Transport Assessment - 280419-00, Remediation Options Appraisal and Strategy - 5204803 RS, Air Quality and Odour Management Plan Rev 00, Operational Waste Management Plan Rev 02, Ecological Assessment 8757.EcoAs.vf1, Windtech Pedestrian Microclimate CFD Study WF247-07F02-Rev 2 November 2023, Sustainability Statement Rev 2 and the Drainage Strategy Report (Appendix 3 to the Flood Risk Assessment).
4. The development hereby approved shall not commence until a phasing plan showing the location of phases and the sequencing for those phases has been submitted to and approved by the Local Planning Authority in writing. The development shall be carried out in accordance with the plan thereby approved. The phasing plan may be updated subject to the written approval in advance of the Local Planning Authority.
5. Prior to the commencement of any demolition, site preparation or enabling works within any relevant phase of the development, details of any demolition, site preparation or enabling works shall be submitted and approved by the Local Planning

Authority. The above works shall be carried out in accordance with the approved details.

6. Prior to the commencement of the development hereby permitted, a scheme shall be submitted to and approved in writing by the Local Planning Authority detailing the establishment of a Community Liaison Group to include representation from the applicant and site contractor, the Council and local residents. The scheme shall include provision for:
 - i. The appointment of a chairperson,
 - ii. The appointment of a liaison representative from the developer or their appointee;
 - iii. A community complaints procedure;
 - iv. The production, approval and publication of Minutes of Community Liaison Group meetings;
 - v. Details of how the group will operate, including its terms of reference, and frequency of meetings; and,
 - vi. An implementation programme.

Thereafter, the scheme shall be implemented and adhered to in accordance with the approved details throughout the lifetime of the construction of the development.

7. No demolition shall take place until a Demolition Environmental Management Plan (DEMP) has been submitted to and approved in writing by the Local Planning Authority. The DEMP shall include:
 - i. The phases of the proposed demolition including the estimated completion date(s).
 - ii. 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).
 - iii. 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.
 - iv. Details of hours of demolition including all associated vehicular movements.
 - v. A plan showing demolition traffic routes.
 - vi. A method statement setting out practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts on ecology during construction and including a pre-works check for Schedule 9 invasive plant species.
 - vii. A Site Waste Management Plan

The demolition shall be carried out in accordance with the approved DEMP. Any such works approved under this condition are referred to in other conditions as 'demolition works'.

8. No development of a phase (excluding site preparation, demolition, enabling works), shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include:
 - i. The estimated construction dates of the phase(s).
 - ii. 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).

- iii. 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 employee and contractor parking arrangements.
- iv. Details of hours of construction including all associated vehicular movements.
- v. Details of the construction compound.
- vi. A plan showing construction traffic routes.
- vii. A method statement setting out practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts on ecology during construction and including a pre-works check for Schedule 9 invasive plant species.
- viii. A Site Waste Management Plan.

The construction shall be carried out in accordance with the approved CEMP.

9. All remediation works shall be carried out in accordance with the Air Quality and Odour Management Plan (AQOMP) (Atkins ref. 5204803 OMS, December 2023). The baseline monitoring identified in paragraph 4.3 of the AQOMP shall also include vapour monitoring (through vapour collection and laboratory analysis). Prior to commencing any remediation works, baseline monitoring results, together with analysis of the additional vapour results, shall be submitted to the Local Planning Authority and made available to the Community Liaison Group in accordance with Section 6 of the AQOMP. If these results indicate that any changes that will be required to the AQOMP, an updated version shall be submitted to and agreed in writing by the Local Planning Authority prior to commencing remediation works. The remediation shall be carried out in accordance with the approved AQOMP.
10. Prior to the commencement of any remediation works, further details of the exclusion zones as described in the Air Quality and Odour Management Plan (ref. 5204803 OMS December 2023), where excavated made ground or pile arisings containing potentially contaminated or odorous material (i.e. excluding chalk or concrete) shall not be stockpiled shall be submitted to and agreed in writing by the Local Planning Authority. Details shall include proposed locations, how the exclusion zones will be managed and timeframes for the movement of potentially contaminated or odorous material from excavations or piling within any exclusion zone. The remediation works will be carried out in accordance with the agreed details.
11. No phase of the development hereby permitted shall be occupied or brought into use until a Verification Report by a competent person has been submitted to and approved in writing by the Local Planning Authority. The Report shall confirm that the Remediation Strategy for that phase, as set out in the Remediation Options Appraisal and Strategy (Atkins ref. 5204803 RS, December 2023) has been fully implemented in accordance with the agreed details (unless varied with the written agreement of the local planning authority in advance of implementation). Unless otherwise agreed in writing, the Verification Report shall comprise:
 - a) drawings (if relevant) and photographs of the remediation works in progress;
 - b) results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met.
 - c) certificates demonstrating that imported and/or material left in situ is suitable for use in accordance with the Remedial Target Values set out within the approved Remediation Strategy.

d) details confirming the requirement and appropriate selection of gas/vapour membranes,

12. If during construction, contamination not previously identified is found to be present at the site that requires a change to the approved Remediation Strategy, as set out in the Remediation Options Appraisal and Strategy (Atkins ref. 5204803 RS, December 2023) then no further development (unless otherwise agreed in writing by the Local Planning Authority), shall be carried out within that area of the site until a Method Statement identifying and assessing the risk and proposing remediation measures, together with a programme for such works, is submitted to and approved in writing by the Local Planning Authority for approval in writing. The remediation measures shall be carried out as approved and in accordance with the approved programme.
13. No phase of the development hereby permitted (excluding demolition, site preparation or enabling works) shall be commenced until a surface water drainage scheme in accordance with the Flood Risk Assessment and Drainage Strategy Report for each phase has been submitted to and approved in writing by the Local Planning Authority. The scheme for each phase shall subsequently be implemented in accordance with the approved details and retained thereafter.
14. Notwithstanding any details shown on the approved plans, no development above ground floor slab level of any phase of the development hereby permitted shall take place until details of all materials to be used in the construction of the external surfaces of the buildings in that phase of the development have been submitted to and approved in writing by the Local Planning Authority, including (where applicable):
 - i. Details of all brick, mortar, roofing materials (including details of the colour of render/paintwork to be used);
 - ii. Details of all cladding to be used;
 - iii. samples/details of the proposed window, door and balcony treatments,
 - iv. details of external materials maintenance plans, and
 - v. details of privacy screening and/or planting to protect the amenity of any residential occupiers with private terraces fronting onto the residential podium gardens.

Each phase of the development shall be carried out in accordance with the approved details.

15. Prior to occupation of each phase of the development hereby permitted, a scheme for landscaping shall be submitted to and approved in writing by the Local Planning Authority. The approved landscaping scheme for that phase shall be implemented in full, in accordance with the approved details in the first planting season after completion or first occupation of the development, whichever is the sooner. The scheme shall include the following:
 - i. details of all hard and soft surfacing to include the type, position, design, dimensions and materials and any sustainable drainage system used.
 - ii. a schedule detailing sizes and numbers/densities of all proposed trees/plants including food-bearing trees/plants, and details of tree pit design, use of guards or other protective measures and confirmation of location, species and sizes, nursery stock type, defect period and maintenance plan.
 - iii. both shade and wind tolerant species of a mixture of native and exotic origin that are capable of thriving on the specific soil type found on the site should be included where planting locations receive low levels of annual sunlight and strong winds.

- iv. measures to promote healthy root growth such as mulching and shared root trenches between planted specimens shall be included in the landscaping proposals to maximise the survival rate of replacement trees.
- v. details of all food growing areas, including a maintenance plan and provision of storage for necessary tools and equipment.
- vi. details of all existing and proposed boundary treatments to include type, position, design, dimensions and materials.
- vii. details of proposals that show a visual reference to the position and extent of the historic flint boundary wall.
- viii. details of the children's play areas including equipment to be installed and any boundary treatments.
- ix. a landscaping plan for the Boundary Road.
- x. Details of a wayfinding scheme.
- xi. Details of the new pedestrian/cycle route though the site.
- xii. Extents of permeable pavings to be confirmed following contamination studies and confirmation of all drain points and locations.

Any trees or plants which within a period of 5 years from the completion of each phase of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. The landscaping scheme, including all boundary treatments, food growing areas and children's play areas shall be retained thereafter

- 16. Notwithstanding any details shown on the approved plans, no development above ground floor slab of Block A, B, F and H shall take place until details of oriel windows designed to ensure sufficient privacy for future occupiers of the scheme, have been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out and completed fully in accordance with the approved details and shall be retained as such thereafter.
- 17. No development above ground floor slab shall take place until a Noise Mitigation Plan detailing how all future residents of the development will be protected from sources of noise and vibration including from the commercial units, plant rooms and energy infrastructure has been submitted and agreed in writing by the Local Planning Authority. The mitigation measures for each phase shall be carried out in full prior to first occupation of any relevant phase and retained as such thereafter.
- 18. Noise associated with plant and machinery incorporated within the development shall be controlled such that the Rating Level measured or calculated at 1-metre from the façade of the nearest existing noise sensitive premises, shall not exceed the existing LA90 background noise level. The Rating Level and existing background noise levels are to be determined as per the guidance provided in BS4142:2014-A1:2019 (or the relevant updated Standard). For the avoidance of doubt, this relates to all plant on the site, whether roof top Air Source Heat Pumps or plant associated with the class E ground floor uses.
- 19. No servicing (i.e. deliveries to or from the commercial premises) shall occur except between the hours of 07.00 and 21.00 Monday to Saturday, and 09.00 to 17.00 on Sundays, Bank or Public Holidays.
- 20. The commercial uses (Class E) hereby permitted shall not be in use except between the hours of 07.00 and 22.30 Monday to Saturday, and 08.00 to 22.00 on Sundays,

Bank or Public Holidays unless otherwise agreed in writing by the Local Planning Authority.

21. No phase of the development hereby permitted shall be occupied until an external lighting scheme for that phase has been submitted to and agreed in writing by the Local Planning Authority. The scheme shall include details of external lighting, levels of luminance at adjacent receptors, hours of operation, a lighting design strategy for biodiversity and details of maintenance. The external lighting for each phase shall be installed, operated and maintained in accordance with the approved details and thereafter retained.
22. Prior to first occupation of any non-residential unit hereby permitted within use class E(b) a scheme for the control of fumes, smells and odours has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in strict accordance with the approved details prior to first occupation that phase of the development and shall thereafter be retained as such.
23. Prior to the occupation of any phase of the development hereby approved a Waste & Recycling Management Plan, which includes details of the types of storage for residential and commercial residual waste and recycling materials (including separated food waste), provision for waste collection vehicle access, and the anticipated frequency of collections for that phase shall be submitted to and approved in writing by the Local Planning Authority. The approved Plan shall thereafter be implemented for each phase of the development.
24. Notwithstanding any details shown on the approved plans, no phase of the development hereby permitted shall be occupied until details of secure and covered cycle parking and associated changing/showering facilities for the occupants of, and visitors to, for that phase of the development have been submitted to and approved in writing by the Local Planning Authority. The approved facilities shall be fully implemented and made available for use prior to the first occupation of that phase of the development and shall thereafter be retained for use at all times.
25. Within three months of the date of first occupation of any phase of the development hereby permitted a Residential Travel Plan and Workplace Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall cover a minimum 5-year period and once approved, shall thereafter be fully implemented in accordance with the approved details. The Plans shall include as a minimum:
 - i. Objectives, targets, actions, and measures/incentives to promote sustainable transport modes, reducing single occupancy trips by motor vehicles and reducing trips by delivery and servicing vehicles;
 - ii. Annual monitoring of trips rates including delivery and servicing movements;
 - iii. Monitor occupant awareness of travel plan objectives, targets, actions, and measures/incentives;
 - iv. Measures and incentives to support the delivery of Travel Plan objectives and targets, and shall include:
 - v. Residential travel pack to first residential occupiers to include 2 years of free or subsidised tickets/memberships for local buses and/or train service tickets, bike Share membership and use; and car club membership;
 - vi. Car club monitoring;
 - vii. Workplace travel pack, and

viii. Establishment of a Bicycle User Group

26. Prior to first occupation of a phase of the development hereby permitted, full details of electric vehicle charging points (EVCPs) for that phase shall be submitted to and approved in writing by the Local Planning Authority. These facilities shall be fully implemented and made available for use prior to the occupation of the that phase of development hereby permitted and shall thereafter be retained for use at all times. A minimum of 50% of the parking spaces in each phase shall have full EVCP. The remaining parking spaces shall have passive provision.
27. Within 6 months of first occupation of each non-residential (use class E) unit in each relevant phase, a BREEAM Building Research Establishment issued Post Construction Review Certificate confirming that a minimum BREEAM New Construction rating of 'Excellent' has been achieved shall be submitted to, and approved in writing by, the Local Planning Authority
28. The development hereby approved shall achieve a minimum Energy Performance Certificate (EPC) rating 'B' for new build residential and non- residential development.
29. None of the residential units hereby approved shall be occupied until each relevant residential unit built has achieved as a minimum, a water efficiency standard of not more than 110 litres per person per day maximum indoor water consumption.
30. No phase of the development hereby permitted shall be occupied until the archaeological site investigation and post - investigation assessment (including provision for analysis, publication and dissemination of results and archive deposition) for that phase has been completed and approved in writing by the Local Planning Authority. The archaeological site investigation and post-investigation assessment will be undertaken in accordance with the programme set out in the written scheme of investigation approved under Condition 5.
31. Prior to removal/demolition of the flint wall running along the eastern side of Boundary Road a detailed photographic recording of the wall shall be made, and these records shall be submitted to and approved in writing by the Local Planning Authority.
32. A Landscape and Ecological Management Plan (LEMP) shall be submitted to, and approved in writing by, the Local Planning Authority prior to the occupation of each relevant phase of development. The content of the LEMP shall include the following:
 - i. description and evaluation of features to be managed;
 - ii. ecological trends and constraints on site that might influence management;
 - iii. aims and objectives of management;
 - iv. appropriate management options for achieving aims and objectives;
 - v. prescriptions for management actions, together with a plan of management compartments;
 - vi. preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
 - vii. details of the body or organisation responsible for implementation of the plan, and
 - viii. ongoing monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plans shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP

are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan will be implemented in accordance with the approved details.

33. No development above ground floor slab level of any phase of the development hereby permitted shall take place until final designs of the roof systems (including for blue and brown roofs) for that phase have been submitted to and approved in writing by the Local Planning Authority. The details shall include a cross section, construction method statement, drainage details, the seed mix, and a maintenance and irrigation programme. The roofs shall then be constructed in accordance with the approved details and retained as such thereafter.
34. A minimum of 5% of the total housing provision hereby permitted shall be built as wheelchair user dwellings in compliance with Building Regulations Optional Requirement M4(3)(2a) (wheelchair user dwellings – ‘adaptable’) prior to first occupation and shall be retained as such thereafter. All other dwelling(s) hereby permitted shall be completed in compliance with Building Regulations Optional Requirement M4(2) (accessible and adaptable dwellings) prior to first occupation and shall be retained as such thereafter. Evidence of compliance shall be notified to the building control body appointed for the development in the appropriate Full Plans Application, or Building Notice, or Initial Notice to enable the building control body to check compliance.
35. A minimum of 2,000sqm of the commercial floorspace hereby permitted, including all of the floorspace within the four units within the area annotated as ‘The Yard’ shall be used solely as office, research and development or light industrial space (Use Class E(g) (i), (ii) and (iii)) only and for no other purpose (including any other purpose in Class E of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification). Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (or any order revoking and re-enacting that Order with or without modification), no change of use shall occur without planning permission obtained from the Local Planning Authority.



Report to the Secretary of State

by D M Young JP BSc (Hons) MA MRTPI MIHE

Inspector appointed by the Secretary of State

Date 11 June 2025



TOWN AND COUNTRY PLANNING ACT 1990

BRIGHTON & HOVE CITY COUNCIL

APPEAL MADE BY

ST WILLIAM HOMES LLP

Inquiry Held on 18-21, 25-26 March 2025

Brighton Gasworks

File Ref: APP/Q1445/W/24/3353409

Abbreviations used in this report

5YHLS	5-year housing land supply
BGC	Brighton Gasworks Coalition
BHCC	Brighton & Hove Council
BNG	Biodiversity Net Gain
BRE	British Research Establishment
CD	Core Document
CEMP	Construction Environmental Management Plan
CIL	Community Infrastructure Levy
CPP1	The Brighton & Hove City Plan Part One, March 2016
CPP2	The Brighton & Hove City Plan Part Two, October 2022
DAS	Design and Access Statement
DHA	designated heritage asset
dph	Dwellings per Hectare
DRP	Design Review Panel
DVS	District Valuation Service
ECCA	East Cliff Conservation Area
EIA	Environmental Impact Assessment
ES	Environmental Statement
FCH	French Convalescent Home
FVA	Financial Viability Assessment
HE	Historic England
HTLVIA	Heritage, Townscape, Landscape Visual Impact Assessment
KTCA	Kemp Town Conservation Area
LPA	Local Planning Authority
LTSH	less than substantial heritage harm
NDHA	non-designated heritage assets
NDSS	Nationally Described Space Standards
NPPF	National Planning Policy Framework
OR	Planning Officer's report to Committee
PAN04	Brighton Marina Masterplan Planning Advice Note 04
PLBCAA	Planning (Listed Buildings and Conservation Areas) Act 1990
PoE	Proof of Evidence
PPG	Planning Practice Guidance
RfR	Reason for Refusal
RPG	Registered Park and Garden
S106	Section 106 of the Town and Country Planning Act 1990
SDNP	South Downs National Park
SHLAA	Strategic Housing Land Availability Assessment
SoCG	Statement of Common Ground
SoS	Secretary of State
SSoC	Council's Supplementary Statement of Case
SPD17	Supplementary Planning Document 17

Contents

Cover¹ page

1	Procedural Matters	4
2	The Site and Surroundings	5
3	Relevant Planning History	7
4	The Appeal Scheme	7
5	Planning Policy, Guidance and Legislation	8
6	Matters Agreed	12
7	The Case for Brighton & Hove City Council (the Council)	14
8	The Case for Brighton Gasworks Coalition	22
9	The Case for St William Homes LLP (the Appellant)	30
10	The Case for Interested Parties	48
11	Planning Conditions	51
12	Planning Obligations	52
13	Inspector's Reasons	53
14	Inspector's Recommendation	65

Appendices

A - Appearances

B - Suggested Conditions

C - Inquiry Documents

D - Core Documents

¹ Visualisation of the appeal scheme taken from the 2003 Design and Access Statement

Appeal Ref: APP/Q1445/W/24/3353409

Brighton Gasworks, land bounded by Roedean Road (B2066), Marina Way and Boundary Road, Brighton and Hove, BN2 5TG.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by St William Homes LLP against the decision of Brighton & Hove Council.
- The application Ref is BH2021/04167.
- The development proposed is a comprehensive mixed-use redevelopment comprising site preparation and enabling works, demolition of existing buildings and structures; provision of new buildings comprising residential use (Use Class C3) and flexible non-residential floorspace (Use Class E), new private and communal amenity space, public realm, landscaping; car and cycle parking, highway works, access and servicing arrangements; associated plant, infrastructure and other associated works including interim works.

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

Throughout this Report, core documents (listed at Appendix D) are referred to with the prefix 'CD' followed by the relevant number. Documents handed up during the Inquiry (listed at Appendix C) are prefaced with 'ID' followed by the relevant reference number.

1.0 Procedural Matters

- 1.1 The appeal was recovered by the Secretary of State (SoS) for her own determination by means of a Direction dated 20 January 2025.² The reasons for the Direction are that the appeal involves proposals for residential development 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.
- 1.2 The Inquiry sat for 6 days between 18 and 26 March 2025. A pre-Inquiry Case Management Conference was held on 10 January 2025 to discuss the arrangements for the Inquiry and deadlines for the submission of various documents. A summary of the conference was subsequently sent to the main parties.³
- 1.3 The Brighton Gasworks Coalition (BGC) appeared at the Inquiry as a Rule 6 party. BGC is an umbrella organisation formed of the Brighton Society, Regency Society of Brighton & Hove, Kemp Town Society, Kingscliffe Society, Montpelier & Clifton Hill Association, Brighton & Hove Heritage Commission, North Lane Community Association, Rottingdean Heritage, West Hill Community Association, Marine Gate Holdings Ltd, Due East, AGHAST, Amex Area Neighbourhood Action Forum, Regency Square Community, Southdown Rise Residents Association and Kingsway and West Hove Residents Association.
- 1.4 I carried out four unaccompanied site visits before and during the Inquiry. These visits were aided by itineraries provided by the parties and among other locations, included all the viewpoints contained in the Appellant's Heritage, Townscape, Landscape Visual Impact Assessment⁴ (HTLVIA) which were discussed extensively at the Inquiry.⁵ In light of the foregoing and in agreement with the main parties, a formal accompanied site visit was not deemed necessary.

² CDC.03

³ CDI.20

⁴ CDA.36

⁵ See Appendix 1 to Andrew Smith's Proof of Evidence (PoE) CDJ.04

- 1.5 The Council refused the application on 22 May 2024. The refusal was made by the Planning Committee against the recommendation of the Council's officers for three reasons.⁶ Reason for Refusal (RfR) 1 alleged the development would represent overdevelopment of the appeal site by virtue of excessive massing, density and height thereby harming the townscape and seascape of the area including its heritage assets. RfR 2 related to proposed housing mix and RfR3 concerned the effect of the appeal scheme on the living conditions of future residents with particular regard to amenity and light.
- 1.6 Following a determination by the Council's Planning Committee on 4 December 2024, the Council withdrew the words 'material palette' and 'seascape' from RfR1 and withdrew RfR2 in its entirety.⁷
- 1.7 The appeal scheme proposal constitutes Environmental Impact Assessment development, and the application was accompanied by an Environmental Statement⁸ (ES) prepared pursuant to the Town and Country Planning (Environmental Impact Assessment (EIA)) Regulations 2017 (as amended). Having undertaken its own review, the Planning Inspectorate considers the ES to be satisfactory in terms of Schedule 4 of the EIA Regulations. I am therefore satisfied that the ES is fit for purpose and identifies the likely environmental effects arising from the appeal scheme.
- 1.8 Signed and dated agreements under s106 of the Town and Country Planning Act 1990 were submitted after the close of the Inquiry in accordance with an agreed timetable. Draft versions of the documents⁹ along with a Compliance Statement¹⁰ were discussed at the Inquiry. Among other things, the bilateral s106 agreement contains obligations in respect of off-site highway works, public art and monitoring contributions. The Unilateral Undertaking (UU) was submitted as a result of the Council and Appellant being unable to agree on the wording of the affordable housing obligation, specifically what proportion of any surplus that should be paid following a late-stage viability review. All the proposed planning obligations need to be assessed against the statutory Community Infrastructure Levy (CIL) tests, a matter I return to later.
- 1.9 Planning¹¹ and Heritage¹² Statements of Common Ground (SoCG) were submitted prior to the Inquiry. BGC provided comments on the Planning SoCG.¹³ I have had regard to all these documents in reaching my decision.
- 1.10 An application for costs was made by the Appellant against Brighton & Hove Council. This application is the subject of a separate report.

2.0 The Site and Surroundings

- 2.1 The site and its surroundings are described in some detail in the SoCG and other appeal documents. Put briefly, the appeal site is a previously developed and contaminated brownfield site within the built-up boundary of Brighton. It extends across an area of approximately 2 hectares and currently comprises a number of

⁶ CDD.05

⁷ CDI.07, paragraph 2.3

⁸ CDA.18-35

⁹ CDH.04 & 05

¹⁰ CDH.03

¹¹ CDI.16

¹² CDI.21

¹³ CDI.19

different elements and built forms including predominantly hardstanding and warehouse style buildings and vehicle-related uses, alongside two gasholders in the northeast of the site. The steelwork frame for one of these is visible over a wide area of east Brighton.

Figure 1 – An aerial photograph showing the appeal site and its context.¹⁴



- 2.2 The existing buildings cumulatively provide 855m² of floorspace. Vehicular access to the site is via four points, three entrances along Boundary Road to the west, and one point of access on Marina Way to the east which in turn serves as the main access route to Brighton Marina.
- 2.3 To the north of Roedean Road is a four-storey post-war residential building, an assisted living cottage complex (John Howard Cottages) and the Brighton Waldorf School. Further north of Roedean Road is the residential neighbourhood of Whitehawk. To the north-east is East Brighton Park, which contains sports pitches and links to Sheepcote Valley to the north, which is a Local Nature Reserve that sits mostly within the South Downs National Park (SDNP). To the east of Marina Way, are a mixture of detached, semi-detached and terraced properties, the Roedean Community Fire Station and the imposing and locally listed Marine Gate flatted complex which is of 8-10 storeys in height.
- 2.4 To the south-west is the Courcels building, a post-war flatted building up to 8 storeys in height. Beyond this on the opposite side of De Corcel Road is the Grade II listed French Convalescent Home (FCH). To the west of the appeal site are two, three-storey terraced properties along Boundary Road and Arundel Street (with basements). The Bell Tower Industrial Estate containing two rows of single storey industrial units is located to the north-west.

¹⁴ Taken from page 30 of the Design and Access Statement (CDA.07)

- 2.5 The site is not located within or immediately adjacent to a conservation area and does not contain any listed buildings or structures. The flint wall which forms the western boundary of the appeal site is a non-designated heritage asset (NDHA).

3.0 Relevant Planning History

- 3.1 The planning history relevant to the appeal is summarised in section 3 of the Officer's Report¹⁵ (OR) and section 4 of the Planning SoCG. These set out the planning permissions covering the appeal site, none of which are considered particularly relevant to the consideration of the proposed development.
- 3.2 Paragraphs 4.8-4.13 of the SoCG detail the extensive pre-application engagement between the Appellant and Council and records that there were more than twenty meetings between October 2019 and 2021. The pre-application process included three independent external Design Review Panels (DRP) where a panel of built environment professionals critiqued the development proposals. The initial scheme had approximately 600 residential units with building heights of up to 16 storeys.
- 3.3 As part of the pre-application process, the Appellant engaged with the local community via mail-drop, a consultation website, virtual drop-ins, and meetings with local councillors and groups. The extent of community engagement and how feedback has shaped the appeal scheme is detailed in the Statement of Community Engagement¹⁶ and paragraphs 4.14-4.19 of the SoCG.
- 3.4 During the determination period, the appeal scheme was further amended to respond to feedback from the Council and its consultees. Among other things this included a reduction in the number of homes from 553 to 495 units, an increase in on-site car parking provision and a reduction in the heights of a number of the taller buildings. Changes between the original 2021 scheme and the appeal scheme are summarised in Table 4-1 of the SoCG and explained in more detail in the 2023 Design and Access Statement¹⁷ (DAS) and the Appellant's Planning Application Changes and Summary Revision.¹⁸

4.0 The Appeal Scheme

- 4.1 The appeal scheme is described in Section 5 of the DAS and Section 3 of the SoCG. Put simply, the proposed development comprises:
- 9 new buildings of varied height between 3 and 12 storeys including a terrace of 14 townhouses adjacent to Boundary Road providing a total of 495 new homes;
 - Ground floor uses comprising 2,791m² of non-residential-floorspace including ancillary floorspace. A minimum of 2,000m² of employment related uses falling within Use Class E(i),(ii) (office, research and development or light industrial);
 - 179 car parking spaces (0.36 spaces per dwelling) beneath two ground floor podiums including 31 disabled spaces, 30 motorcycle spaces, 642 cycle parking spaces, as well as a car club bay and bikeshare docking facilities for 10 e-bikes, and

¹⁵ CDD.01

¹⁶ CDA.16

¹⁷ CDA.07

¹⁸ CDA.15

- New public realm including soft landscape providing play features, Sustainable Urban Drainage, ecological enhancements and communal gardens.

4.2 The layout of the proposed development is shown in Figure 2 below and comprises a series of linear buildings arranged around the primary areas of public realm and open space which includes a new connection through the appeal site.

Figure 2 - Proposed layout.¹⁹



4.3 The appeal scheme does not include the provision of any affordable housing. This is supported by a Financial Viability Assessment²⁰ (FVA) which was independently reviewed by the District Valuation Service (DVS) on behalf of the Council. The Appellant has agreed to enter into a 'reasonable endeavours' review arrangement within a unilateral s106 obligation and associated with potential additional funding from Homes England. This is a matter a return to later in this report.

5.0 Relevant Planning Policy, Guidance and Legislation

5.1 The relevant planning policy is set out in Section 7 of the SoCG and Sections 7-8 of the OR. I summarise the main points below.

¹⁹ Landscape Masterplan, abstracted from Nov 2023 Design & Access Statement

²⁰ CDA.10

- 5.2 Section 38(6) of the 2004 Planning and Compulsory Purchase Act 2004 (the Act) requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise. One such material consideration is the National Planning Policy Framework (NPPF), which can override development plan policy if it is not consistent with the NPPF's provisions. I therefore summarise the national planning policy context first, before turning to look at relevant Development Plan policies.
- 5.3 The latest version of the NPPF was issued in December 2024.²¹ Like earlier versions it emphasises that the purpose of the planning system is to contribute to the achievement of sustainable development, including the provision of homes, through three over-arching objectives – economic, social and environmental. It makes it plain that planning policies and decisions should play an active role in guiding development towards sustainable solutions, but should take local circumstances into account, to reflect the character, needs and opportunities of each area.
- 5.4 To ensure that development is pursued in a positive way there is a presumption in favour of sustainable development at the heart of the NPPF. Paragraph 11 explains that for decision-taking this means, approving development proposals that accord with an up-to-date development plan without delay. Where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date²², as is the case here, planning permission should be granted unless the application of policies in the NPPF that protect areas or assets of particular importance provide a strong reason for refusing the development; or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. Decision makers should have particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.
- 5.5 NPPF paragraph 61 states that to support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay. The overall aim should be to meet an area's identified housing need, including with an appropriate mix of housing types for the local community.
- 5.6 Of particular relevance to the appeal scheme are NPPF paragraphs 125c) and 130c). The latter states that planning decisions should give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, proposals for which should be approved unless substantial harm would be caused, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land. Paragraph 130c) states that applications which fail to make efficient use of land, should be refused and also that decision makers should apply a flexible approach to daylight and sunlight matters, provided the resulting scheme would provide acceptable living standards.

²¹ CDE.01

²² The SoCG confirms that the Council has a housing land supply of 1.7yrs. At the commencement of the Inquiry this figure had fallen to below 1.3 yrs (see Murphy PoE, paragraph 8.9).

- 5.7 Turning to heritage, the statutory provision is Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA). This provision requires the decision maker to pay special regard to the preservation of a listed building (and/or its setting). Section 72(1) requires decision makers to give special attention to the desirability of preserving or enhancing the character or appearance of Conservation Areas.
- 5.8 NPPF paragraphs 207 and 208 explain that the significance of all heritage assets needs to be identified in a manner proportionate to their importance. Paragraph 212 advises that great weight should be given to the conservation of an asset's significance. The grading of an asset is material to the calculation of weight – the more important the asset, the greater the weight should be. Paragraph 215 states that where a development proposal will lead to 'less than substantial' harm (LTSH) to the significance of a designated heritage asset (DHA), this harm should be weighed against the public benefits of the proposal. The Courts have found that the above NPPF paragraphs on heritage are consistent with the statutory duty under the PLBCAA.²³
- 5.9 The Planning Practice Guidance (PPG) advises a thorough assessment of the impact on a heritage asset's setting needs to take into account, and be proportionate to, the significance of the heritage asset under consideration and the degree to which proposed changes enhance or detract from that significance and the ability to appreciate it.
- 5.10 Other relevant documents include the 2019 National Design Guide²⁴ which supports NPPF paragraphs 131 and 139 in seeking to achieve high quality places and buildings, advice from Historic England (HE) in relation to heritage assets²⁵ and relevant sections of the PPG.²⁶ Further commentary on these and other relevant documents are provided in the planning Proofs of Evidence (PoE).²⁷
- 5.11 The Development Plan insofar as it is relevant to the appeal scheme comprises:
- The Brighton & Hove City Plan Part One (CPP1) March 2016²⁸, and
 - The Brighton & Hove City Plan Part Two (CPP2) October 2022 Economy, Environment & Culture.²⁹
- 5.12 A full list of the relevant policies and supplementary documents is provided in Section 7 of the SoCG and the Planning Statement.³⁰ 'The key policies in my assessment of this appeal are set out below.
- 5.13 The strategy for Brighton & Hove, set out in CPP1, acknowledges that Brighton is tightly constrained by the SDNP and the sea with a '*limited legacy of derelict or vacant sites*'. Against that background, paragraph 2.19 states:
- "Spatially the majority of new housing, employment and retail development will be located on brownfield (previously developed) sites within the city's built-up area and directed to eight specific development areas. These are areas of the city*

²³ *Jones v Mordue* [2016] 1 W.L.R. 2682

²⁴ CDE.03

²⁵ CDE.07-08

²⁶ CDE.04-05

²⁷ Ben Ford PoE (CDJ.01) & Ms Murphy PoE (CDJ.08)

²⁸ CDF.01

²⁹ CDF.02

³⁰ CDA.04

which either already benefit from close proximity to good sustainable transport links or are areas where accessibility can be improved; are areas which offer significant capacity for new development and are areas where new development and/or regeneration will secure substantial benefits for the city. This approach ensures that opportunities for development of brownfield sites are maximised, transport impacts will be minimised and that the city's countryside and the South Downs National Park will continue to be protected".

- 5.14 The appeal site was first allocated for development in the 2005 Local Plan. The current Proposals Map³¹ designates the appeal site as a Strategic Allocation within a wider Development Area. CPP1 Policy DA2 concerns the Strategic Allocation covering Brighton Marina, the gasworks site and the Black Rock Area. Section C.2 of the policy relates specifically to the gasworks and provides for 2,000m² of business floorspace to the north of the site and a minimum of 85 residential units and some ancillary retail development. Criterion c) states: *"development proposals should demonstrate high quality design which positively contribute to the varying character of existing residential and commercial properties in the vicinity to create a cohesive and attractive urban environment"*.
- 5.15 In terms of the development potential of the appeal site, the most recent Strategic Housing Land Availability Assessment³² (SHLAA) published in March 2025 identifies the site for a capacity of 340 homes.
- 5.16 The site is within a medium priority area for development '*with significant development potential*' in the Brighton Marina Masterplan Planning Advice Note 04 (PAN04).³³ PAN04 requires development to preserve and/or enhance the setting of historic buildings and conservation areas nearby, as well as wider historic landscape and the city skyline including views from the SDNP. The appeal site is outside the area identified for tall buildings in PAN04 and Supplementary Planning Document 17 (SPD17).³⁴ The latter states that sites outside tall building areas may potentially be suited for tall buildings subject to detailed testing. In relation to the appeal site, SPD17 notes that '*positive and proactive measures [are required] to secure major enhancement*' akin to category 3B ('suburban areas') and provides additional design considerations for tall buildings regardless of whether they are in a tall building zone or not. SPD17 also sets out that the DA2 area which includes the marina has specific sensitivity due to potential for views from the Kemp Town Conservation Area (KTCA) and from hillsides to the north.
- 5.17 CPP1 Policy CP14 'Housing density' confirms that development densities will be determined on a case-by-case basis. The policy is permissive and allows for density to be permitted at higher densities than those typically found in the locality where it will achieve a high standard of design; repair the character of the neighbourhood and contribute positively to its sense of place; would include a mix of dwelling types, tenures and sizes; is easily accessible by sustainable transport; is well served by local services and community facilities; provides for outdoor recreation and green links. Within the Development Areas covered by policies DA1 to DA6 and DA8, the density of new residential development will be expected

³¹ CDF.03

³² CDF.23

³³ CDF.05

³⁴ CDF.04

to achieve ‘a minimum of 100 dwellings per hectare (dph) on major development sites’, double the minimum in the rest of the city.

- 5.18 CPP2 Policy DM18 requires development proposals to ‘*demonstrate a high standard of design and make a positive contribution to a sense of place and the visual quality of the environment*’; requiring ‘*an integrated approach to design, place making and sustainable development*’ and includes a number of key design aspects that development is required to consider.
- 5.19 CPP2 Policy DM19 states that ‘*to avoid underdevelopment of sites, proposals should seek to maximise opportunities for the development and use of land to ensure the efficient and effective use of available sites*’.
- 5.20 CPP1 Policy CP15 and CPP2 Policy DM29 relate to heritage and set out that development should preserve and enhance the setting of DHAs. CPP2 Policy DM28 relates to locally listed and NDHAs.
- 5.21 Finally, CPP2 Policy DM20 states that planning permission for development will be granted where it would not cause unacceptable loss of amenity to existing occupiers or where it is not liable to be detrimental to human health.
- 5.22 The above list is not exhaustive and other policies and guidance is referred to in this report where relevant.

6.0 Matters agreed between BHCC and the Appellant

- 6.1 The matters of agreement are contained within the Planning and Heritage SoCGs. Based on those documents, the description of the development; application documents; RfRs, statutory consultation responses; the relevant development plan policies as well as planning history and changes to the appeal scheme during the determination period are not in dispute. Other salient agreed matters include:
- a) The site is not located within a conservation area and does not contain any listed buildings or structures, or any DHAs. The flint wall along western site boundary is a NDHA.
 - b) The site is considered to be previously developed brownfield land, which is located in a highly accessible location within the settlement boundary of Brighton & Hove.
 - c) The existing character of the site is varied, degraded, and makes a limited positive contribution to the character or environmental quality of the local area.
 - d) The UK Health Security Agency was the only statutory consultee to formally object to the application but confirmed in an email dated 24 July 2024 that impacts on public health and land contamination fall under the remit of the local authority.
 - e) A total of 1,734 representations were received in response to the planning application notification (the issues raised are covered in section 5 of the OR).
 - f) The principle of the proposed development is consistent with the Government’s objective to maximise the contribution from brownfield sites which are considered under-utilised.

- g) Brighton & Hove is physically constrained by the sea to the south, and by the SDNP to the north. One sixth of the City's area is covered by a nature conservation designation (CPP1 paragraph 1.15), and there are numerous heritage assets in the form of listed buildings and conservation areas across the city.
- h) Brighton & Hove has an acute need for additional housing and the provision of 495 homes would be a significant public benefit of the proposal in the planning balance.
- i) The Appellant has provided a FVA, which has been agreed by the Council's third-party assessor, which confirmed that the development cannot viably provide any affordable housing.
- j) A significant amount of investigation and remedial works have already taken place on the site and therefore the extent of contamination is likely be limited compared to many other gasworks. It is not expected that substantial areas of undetected contamination would be encountered but some unexpected areas may be encountered.
- k) The following planning benefits are agreed:
 - 1) The redevelopment of an existing underutilised brownfield site within the settlement boundary of Brighton to deliver a development including housing and new public realm.
 - 2) The proposed development would deliver 495 homes adding to the supply of housing in a city with an acute need.
 - 3) Subject to the availability of grant funding or an improvement in the viability position of the appeal site (captured through a review mechanism contained within the s106 Agreement) the development could deliver up to 198 affordable homes in an affordable tenure split 55% affordable rent (109 homes) / 45% shared ownership (89 homes). This would make a significant contribution to Brighton & Hove's affordable housing need.
 - 4) The mix proposed by the development would also deliver 62 family sized (three and four bedroom) homes, 14 of which would be delivered as three or four bed townhouses, providing choice of housing.
 - 5) The delivery of 2,791m² of high-quality, non-residential (Class E) floorspace would make a significant contribution to meeting local employment needs, providing up to 195 new jobs.
 - 6) The physical transformation of a brownfield site and contaminated former gasworks.
 - 7) Public realm and open space is proposed with 11,276m² of new public realm for new and existing residents creating new routes and connections across the appeal site and to the surrounding area.
 - 8) The proposals would result in significant net-ecological enhancement of almost 2,000% biodiversity net gain via extensive landscaping, tree planting, and inclusion of biodiverse roof spaces as well as a commitment to bird and bat boxes.

- 9) A sustainability and energy strategy is proposed including an air source heat pump-led energy system which shall achieve a 78% improvement upon Part L (2013) through the adoption of a range of sustainability measures.

7.0 The Case for Brighton & Hove City Council

The case for the Council set out below is taken primarily from its Opening and Closing Statements³⁵ as well as its Supplementary Statement of Case³⁶ and PoE³⁷.

Overview

- 7.1 The Council accepts the principle of a mixed-use scheme on the appeal site. However, the size and certain elements of the design would lead to unacceptable impacts in planning terms upon the important townscape of Brighton and its heritage assets. The Council also considers the scheme would lead to poor daylight and amenity conditions for future residents of the scheme.
- 7.2 Although brownfield land should be maximised, it is important to recognise that the Government at no stage suggested its policy is to maximise use of brownfield land *'at any cost'*. In particular, the Government in its response to the NPPF consultation stated, *"we are clear that there can be no trade-off between supply and quality – indeed, as we act to allocate more land for development, we expect it to be delivered quickly and to a higher quality"*. There is also nothing within the Brownfield Passports³⁸ working paper that suggests the Government is content to sacrifice local scrutiny and quality for the sake of building as much housing as possible on brownfield sites.
- 7.3 Although there were no formal objections from statutory consultees, there were 1,700 representations from local people and interested non-statutory bodies such as Save Britain's Heritage, Rottingdean Heritage, Kemp Town Society, Brighton & Hove Heritage Commission, The Brighton Society, Regency Squares Community Regency Society of Brighton & Hove and The Georgian Group all of whom raised objections to the scheme.

Relevant policy

- 7.4 The starting point is Policy DA2.2C which identifies the appeal site as part of the wider strategic allocation *'Brighton Marina, Gas Works and Black Rock Area'* and covers a slightly larger area of approximately 2.33ha than the appeal site which is 2.02ha. The site is allocated for a minimum of 85 residential units of the total allocation of 1,938 homes (although it is acknowledged that the SHLAA identifies a potential capacity for 340 homes).
- 7.5 Policy DA2.C2 explains why the policy extends beyond the marina to include the Gasworks (Site 2) (and the further Blackrock (Site 3)) namely *"because they are likely to be affected by any future development of the Marina and vice versa, particularly in terms of traffic generation and impact on nearby junctions"*. It does not suggest that the extent of the allocation is reflective or determinative in any other planning terms for example heritage or townscape.

³⁵ ID.02 & ID.18

³⁶ CDI.08

³⁷ CDJ.08

³⁸ CDE.14

- 7.6 Policy DA2.C2 requires development to “*demonstrate high quality design which positively contributes to the varying character of existing residential and commercial properties in the vicinity to create a cohesive and attractive urban environment*”. Paragraph 3.15 of the supporting text confirms that “*the provision of mixed-use development at a density that helps achieve a vibrant and sustainable place*” is “*fundamental to the strategy for the development area*”. It goes on to state; “*However, proposed developments should ensure the preservation and/or enhancement of the setting of all listed buildings and conservation areas nearby, as well as the wider historic landscape and city skyline including views to and from the South Downs National Park*”.
- 7.7 The same paragraph also states that “*Applications for higher density development will be assessed in terms of their ability to meet the design and density considerations set out in CP12 and CP14.*” Policy CP12, identifies nine areas including the Brighton Marina site (i.e. site 1 in DA2), with the potential to accommodate raised densities including “*making most effective use of those identified areas which have the potential for taller developments*” (with such buildings defined as 18m or more in height (approximately 6 storeys)). None of these however include the Gasworks site.
- 7.8 Policy CP14 relates to the density of future housing proposals requiring as a matter of design in the first instance that density should be “*appropriate to the identified positive character of the neighbourhood and be determined on a case by case basis*”. Further, where it is proposed to introduce a scheme at a higher density not typically found in the locality then six criteria need to be demonstrated as met in including, inter alia, “*a high standard of design*” which “*would help to maintain or create a coherent townscape...respect, reinforce or repair the character of the neighbourhood and contribute positively to its sense of place*”.
- 7.9 Policy CP14 also confirms that densities are expected to be minimum of 100dph, provided the six criteria are met. The density of the appeal scheme at 245dph (495 divided by 2.02) is well in excess of 100dph and the SHLAA assessed capacity of 340 homes giving 145.5dph.
- 7.10 Policy CP14 also needs to be considered with Policy DM19 “Maximising Development Potential” which cross refers to Policy CP14. This is aimed at avoiding underdevelopment of sites and “*ensuring efficient and effective use of available sites*”. This sets out four criteria referring in particular to CP14 but also in its supporting text makes it clear that whilst it is “*important that new development proposals make efficient use of land and maximise the potential of available sites*” this must be on the basis that such developments avoid “*over-crowding, congestion, excessive densities and negative amenity/infrastructure impacts on surrounding areas. This requires consideration of the efficient and effective use of sites, not only in terms of the design and layout of buildings, but also considering open space, access, car parking and other uses where relevant.*”
- 7.11 SPD17 specifically omits the gasworks site from the indicative tall building area identified (it had been included in the draft version). The SPD instead identifies the gasworks as appropriate for density akin to Suburban Area 3B (medium 50–100dph) which is categorised as a ‘medium density’. It is however acknowledged that SPD17 does not preclude sites outside the indicative tall buildings area accommodating tall buildings, but it requires a test that the proposal provides a “*positive contribution to local townscape and community*”.

7.12 PAN04 is the Brighton Marina masterplan dated 2008. This pre-dated Policy DA2 and CPP1 and was adopted at a time when the gasworks site was protected for and intended to continue in employment use. PAN 04 highlights the site's relationship with the KTCA and East Cliff Conservation Area (ECCA) as well as the need to preserve and/or enhance the setting of historic buildings and conservation areas nearby, as well as the wider historic landscape and city skyline. Whilst the marina itself was identified as a possible location where tall buildings (6 storeys or more) may be acceptable, no such suggestion is made of the gasworks site. In addition, whilst the presence of Marine Gate (some 8-10 storeys) and Courcels building (6-8 storeys) are noted, there is no suggestion in the masterplan that the development should use these as a reference point for the design of future development either in terms of heights of buildings or for a high-density scheme.

Character and appearance

- 7.13 The number of units and the design response to accommodate those numbers, with nine large housing blocks varying between 6 and 12 storeys, would result in overdevelopment of the appeal site. The Appellant has referred to the creation of a "*new urban quarter*". If it had been the Council's intention to create a whole new quarter to Brighton, it would have been identified as such in the Development Plan in a similar way to the marina. The reference therefore to a new urban quarter only arises out of the Appellant's attempt to justify as many housing units as possible on the appeal site.
- 7.14 The Council's expectations for the appeal site are made explicitly clear in the Development Plan notably SPD17 and PAN04. The site is not identified as a city centre site but rather a suburban/ edge of city site that has been excluded as being suitable for tall buildings. Policy DA2.C2 also makes no reference to the site's suitability for tall buildings. The Council considers that this explicit exclusion demonstrates a clear policy intent not to accommodate tall buildings on the site with the intention of directing tall buildings to the marina, 30m at sea level, not on top of or set back from the cliff.
- 7.15 The Council's Heritage Team refers to the site as presenting "*a gap in the built development at the eastern edge of the city*".³⁹ Moreover, the Council's Urban Design Officer refers to a "*key townscape from Eastern Road which leads out of view out of the city to the downland ridge beyond*" being "*an important characteristic of the edge-of-city context*" and refers to "*this edge-of-city and sensitive landscape context*"; "*not within a heavily built up area of the city and enjoys enviably open aspect in every direction*".⁴⁰ From a policy position, the Council considers the appeal site should not be treated as falling within the centre of the city. It is very much edge-of-city, edge of centre, representing a gap in built development between the edge of the city marked by Boundary Road and development to the east side of Marine Way.
- 7.16 The Brighton & Hove Urban Characterisation Study (2009)⁴¹ provides a graphic representation of density and indicates the appeal site is within a 'moderate' density area. On page 17, under "neighbourhood typologies" it sees Black Rock as low-rise, low-density and East Brighton comprising predominantly post-war

³⁹ CDB.08

⁴⁰ CDB.09

⁴¹ CDF.06

residential development with a mix of building type, quality and density ranges. CPP1 Policy CP14 confirms that in development areas D1 - DA6 densities are expected to be a minimum of 100dph, provided all of the six criteria are met.

- 7.17 Although Policy DA2.C2 allocates the site for a minimum of 85 residential homes, this is not an 'open ended' figure and is significantly less than the 495 units sought by the appeal scheme. Although the SHLAA identifies the DA2.C2 site as having the potential to provide 340 units, this figure has not been through the local plan process. If 340 units are assumed over the DA2.2C site area, this equates to a density figure of 145dph which is clearly higher than the 100dph in Policy CP14. The appeal scheme equates to a density of 245dph which is well over the recommended range for the DA2.2C allocation.
- 7.18 The Council does not agree that the appeal scheme should be compared against a 340-home scheme, nor should the height of the proposed buildings be compared with the former inflated gasholders. Notwithstanding that the remaining gasholder has been unused for a considerable amount of time, the Council has demonstrated that even when they were in use, the gasholders were sometimes inflated and sometimes deflated. As such, no principle of tall buildings on the appeal site sensibly arises. The historical presence of tall structures on the appeal site does not therefore represent a 'fall back' position in planning terms.
- 7.19 The proposed development fails to engage properly with and take account of adopted Development Plan policies and guidance, including at the national level and as a result has led to a development of an inappropriate density, footprint, scale, massing and height, internal and external relationships causing harm to townscape.
- 7.20 None of the Appellant's witnesses at the Inquiry had any involvement in the design of the scheme and therefore the Inspector was unable to hear directly from those who designed the appeal scheme.

Heritage assets

- 7.21 Policies CP15, DM28 and DM29 are clearly central to the determination of this appeal. S66 of the PLBCAA is also engaged. CP15 in particular states clearly 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... The council will further ensure that the city's built heritage guides local distinctiveness for new development in historic areas and heritage settings*".
- 7.22 With regard to development within an asset's setting, Policy DM29 states that regard should be had to "*a) The physical surroundings of the asset, including topography and townscape; b) The asset's relationship with the Downland landscape, the sea or seafront and with other heritage assets; c) The asset's historic or cultural associations with its surroundings, including patterns of development and use; d) The importance of any sense of enclosure, seclusion, remoteness or tranquillity; e) The way in which views from, towards, through and across the asset allow its significance to be appreciated; f) Whether the asset is visually dominant and any role it plays as a focal point or landmark; and g) Whether the setting was designed or has informally occurred over time, including the degree of change to the setting that has taken place.*".

- 7.23 Policy DM29 also makes it clear that “*Where a major development impacts on the settings of multiple heritage assets, the scale of impact should be assessed against the importance of the heritage asset and the degree to which setting contributes to its significance*”. Notably whilst the policy recognises that views and intervisibility are important factors, other factors including historic or cultural associations are equally important.
- 7.24 While there are differences in the approach and conclusions to heritage impacts between the Council and Appellant there appears to be no disagreement as to the relevant facts. It is agreed that the site lies both within the setting of the KTCA (with its clusters of listed buildings), Marine Gate and the FCH. The essential difference relates to the extent of these assets and the contribution thereto as well as whether the impact from the appeal scheme includes non-visual experiences. This is a recognised part of any heritage assessment and in particular is clearly part of a decision where s66 (or indeed s72) of the PLBCAA is engaged.⁴²
- 7.25 The Catesby judgement shows that it is accepted that setting needs to be identified “*even if its extent is difficult or impossible to delineate exactly*”; that it must involve some level of subjectivity albeit not purely so; that “*none of the relevant policy, guidance and advice prescribes for all cases a single approach to identifying the extent of a listed building's setting*”; that the approach is dependent upon the “*facts and circumstances which will differ from one case to the next*”; that the physical surroundings “*may change over time*” and that “*the way in which a heritage asset can be "experienced" is not limited only to the sense of sight*”.
- 7.26 The Council considers that the heritage harm would give rise to a strong reason for refusal and therefore the scheme fails to accord with the Development Plan. The material considerations which arise do not outweigh the clear statutory (and policy) presumption in favour of the plan where the ‘tilted balance’ is disapplied.

Kemp Town Conservation Area

- 7.27 The appeal site forms part of the overall experience of the KTCA and allows it to retain its historic townscape importance. The proposed development would be seen in limited direct views and would form part of the kinetic experience of Marine Parade, Madeira Drive and the beach and Eastern Road. The build-up of development along Marine Parade with the anticipation of arriving in Kemp Town is far reaching and leaves a lasting impression.
- 7.28 The overdevelopment of this important gap site as a result of the scheme’s excesses of scale, mass and height and a lack of visual transparency would act as a draw and focus of attention, competing with the long-established historic procession of designated listed buildings and their composition. The Council considers there would be a high level of LTSH due to the historic and architectural importance of the KTCA with its Grade I listed buildings.
- 7.29 Although HE did not formally object, the full text of their concerns regarding the assessment and impact of the scheme is set out in their consultation response⁴³ as well as paragraph 7 of the Heritage SoCG. It was not for HE to carry out the exercise of weighing the public benefits of the scheme against the harm to heritage: that is a matter for the decision maker.

⁴² See paras 28-30 *Catesby Estates Ltd. v Peter Steer v Historic England* [2018] EWCA Civ 1697 (CDG.19).

⁴³ CDB.05

East Cliff Conservation Area

7.30 The ECCA has a setting which is a material policy consideration. The ECCA abuts the KTCA and provides routes to the site at the lower level along Madeira Drive, Marine Parade and Eastern Road with the approach to the site comprising sequential views, view foils and an unfolding townscape. The appeal scheme, with its cluster of tall buildings is already noted as having a negative impact on Viewpoint 6 in the HTLVIA. Having regard to the direct, indirect, experiential and cognitive responses to this heritage asset, it is considered that the harm would amount of a moderate level of LTSH.

French Convalescent Home

7.31 The Grade II FCH was constructed at the end of the 19th Century, to the east of the KTCA. Although of a different architectural style, it sits with a relative discreetness within its defined and contained site which is set well back from the road, at a lower level with its enclosed garden having a seaward aspect.

7.32 The FCH has a high level of significance as a result of its architectural and historical interest. Architectural interest is derived from its French Renaissance Revival style with a skyline of steep roofs and ironwork cresting, and the buildings position within open grounds to the south, which means that there are opportunities to view the impressive elevations and roofscape from the surrounding roads. Historical interest is derived from the fact that it is the only known French convalescent home in the country and the early example of secondary glazing. The flatted Courcels building to the east is visually discordant and has a negative impact on the setting of the FCH.

7.33 The ES describes “*the first intimate view of the Grade II listed French Convalescent Home is obtained, beyond its sunken garden*”. However, and having regard to the proximity to the site, Views 1, 2 and 19 are the only views that identify the FCH. There is no reference to its setting and townscape role or the kinetic experience of walking around the streets in its immediacy or the fact that there is intervisibility between the heritage asset and the appeal site or the views across the site from east to west.

7.34 As evidenced by Viewpoint 2 (Figure 5 below), two of the appeal scheme blocks would be visible alongside/behind the central and eastern pavilion of the FCH. These blocks appear to be large and cover a large portion of the roof which is a feature of note of this particular heritage asset, as it creates positive skyline interest particularly when viewed in conjunction with the discordant roofscape of the Courcels building. When experienced in the round, the harm already caused by the Courcels building would be further exacerbated by the dominance arising from the bulk of the appeal scheme.

Church of St Mark

7.35 The Grade II St Marks Church is an Anglican church, now serving as the chapel and concert hall for St Mary's Hall School. It was constructed between 1840-1849 and was built on land given to St Mary's Hall School by the Marquess of Bristol; designed by Thomas Cooper. The church sits within its contained grounds on a corner plot with a knapped flint wall around. It is located north of the boundary of the ECCA and close to the boundary of the KTCA which is just to the west on Eastern Road.

- 7.36 There are views from the church towards the appeal site and vice versa. As a result, the site forms part of the wider setting of the building. There are also opportunities to view the building, notably the tower and spire from within, and through the KTCA. Bearing in mind the proximity of many heritage assets, including the close proximity of the conservation area, which also forms part of the setting of the church.
- 7.37 The church is viewed and experienced as part of a kinetic view along Eastern Road. Of relevance are HLTVIA Viewpoints 6 and 6w which show that the development would be seen in the context of the listed church, which would dilute its role as a landmark building in townscape terms, removing its ability to assist with legibility and way-finding. The Council therefore concludes a low level of LTSH to the Church of St Mark.

Marine Gate

- 7.38 The development would interrupt, block and sever the reading of Marine Gate as a prominent yet removed landmark. It would also block and sever views across from east to west and west to east and appearing overwhelming in form, scale and mass when approached from Wilson Avenue and Roedean Road. As such, there would be a high level of LTSH to Marine Gate.

Conclusion on heritage assets

- 7.39 Overall, the Council considers the appeal scheme would cause harm to the significance of the nearby historic environment including the KTCA, ECCA, the FCH, the Church of St Mark and Marine Gate. In some cases, the Council considers a high level of LTSH for example Marine Gate and the architecturally important KTCA with its Grade I listed buildings.
- 7.40 The harm carries great weight in the decision-making process and would conflict with the statutory duty under sections 66 and 72 of the 1990 Act, the requirements of the NPPF and the Development Plan. The heritage harm would not be outweighed by the public benefits of the appeal scheme.
- 7.41 Although the Council's Heritage Team concluded that fewer heritage assets would be affected, the Conservation Advisory Group (which is a recognised advisory body to the Council) raised additional concerns and objected to the scheme.
- 7.42 While the Appellant's representative viewpoints are accepted, the Inspector should not limit himself to considering the specific views identified in the HLTVIA but should conduct the sort of exercise as described in the Council's PoE which involves walking through the ECCA and KTCA.

Daylight/Sunlight

- 7.43 Policy DM18 outlines the criteria for granting planning permission for development proposals, which include "*the scale and shape of buildings; and d) the spaces between and around buildings taking into account: (i) purpose and function; (ii) (iii) (iv) access and linkages; uses and activities; and comfort, image and sociability.*"
- 7.44 Policy DM20 makes it plain that where proposed development causes "*unacceptable loss of amenity to the proposed...residents, occupiers*" it will not be granted permission. The supporting text advises that attention be paid at an early stage to such issues when designing new development.

7.45 The overdevelopment of the site, with limited spacing between buildings and together with their respective heights, would have an overwhelming, enclosing and oppressive impact on outlook for future occupants. This gives rise to a sense and perception of reduced privacy for residential units, further compounded in locations where space between is lacking and where light would be affected. This would lead to poor levels of residential amenity including poor outlook, light and privacy resulting in inadequate living conditions for future residents.

Affordable Housing

7.46 Policy CP20 allows for the 40% target for affordable homes to be applied more flexibly where this is justified. The Council accepts the conclusions of the FVA which demonstrates why it is not viable for the appeal scheme to provide any affordable housing. The review carried out by DVS concluded that despite finding a higher profit than the FVA, the scheme cannot viably provide affordable housing. This is based upon the abnormal costs associated with developing this former gasworks site. It should be noted that the Appellant nevertheless recognises “*the costs to remediate and decontaminate Gas Works varies from site to site and is very much an unknown until the developer commences the work*”.⁴⁴

7.47 The Appellant undertakes, through the s106 agreement to make ‘*reasonable endeavours*’ to attract Homes England funding to enable affordable units to be provided without affecting its own profits. If that fails, the Appellant is required to review the position once the development has reached a 75% occupancy to see if it is possible at that point to provide some affordable housing units. This was a response to the DVS recommendation that a review mechanism be included as a s106 obligation to re-evaluate the scheme at a later date, to allow the Council to receive a contribution towards affordable housing if the viability position improves when actual costs and values are known.

Planning Balance

7.48 The Council acknowledges that there are a number of material considerations to be taken into account comprising in particular the guidance within the NPPF; the PPG as well as relevant Government policy statements, together with the public benefits associated with this housing scheme. These both weigh in favour and against the scheme.

7.49 The Council accepts the principle of a mixed-use housing scheme on the appeal site and considers that 495 homes would make a significant contribution to its 5-year housing land supply (5YHLS) which currently stands at 1.3 years. The site is also a brownfield site and therefore the SoS should have regard to NPPF 125c) which states that substantial weight be given to the “*value*” of using “*suitable brownfield land within settlements for homes and other identified needs*” and that such proposals “*should be approved unless substantial harm would be caused*”.

7.50 However, these benefits do not give rise to an overriding justification for development which fails to meet policy and gives rise to unacceptable levels of harm.

7.51 The scheme is referred to in the OR as “*very dense*” which “*would represent a major change to the townscape and visual amenity of the local area*”. The

⁴⁴ Table 5.1, Wheaton PoE CDJ.05

Appellant's approach has been to maximise the number of dwellings whilst downplaying the real impact in heritage terms by focussing on individual elements close to the site, such as the Courcels building, as reference points to justify a high-density development with a series of tall buildings. This has resulted in a development that represents a harmful overdevelopment which falls short both in design and amenity terms and which inter alia gives rise to a strong reason in heritage terms to refuse it.

- 7.52 Should the SoS was to conclude that the harm to heritage does not disapply the 'tilted' balance under NPPF 11 (d)(ii), the heritage, townscape and amenity harms identified by the Council would not be outweighed by the public benefits of the appeal scheme. This is because it provides a vast scheme which gives rise to a 'new quarter' on the edge of Brighton which would be of an inappropriate, massing, and height that does not align with the local context.
- 7.53 It is also the Council's position that even if it were to be concluded that the 'tilted' balance' is not disapplied in this instance, despite the harm in heritage terms, that the adverse impacts of granting permission for this scheme to proceed would significantly and demonstrably outweigh the benefits, when assessed against the NPPF.

8.0 The Case for the Brighton Gasworks Coalition

The case for BGC set out below its Statement of Case⁴⁵, PoEs 1-5⁴⁶, Supplementary PoEs⁴⁷ and Closing Statement⁴⁸.

Character and appearance

- 8.1 When considering the appeal site BGC say that there is an important fact that may not be immediately apparent to anyone simply looking at it for the first time. It is situated in a very sensitive and unusual position, straddling, as it does, two highly divergent areas of the city. One is the immediately surrounding area, which boasts some of the finest landmark heritage sites in the nation, while the other, is the much-neglected area of Whitehawk and Manor Farm, one of the largest and most deprived estates in the country which is located on the rising ground above the site. It is therefore vital that, whatever scheme is finally chosen for this crucial location, it manages to respond to the key features and needs of these two such widely disparate and contradictory areas. This requires careful balancing.
- 8.1 The appeal scheme is a gross overdevelopment of the 2.02ha appeal site and 495 new homes is excessive. This is why more than 1,700 people objected to the scheme and only 58 wrote in support. There were no meaningful attempts by the Appellant to engage with the local community before submitting their application.
- 8.2 The proposed 8-12 storey tower blocks would be located in a suburban or mostly urban, area where 99.6% of the buildings are 4 storeys or less. Whatever anyone's particular view of the key features of the area might be, it is quite clear that the scheme would very substantially change, and damage, the present nature of this largely residential area, which all agreed was certainly not located in a city-

⁴⁵ CDI.09-11

⁴⁶ CDJ.09-13

⁴⁷ CDK.08--13

⁴⁸ ID.19

centre area. To demonstrate this overdevelopment, BGC have compared the plot ratio and population density of the appeal scheme with the surrounding area.⁴⁹

- 8.3 'Plot ratio' measures the floorspace of any building against the total plot area. This can then be aggregated to floorspace/ha, whether to net development plot total, or to total land area, including road space and any parks. On the appeal site this gives a net plot ratio of 4.37:1. If one were to include the internal streets that occupy 35% of the land, the gross ratio is 2.80:1. Policy CP14 suggests a minimum ratio of 100dph for all new developments. In a representative 35 hectares surrounding the site, the average local density is 46dph. The appeal scheme is more than 5 times denser at 245dph.
- 8.4 Population density is a social measure of people per ha. This is the plot ratio of dph multiplied by the average household size which, in Brighton & Hove is about 2.25 people per household. BGC's comparison found that the appeal scheme would be more than double the density of Marine Gate and higher than the Western Road area.
- 8.5 The proposed plot ratio and density contradict two Development Plan policies. Policy CP12 states that outside the 8 Development Areas "*where appropriate, density will increase through low-medium rise development*". This was confirmed by the latest SHLAA which "*indicates a potential of 340 units*" for the site, rather than 495. This figure, however, was for an enlarged gasworks site of 2.37ha that included two small parcels of council-owned land. The appeal site total is thus 290 dwellings, or 144/ha. This seems to be a reasonable maximum, which BGC used in our alternative scheme.⁵⁰
- 8.6 The second policy covers Tall Buildings which restricts all buildings over 6 storeys to 8 specific development areas. In Policy DA2, in which the gasworks site is included, only the marina is identified for tall buildings.
- 8.7 Through its design witness the Appellant agreed that the scheme should be described as "*very dense*" and would "*represent a major change to the townscape and visual amenity of the local area*". It was further asserted that the scheme's appearance "*is appropriate to realise the ambitions to create a new urban quarter*" and to create "*a gateway from the South Downs to the seafront*".⁵¹ These 'ambitions' have no basis in Council policy.
- 8.8 The Appellant argues that the impacts resulting from the appeal scheme would be similar to a SHLAA compliant 340 home scheme. Along with this the Appellant argues that the former gasholders when inflated should also form the basis for a comparative assessment of the appeal scheme. The suggestion is that these structures (even though they have to a large extent not been present on site for the last 18 years and what was left was the skeleton frame on 2 and then one) equate to establishing a principle of tall buildings on the site.
- 8.9 In summary, the appeal scheme is an ambitious attempt to maximize the site for 495 much-needed homes. However, the scale and massing of the scheme precludes a satisfactory environment and decent well-lit homes for its residents. NPPF paragraph 130 is of particular relevance, this states "*Significant uplifts in the average density of residential development may be inappropriate if the*

⁴⁹ See Statement of Case (CDI.09) pg. 2.

⁵⁰ CDK.11 & ID.17

⁵¹ CDI.05 para 41.24

resulting built form would be wholly out of character with the existing area.” This applies with added force because this scheme would irreparably damage the townscape of Brighton

Heritage assets

- 8.10 If overdevelopment is a quantitative assessment of scale, protecting Brighton's exceptional Regency and Victorian heritage is fundamentally about quality. The city has a rich architectural heritage with over 3,360 listed buildings, 14% of which (476) are grade I and II*. This is more than double the national average of 6%.
- 8.11 Objections to this scheme on heritage grounds were lodged by local and national heritage and conservation groups. Local objectors included the Council's own Conservation Advisory Group, leading amenity societies such as the Regency Society, the Brighton Society, the Kemp Town Society, and the Brighton & Hove Heritage Commission. Nationally, Save Britain's Heritage objected to the appeal scheme, and HE expressed concerns.
- 8.12 Save Britain's Heritage said, *“Whilst the reduction of some building heights is welcome, we consider the changes to be minor and insufficient to address our fundamental concerns about the heritage impact of the application as a whole. In our view, the reduction of Building F by just two storeys cannot be fairly described as a 'significant reduction' and does not alleviate the substantial harm that would be caused to the character of East Brighton by the overwhelming scale, massing and density of the proposed scheme as a whole”*.
- 8.13 While the NPPF favours large schemes in the country by following Garden City principles, in urban areas it promotes *“an efficient use of land”*. The excessive density and poor design of this scheme would be rejected in Welwyn Garden City and Milton Keynes. Brighton's rich urban diversity, environmental setting and unique architectural heritage, being far superior to any new town, deserves a much better design.
- 8.14 BGC stress three vital heritage features that would be seriously violated by the appeal scheme. First, the setting of Brighton is framed by the SDNP which enters the city as the East Brighton Park, the entrance to which is opposite the north-east corner of the site. Thus, the park would face a wall of tall buildings mostly considered inappropriate by the Development Plan. Blocks A (6-storeys) and B (10-storeys) would present a blank brick wall to Roedean Road.
- 8.15 Directly opposite the park entrance would be block C a circular, 8-storey block. This would not be a suitable 'gateway' from the SDNP to an historic city and seafront. Behind these would be the 12-storey block D. In fact, the panoramic vistas as one approaches Marine Parade would suffer catastrophic intrusion by the scheme. Furthermore, views from the east and the sea to the south would be severely impaired by the dense massing, excessive height and overpowering character of this development.
- 8.16 Second, immediately to the west of the site is the KTCA in which virtually every building is listed. Many, including the magnificent Lewes Crescent, Sussex Square and Arundel and Chichester Terraces, which begin less than 100m from the Gasworks site, are Grade I listed. To the north, there is the handsome Brighton Waldorf school, now housing, and to the east is the locally listed Marine Gate. The appeal scheme, a massed heap of tower blocks, would shatter the

setting of these nationally-important heritage assets, and introduce an alien townscape that contradicts the 'urban grain' of the whole city.

- 8.17 The third priceless asset is the unique Regency and Victorian seafront that remains largely intact for 1.5 miles, this is visible from the pier eastwards to the site, apart from the single blot near the SW corner of the site, the 8-storey Courcels building built in 1971.
- 8.18 In summary, it is impossible to find any positive impact of the scheme on its immediate surroundings and on the city's priceless heritage. The site offers a real opportunity to provide a harmonious link between the mostly 4-storey frontage of Kemp Town's listed terraces and the 8-storey Marine Gate east of the site. It could even provide a square off Marine Parade to reflect Lewes Crescent.

Living conditions

- 8.19 BGC consider that overshadowing would be a major problem, not just affecting neighbouring streets, but acute within the appeal scheme. There would be a serious lack of daylight in the 193 single aspect flats, in most of the flats on the lower floors of the blocks and in the back rooms of the 14 townhouses.
- 8.20 Outside, the townhouse gardens do not meet British Research Establishment (BRE) sunlight guidelines and would only receive sunlight from around midday. The sunlight in the 'avenue' between the east and central terraces would be even worse. From the site cross-section, buildings 10-12 storeys high overlook avenues approximately 20 metres wide. Sunlight and daylight levels were an important factor in rejecting the recent Brighton Marina appeal.⁵²
- 8.21 Indoors, it is difficult to comprehend the Appellant's daylight/sunlight assessment.⁵³ Chapter 12 of the revised ES focuses solely on the impact on neighbouring properties, with nothing on the new flats themselves.⁵⁴ A proper analysis would have clarified the following:
- The total number of windows, and their split between bedrooms and living rooms;
 - The number achieving max sunlight (200 lumens plus), the medium and minimum 100+ lumens, and those that fail to reach even 100 lumens;
 - How can 72% of combined living areas (living/kitchen/dining rooms and studios) hit the highest target for kitchens of 200 lux, when only 70% of living areas would be able to meet the minimum sunlight recommendation;
 - Identified the worst affected homes, between east and central block 'terraces', in the gaps between the blocks, and in the "high ratio of single aspect homes," 39% of the total, which is "*less than ideal*", and
 - Sunlight levels in the commercial units, which were scoped out of the assessment, despite Policy DM11 requiring all commercial premises to be well-lit.

⁵² CDG.01

⁵³ CDA.06

⁵⁴ CDA.30

- 8.22 Given the above shortcomings, BGC propose a simpler method of assessing internal levels of daylight. Our version of the 'vertical skylight component' is loosely based on how the Victorians may have developed their by-law housing. In short, the height of the terraces determined the width of the streets to ensure that every downstairs room had an adequate angle of sky visible from the window. As a guide, with 30 feet between terraces 20 feet to roofline, the maximum angle of elevation was to be about 35°. In more middle-class neighbourhoods, this reduced to about 25°, and in the suburbs, less than 15°. Thus, from the vertical to the roofline, the angle of visible sky varies from about 55° to 75°.
- 8.23 The sections at Fig. 1-3 of BGC's PoE⁵⁵ illustrate the visible sky component within and on the eastern boundary of the proposed scheme and demonstrate:
- A VSCs of 35° and 35.5° between Block G and Block I1 and the townhouses.
 - VSCs of 39°, 44° and 45° between Block F and Block D and E1.
 - VSC of 62° between Block D and the houses on Cliff Road.
- 8.24 Such low levels of daylight for the gasworks site mean that residents on lower levels would need to switch lights on for much longer periods and paint their rooms white in order to maximize what daylight they get.
- 8.25 The proximity between the tower blocks also raises serious issues of privacy. Even in the 'avenues' ranging from 15 to 24 metres, particularly when internal lights are on, privacy would require curtains. Between blocks F, G and H however, with gaps of 7 to 8.5 metres, many residents may feel like goldfish.
- 8.26 BGC do not share the Appellant's confidence about tree growth. The chalk subsoil is not conducive to growth, but primarily because the lack of sunshine, plus the frequent strong winds, would prevent healthy growth. Mature trees are absent along the whole seafront except in the exceptionally large Brunswick Square. This serious lack of daylight and sunlight means that the landscape enhancement and biodiversity potential claimed by the applicant are exaggerated.

Housing

- 8.27 The current housing crisis is rooted in the Housing Act 1980. Since then, social housing has halved, largely replaced by private market rents, while home ownership, after rising to nearly 70%, has returned to pre-1980 levels of c 60%. Instead of capital investment in social housing, councils now make revenue payments to private landlords as Housing Benefits. The five housebuilding oligopolies have not made good that investment in social housing – despite excessive profits of well over 30% on each development.
- 8.28 The appeal scheme has three serious faults. First, the bedroom housing mix does not tally with local need as specified in Policy CP19. Supply in Brighton does not match demand, notably for larger homes. The Appellant is clearly seeking to maximise sales revenue, as smaller 1- and 2-bedroom flats cost more to buy. Equally serious, even with sufficient large homes, tower blocks are unsuitable for families.

⁵⁵ CDJ.09

8.29 Second, the appeal scheme offers no affordable housing. Policy CP20 requires that 40% of homes in all larger schemes should be affordable. According to the supporting text, in 2007, buying an average 1-bedroom flat required an annual income of £40,000, while a 3-bedroom home required £72,500. Renting 1- and 3-bed homes required similar incomes. At the time, the average household income post-tax was £22,865, varying from £15,065 for single working adults to £35,038 for 2 adults with 2 children.

8.30 Today, the situation between market housing costs and household incomes is even worse. BGC do not accept the Appellant's FVA which states the scheme is not profitable. Our review of the FVA⁵⁶ identifies several major errors and omissions including:

- Market inflation of house prices is over 10% per annum, not 2.4% as used by the FVA;
- It ignores 150% tax relief on the costs of remediating the contaminated site;
- The marketing fees (at 4%) are excessive compared to local agent fees of 1-2%;
- Financing costs would be lower if affordable housing were to be funded by Homes England, since half the agreed costs would be paid upfront;
- The FVA is silent on flats or whole blocks bought privately 'off-plan' where full payment is upfront; and
- It ignores the various government subsidies for infrastructure and first-time buyers, let alone 0% VAT.

8.31 Last year, there were 1,695 homes empty for at least 6 months, and a further 2,705 registered as second homes. Both figures were on the rise. Accurate surveys would determine not only vacancy levels in these recent developments, but also how many flats are shared above their designed capacity, which would indicate levels of domestic overcrowding and financial stress.

8.32 This market failure can be seen in the recent Circus Street development. Though only up to 8 storeys, it illustrates a 'cataclysmic' overdevelopment, while concealing some real financial hardship faced by many residents due to uncontrolled service charges.

8.33 While BGC agree on the need to maximize houses on each site, every home must be attractive and well-lit, with adequate open space. They must also match current demand, focus on housing need and be affordable for all. Levels of financial stress and hardship are becoming a major issue. It can be argued that excessive developments such as this one actually exacerbate the housing crisis. National housebuilders and remote investors both put profit above social need.

Sustainable development

8.34 The NPPF states that sustainable development is that which provides important social facilities, strengthens local economies and enhances the environment, in mutually supportive ways. BGC argue that while housing is a critical issue, to

⁵⁶ CDI.10 Appendix 4

cram so many homes on the site would create serious social problems of dark living conditions and financial stress for many residents. To have no interest in how they would be used, abused or even left unused is unsustainable.

- 8.35 Policy CP12 sets out urban design principles for all development areas, including the appeal site. These should be regarded as essentials for sustainable development. The appeal scheme conflicts with at least seven of them, being poorly designed, a strong sense of towering building blocks of unsustainable construction, impairs the city's heritage and the setting of the SDNP, is hardly adaptable, with too little public open space that is cramped and overshadowed.
- 8.36 The environmental impact of the scheme is unsustainable on several counts. The landscaped areas would be small and sunless emphasizing the lack of streets and gardens. The scheme could strengthen the local economy in two ways – which it declines to do. First, there is a national labour shortage in all building trades. Instead of focussing on maximizing annual profits, the major housebuilders should offer local apprenticeships on every major scheme, instead of relying on skilled workers from eastern Europe. The current skills shortage following Brexit means that housebuilders now struggle to complete 200,000 homes a year. The s106 contribution of £180,260 to the Local Employment Scheme is insufficient.
- 8.37 The appeal site currently accommodates a vital community transport hub with the following firms:
- The Big Lemon, a bus company on-site since 2008 with 22 electric buses, employs 45 staff and runs seven bus routes;
 - Community Transport, with 25 large minibuses, 3 full-time staff and 54 part-time drivers and assistants (30 FTE), does 13 school runs a day carrying 5-8 young people with special needs to schools and colleges, as well as providing transport for 111 housebound older citizens;
 - Minibus Travel, on-site since 1996, has 60 minibuses transporting 160 children and young people with Special Educational Needs to three sites in 190 days a year. It employs 5 staff and approximately 100 part-time drivers and carers;
 - Brighton Bike Hub, with 3 part-time staff, repairs and sells bikes and trains circa 50 volunteers, and
 - Black Rock Tyres, since about 2010, employs 12 staff servicing up to 60 cars a day; as well as a parking firm for about 65 cars, plus 60 storage containers.
- 8.38 As the above illustrates, the 25 FTE jobs claimed by the Appellant is in fact about 145 FTEs, plus approximately 50 volunteers. The Big Lemon bus company was offered two alternative sites – one in Shoreham, the other in Burgess Hill. If these businesses cannot be relocated in the local area, they should be retained on-site.
- 8.39 These economic, social and environmental factors of sustainability, however, are only the outcomes of development. The inputs of the construction industry itself, namely the efficiency and costs of the buildings themselves, are largely ignored, even in the NPPF.
- 8.40 The Development Plan is committed to sustainable buildings. Policy CP8 lists 16 parameters. However, it overlooks the inherent faults with tower blocks, including the following:

- Their use of building materials creates an excessive tonnes/floorspace ratio. This contradicts the one relevant NPPF policy, namely “to secure the long-term conservation” of building materials. The greatest waste of materials (perhaps 30% of the total) is in the deep foundations that hold them up
- Roughly 20% of space within tower blocks is unusable due to access lifts, corridors and stairwells.
- Tower blocks use excessive energy during both construction and subsequent occupation.
- When crowded together, they create not only 'heat islands', but also 'heat chimneys' in cold windy weather. These reduce neighbouring street temperatures.
- Tower blocks are unsuitable for families, the lifts would be in almost constant use, consuming energy while reducing healthy exercise and social intercourse.

8.41 Another problem to add to the social problems of dark living conditions, sunless open spaces and financial stress must be the serious risks to public health from soil contamination on all gasworks sites. The Appellant’s assessment suggests that the site is unlikely to be seriously contaminated. Should that assessment be wrong, however, a strong s106 agreement is needed to ensure that, if severe health problems do emerge, then half of the 150% tax relief on site remediation should be donated to a 'community fund'.

8.42 High construction costs inevitably impact on housing associations and Homes England that is perhaps even more damaging. Not only does this increase the cost of affordable homes, but as already stated, it forces them to increase rents and still be unable to manage and maintain their homes properly.

8.43 In summary, such building inefficiency and price inflation by the major housebuilders are not remotely sustainable. These risks to public health take one back to the very foundation of planning in the Public Health Act 1848.

Conclusions

8.44 The appeal scheme clearly contradicts some basic and vital Development Plan policies, not least on tall buildings and urban design, on affordable housing and market demand, on protecting the city's unique architectural and historic heritage, on adequate daylight and sunlight for all, and on adequate open space for biodiversity, food growing (which is not allowed if the soil is seriously contaminated), family play and social activities. Sustainable planning is the backbone of the Development Plan

8.45 There are three very real threats if this appeal is upheld. First, it undermines the statutory “*planning system which should be genuinely plan-led*”. Planning powers should be firmly rooted in local planning authorities and their statutory Local Plans – giving us 'plan-led development'. Approval for this appeal scheme would set a precedent, making it nigh impossible to resist future, equally objectionable and unsustainable schemes.

8.46 Second, the heavy reliance on the NPPF to support such schemes not only undermines statutory local planning system but also risks replacing plan-led

development with development-led planning. The NPPF does not over-ride existing local plans except in exceptional circumstances. Basing important planning decisions on the latest ministerial speech further reduces the authority and independence of local councils and local democracy. For every NPPF quote that the Appellant uses in support of its scheme, there are many more positive statements that undermine its case.⁵⁷

8.47 Finally, BGC have stressed the serious harms inherent in this appeal scheme. Yet the site has great potential to produce substantial benefits for the city and all its residents. NPPF paragraph 33 suggests that “*Significant adverse impacts on these [economic, social and environmental] objectives should be avoided and, wherever possible, alternative options which reduce or eliminate such impacts should be pursued.*”

8.48 BGC have produced such an alternative option which shows how it might be possible to develop the site in a way that conforms with all relevant Development Plan policies, the Urban Design Framework, SHLAA as well as the NPPF⁵⁸.

8.49 BGC urge the SoS to uphold the Council's decision, curb our excessive reliance on inefficient, inflationary and unsustainable tower blocks, respect the statutory planning process, and reject this appeal.

9.0 The Case for St William Homes LLP (the Appellant)

The case for the Appellant set out below is taken primarily from its Closing Statement⁵⁹ but with regard to its Statement of Case⁶⁰, PoEs from Ben Ford (planning), Chris Miele (heritage), Colin Pullan (design), Andrew Smith (landscape & visual), Chris Weaton (affordable housing & viability), Simone Pagani (daylight/sunlight), Gary Marshall (land contamination⁶¹ and Rebuttal PoEs.⁶²

Policy Context

9.1 “*Britain is in the grip of the worst housing crisis in living memory. For too long, the country has been held to ransom by the blockers and bureaucrats who have stopped the country building, choked off growth and driven prices through the roof. They’re suffocating the aspirations of working families and obscuring the future of our country*”.⁶³ This is “*the most acute housing crisis in living memory, with 150,000 children in temporary accommodation, nearly 1.3 million households on social housing waiting lists and under-30s less than half as likely to own their own home compared with the 1990s. Rents are up 8.6% in the last year. Total homelessness is at record levels*”.⁶⁴ These are just two of a large number of similar statements made by the Government over the past 9 months.

9.2 Nowhere are the real-world impacts of the housing crisis better demonstrated than Brighton. On the Council's best case, set out in its most recent SHLAA, it has a 1.4-year HLS, a shortfall of 2,129 homes every year and 10,643 over the next

⁵⁷ CDI.10 pg. 19

⁵⁸ CD1.10 Appendix 8

⁵⁹ ID.20

⁶⁰ CDI.01

⁶¹ CDJ.01-07

⁶² CDK.01-07

⁶³ CDE.15 - Keir Starmer 'We will launch a golden era of building' The Times

⁶⁴ CDE.10 - Secretary of State Statement to Parliament Building Homes

five.⁶⁵ This makes it one of the worst performing authorities in the country. This is not a new trend; Brighton has delivered on average 530 dwellings per year since 1999. This is under the CPP1 target of 660 which applied from 2013/14 to 2017/2018 and well under the requirements now imposed by the new standard method which requires the Council to deliver 2,498 dwellings every year. That is five times the average number of dwellings it has delivered each year since 1999 and the equivalent of five developments of the quantum of the appeal scheme every year.

- 9.3 The evidence shows the devastating effect of failing to meet the City's needs. 7,961 households are on the Council's housing register. There are 1,368 homeless households in the district. The Council spent £17 million last year on temporary housing accommodation – almost four times the national average of £4.5m per annum. 1,411 children live in temporary accommodation that is three times higher than the average of 511.
- 9.4 In light of the above, it is no wonder that the Government is pushing to build 1.5 million homes over the course of this Parliament. This is how it intends to deliver economic growth, raise living standards for everyone, everywhere, fix the shortcomings in public services, create jobs, and “*breathe life back into towns and cities*”.⁶⁶ The persistent abandonment by Members of the Council's Planning Committee of even the most basic tenets of their moral and social duty, of which this case is a prime example, is not good enough. This is demonstrated by:
- The clear public statements made by the Prime Minister, SoS and Minister Pennycook (as set out above) regarding the need to build, the change to the default answer to brownfield building being “yes” and the Policy Papers driving further reform.⁶⁷
 - Recent revisions to the NPPF for example: deleting NPPF (2023) paragraph 130; requiring that local plans meet an area's housing need (rather than simply “as much as possible”); the changes to NPPF paragraph 11; and the introduction of NPPF paragraph 125c, were made after extensive consultation and represent a clear, deliberate change in policy trajectory.

The appeal site

- 9.5 Given the national imperative to build, and the devastating local consequences of the Council's failure to deliver enough housing, one might reasonably have thought it would have grabbed the opportunity offered for the redevelopment of this site with both hands.
- 9.6 As agreed in the SoCG the site is a varied, degraded, contaminated parcel of brownfield land. It makes next to no positive contribution to the character and environmental quality of the area. By extension, the Appellant considers there is no positive contribution to the setting of nearby heritage assets. The Council's own public documents recognise that it will require positive and proactive measures, in order to deliver major enhancement.⁶⁸

⁶⁵ CDF.23

⁶⁶ CDE.10 Secretary of State Statement to Parliament

⁶⁷ CDE.16 Minister Pennycook's statement & CDI.06, Appendix 7 - Brownfield Passports paper

⁶⁸ CDF.04 SPD17

- 9.7 The appeal site has been allocated for redevelopment since 2005. The CPP1 is explicit that the spatial strategy for accommodating growth is to “*maximise development opportunities from brownfield sites*” (including the urban fringe). Development areas “*are proposed to accommodate a significant amount of development because they contain the potential capacity and opportunities for change, they can deliver development of a citywide or regional importance and/or because they are in need of regeneration.*” Strategic Allocations within development areas are “*sites whose regeneration/redevelopment are considered critical to the overall delivery of housing and employment growth over the plan period.*” Indeed, the plan directs development to those areas to “*ensure opportunities for development of brownfield sites are maximised, transport impacts will be minimised and that the city’s countryside and the South Downs national Park will continue to be protected.*”
- 9.8 Against that background, Policy DA2 considers this a strategic allocation within the Brighton Marina, Gas Works and Black Rock Area Development Area. Policy DA2 seeks to create, in Brighton Marina “*and the wider area*” a “*sustainable mixed use area of the city*”. Policy DA2 only sets a minimum number of homes. Indeed, the fact that the appeal site can accommodate more has long been recognised by the Council’s own public documentation, with the two most recent SHLAAs considering that 340 homes to be “*suitable, available and achievable*” taking account of “*identified constraints, availability, viability etc*”.⁶⁹
- 9.9 Policy DA2 is designed to set the framework for the consideration of applications on the appeal site. So, where an application meets the specific requirements set out in Policy DA2, compliance with those requirements is a strong indicator that more generic policies are also met. To the extent that the SoS considers that any of the more generic policies contain requirements which go further than, or are different to, those in Policy DA2, these cannot be interpreted or applied in such a way as to prevent the delivery of the site allocations.
- 9.10 The allocation of the appeal site for redevelopment in the Development Plan confirms that the principle of development to accommodate at least 340 homes is not a matter for debate. This has implications for any assessment of the current scheme as there are impacts which will inevitably flow from any redevelopment for that amount of housing.

The appeal scheme

- 9.11 It is relevant that the scheme was subject of extensive engagement from the first pre-application discussions in March 2020 onwards. There have been many, many pre-application and post application meetings, it has been to DRP three times, and there was engagement and consultation with 17 Council departments and 20 external and statutory consultees alongside public consultation.
- 9.12 As set out in the Appellant’s design evidence, the scheme has been through an extensive iterative design process in which it has been developed and refined with the number of homes and the tallest building’s height both reducing.⁷⁰ Throughout this process the Appellant has sought to maximise the number of dwellings as it is required to do by policy but balance that with making sure there are no otherwise unacceptable impacts.

⁶⁹ CDF.23

⁷⁰ CDA.15

9.13 The appeal scheme would deliver the following benefits:

- The scheme would redevelop an existing, underutilised brownfield site within the settlement boundary. This is particularly important as there is no dispute that Brighton & Hove is a physically and geographically constrained borough with a limited legacy of brownfield sites, and policy recognises that development on brownfield land helps prevent development elsewhere such as the SDNP. It is agreed that substantial weight must be given to redeveloping an under-utilised brownfield and allocated site.
- This degraded site would be physically transformed something which has been promised to the people of Brighton since allocation in the 2005 Local Plan.
- The contaminated gasworks site would be remediated.
- The delivery of 495 homes makes a significant contribution to meeting housing needs in Brighton & Hove. The weight is increased because of the significant existing and predicted shortfall.
- The site is in a sustainable location where future residents would have access to genuine alternatives to car-based travel.
- The proposed housing mix is SHMA compliant and the provision of 62 family sized homes must attract substantial weight.
- The s106 Agreement would commit the Appellant to use reasonable endeavours to obtain grant funding and deliver 40% affordable housing, something which the Appellant has been working and engaging with Homes England and Sovereign Network on.
- New commercial floorspace would increase job opportunities, providing up to 195 new jobs – agreed to be a “*clear improvement to the function and vitality of the site in providing employment*”, something which would add employment opportunities in one of the most deprived parts of the city.⁷¹
- The creation of circa 11,276m² of new public realm for existing and new residents.
- A biodiversity net-gain “significantly in excess of 1,000%” (indeed, 1,800%).⁷²
- The delivery of a development built to high environmental standards including an “*exemplary range of advanced energy efficiency measures and heating network*” to maximise CO2 reductions, exceeding requirement improvements in City Plan policies and improving upon Part L requirements by 78%.

9.14 On any metric these are substantial public benefits and weigh very, very heavily in favour of a grant of permission. There are many planning cases that are finely balanced. This is not one of them. The hard work by the Appellant, Officers and external consultees culminated in a lengthy, detailed, and well considered OR summarising the overall position well: “*the public benefits of the scheme overall, which includes the provision of a significant amount of housing are such that they*

⁷¹ SoCG para. 14.3

⁷² CDA.64 ES Volume 3 Appendix 15.1a

clearly outweigh the heritage harm identified, any limited impacts on landscape or townscape and the harm to neighbouring amenity.”⁷³

9.15 To summarise, the scheme is on an allocated brownfield site, recommended for approval by officers in the strongest possible terms, delivering many benefits, in a Local Planning Authority which has one of the worst 5YHLS rates in the country. Of the 42 policies agreed to be relevant, the Council in the remaining RfR allege breach of only 7. As this is a brownfield site, the NPPF states that proposals which use suitable brownfield land “should be approved unless substantial harm would be caused” (Appellant’s emphasis). For the reasons set out below in relation to the main issues there is no substantial harm.

Character and appearance

9.16 As outlined by Mr Smith, the appeal site is a “*poor quality element of the local townscape, devoid of vegetation feature, predominantly laid to hard surfacing, occupied by a collection of poor-quality structures and used for storage of vehicles and containers, apparent from the immediate context. The Site falls from and east to west and from north to south, towards the seafront.*” It does not make any meaningfully positive contribution to the townscape.⁷⁴

9.17 The Council suggested the site context is ‘suburban’ as opposed to ‘city centre’. The Appellant does not dispute this is not a city centre site, but nor is it on the very edge of the city. Brighton has evidently expanded well beyond the appeal site, so the starting point is whether the existing context is urban or suburban. The Appellant contends that the surrounding context is primarily urban. The surrounding area is characterised by terraced housing (both historically and currently) in a pattern and grain reflecting narrow development blocks – a tight arrangement affording little or no set back from the street space, small gardens or yards and a high degree of enclosure. This is punctuated by the larger urban features of the tower blocks of Courcels and Marine Gate which are prominent and large features of the urban context, as are the two linear apartment blocks at the marina – Orion and Osiris.

9.18 The Appellant’s position is reflected in the Council’s published material:

- The site is contained within the urban character area in Fig.12 of PAN04 which also refers to the sites “more urban context”.⁷⁵
- The Urban Characterisation Study (cross referenced in both CP12 and SPD17) describes the area as a “*Poor urban environment with limited access to quality open space and local services. Weak architectural cohesion.*”⁷⁶
- Although less clear, SPD17 identifies the site in the plan on EP11 as falling within Urban Area 3A. The text identifies Black Rock as a 4a mixed approach neighbourhood and shows the gasworks “*requires positive and pro-active measures to secure major enhancement akin to the category 3B areas*”. The description of 3B identifies that these are neighbourhoods that can include “*higher density residential blocks, which generally relate poorly to the prevailing urban form and which have an often piecemeal character*”.

⁷³ CDD.01, paragraph 10.16

⁷⁴ CDJ.04 Smith PoE paragraphs 3.15-3.16

⁷⁵ CDF.05, Fig. 12

⁷⁶ CDF.06

- 9.19 The layout plan (Figure 2) is the result of the lengthy and iterative design process. As explained by the Appellant's design witness, views across to the seafront have been maximised through the arrangement of the north-south linear blocks, with a pattern reflecting the adjacent streets yet managing to incorporate linear open spaces which benefit from south facing exposure, sea views, and openness deriving from the gaps between the buildings. There are clearly defined public and private realms, positive frontages, and a clearly identifiable function and purpose to the spaces between the blocks.
- 9.20 The application was accompanied by a Tall Building Statement⁷⁷ which has not been challenged by the Council. Fundamentally, the scheme design provides a gateway between the end of the SDNP (Block C) and the edge of the seafront (Blocks I2, H and E4), with the appeal scheme creating a connection through the site. There is a lower height and scale to the west, with the adoption of a terrace height typology that respects the prevailing built form along Boundary Road and clearly differentiates between the various individual dwellings. Blocks I2 H and E4 are all white faced with large balconies and many openings (familiar in the context of Brighton). Running from east to west they include modulated height and bulk to respond to both the Courcels Building (8 storeys) and Marine Gate (9 storeys). Running from north to south the appeal scheme uses the topography to include taller buildings toward the sea front, sitting comfortably with Marine Gate while maximising the development potential of the site.
- 9.21 When looked at from afar, the layout, spacing, design and detailing means the scheme does not present as one homogeneous mass, but as a series of individual buildings which vary the skyline and which form an attractive and fitting transition between Marine Gate and the remainder of Brighton. The considered scheme has elements of visual porosity⁷⁸, with views through the site both on the east-west axis and north-south axis. As the appeal scheme is on the north-south axis, the public open space is on an axis that has long been part of the character of the city, with gardens laid out perpendicular to the coastline taking their natural and recreational benefits northwards. This is not only beneficial for the appeal scheme but takes as its inspiration from the grander set pieces in the area such as Sussex Square, Regency Square, Beford Square and Brunswick Square. Interconnected play space is threaded throughout the appeal scheme, creating a pleasant public open space for children to play.
- 9.22 In response to concerns about tree growth, the tree strategy has been carefully considered to ensure that appropriate trees, which would thrive in this specific environment have been and would be chosen.⁷⁹ Overall, the appeal scheme would enhance the townscape and create high quality public realm thus transforming the site from a low value receptor to a high-quality element of public realm.
- 9.23 From more distant and more elevated land the scheme would read as part of the dynamic city – the sea would still hold the horizon, the developed band of the city would remain as a cohesive and continuous element, separating the coastline from the SDNP. In mid distance views the highly developed city negates majority of visual relationships, change resulting from the scheme would be neither apparent or significant.

⁷⁷ CDA.07

⁷⁸ See Figure 6 to Andrew Smith's PoE CDJ.04

⁷⁹ CDA.07 paragraphs 5.57-5.58.

- 9.24 In views close to the appeal site the change would be more apparent and dramatic. As the Appellant's landscape witness put it: *"Within that drama there is considered continuation of the white linear strip, the positive reflection of a townhouse street scene, the delivery of a historically evocative landmark building, the creation of a composition that allows views through it, from east to west, from north to south and new views from within it - from public realm, from communal gardens, from rooftop gardens and from balconies – views over the rooftops of the city, views to the Downs and to the sea. There is the visual balance."*
- 9.25 The Appellant accepts that the appeal scheme would represent a difference from the surrounding urban form. That is unsurprising, when the policy impetus is for exactly that. However, far from harming the townscape of the area, this development would, as the County Landscape Architect set out: *"represent a major change to the townscape and visual amenity of the local area. There would be some localised impacts on the townscape character and views. On balance and in the longer term the proposed development would enhance the local townscape and provide an opportunity to create high quality public realm"*.⁸⁰
- 9.26 In terms of the Council's objection, the Council's witness was a lone voice, running counter to the Council's Urban Design Team, the County Landscape Architect and the case officer. The Council's evidence at this Inquiry has demonstrated the following basic flaws:
- The Council considers the architecture and material palette to be acceptable and in keeping with the area, however, there has been no assessment of these positive design attributes.
 - It is difficult to see what substantive objection there can be to the height of the proposed buildings in this location. The Tall Buildings Statement has not been criticised by the Council and there are already tall buildings immediately adjacent to the appeal site as well as the consented development at Brighton Marina. In recent history the appeal site itself has contained forms of considerable scale and mass (the gasholders).
 - The Council's assessment of townscape harm is underpinned on their being some benefit to the site in its undeveloped form providing a "gap" which is misguided given the site is allocated for major redevelopment. The loss of the gap, to the extent it exists, is therefore part of the Development Plan.
 - The other allegation from the Council relates to density. However, density was deleted as a stand-alone restriction from the removal of paragraph 130 of the 2023 NPPF.

Heritage

- 9.27 Never in the field of heritage assessments has so much harm been alleged, to so many assets, by so few witnesses. The scope of the HTLVIA was agreed with officers and assessed 27 DHAs and 3 NDHAs. The OR considered 17 DHAs and 2 NDHAs. It found a low level of LTSH to the listed FCH as well as Marine Gate and the flint wall both of which are NDHAs.

⁸⁰ CDB.01

9.28 The Council's witness alleged harm to 53 assets, comprising 217 listed properties. Among other things this included:

- High levels of LTSH to the KTCA and various assets within it;
- A high level of LTSH to the Kemp Town Enclosures Registered Park and Garden (RPG);
- A high level of LTSH Marine Gate (NDHA);
- A moderate level of LTSH to ECCA;
- A moderate level of LTSH to the FCH, and
- A moderate level of LTSH to the Church of St Mark.

9.29 The Appellant does not seek to offer evidence on every single asset alleged by the Council to be harmed. For the reasons set out below, the scope of the Council's assessment is disproportionate and misguided. There is nothing in the RfRs or Committee Minutes to suggest that Members took a more expansive view of the assets harmed than those indicated in the OR. Additionally, although HE raised concerns over the KTCA, it did not go anywhere near as far as the Council in identifying other harmed assets. There was no reference to the ECCA and even in relation to KTCA it identified a low level of LTSH.

9.30 With the exception of the removal of the flint wall there is no dispute that this is a 'setting' case. What constitutes the 'setting' is a well understood notion – it is the surrounding in which an asset is experienced. There is generally a staged approach to scoping assets in or out of analysis, predominantly done on the basis of intervisibility.

9.31 As set out in the Edith Summerskill House decision⁸¹ *"In cases where the impact is on the setting of a designated heritage asset, it is only the significance that asset derives from its setting that is affected. All the significance embodied in the asset itself would remain intact. In such a case, unless the asset concerned derives a major proportion of its significance from its setting, then it is very difficult to see how an impact on its setting can advance a long way along the scale towards substantial harm to significance."* That much is common ground and is an approach also reflected in Policy DM29, which states that where major development impacts on the setting of multiple assets, the scale should be assessed against *inter alia* the degree to which setting contributes to its significance.

9.32 Moreover, there is no dispute between the parties that a single view is not the totality of one's experience of an asset – views are kinetic. It is also not in dispute that in setting cases, one can consider non-visual senses, such as odour, noise, and also any historic or functional relationship, as set out in the Catesby case.⁸²

Kemp Town Conservation Area

9.33 As explained by the Appellant's heritage witness, Kemp Town is historically important because it reflects the growth of Brighton as a major seaside resort in the regency period. In that context, it was the most ambitious town planning

⁸¹ CDG.02

⁸² CDG.07

scheme of its kind both in Brighton, and nationally (similar to set pieces you see in Edinburgh, Newcastle, Bath, and the Crown Estate areas in London). It was located on the edge of Brighton because the area of land was considerable and could be developed into something grand.

- 9.34 Architecturally, Kemp Town reflects the neoclassical – a large town planning scheme using square and crescent (common at the time). The architectural language of the buildings reflects Kemp’s aspiration to attract wealthy clientele. While there is some variety in the terraces there is broadly a 3-part classical composition with a rusticated base, middle stories reflecting the classical column proportions, and an attic storey. The distinguishing feature includes projecting porches and first floor balconies with railings. As it is extremely grand and vast in scale it can be hard to get a sense of the composition ‘on the ground’ but it is strongly symmetrical and was designed to take advantage of the north-south slope of the land toward the sea.
- 9.35 The architectural and historical characteristics are set out in the KTCA Area Study and Enhancement Plan.⁸³ It is noteworthy that the KTCA boundary is tightly drawn and while some thought had been given to extending it, this was decided against.
- 9.36 In assessing whether there is any harm to the setting of the KTCA, the central question is what contribution the appeal site makes and does it enhance our ability to understand its historic or architectural interest or significance. As explained by the Appellant’s heritage witness, the main contribution of the setting was the enclosure by and contribution by the seafront and the cliffs. The land to the north, west, and east (which included the gasworks) does not make any material contribution to the historic interest of the asset, and there are relatively few places where one can appreciate the views into the KTCA, along Eastern Road. Moreover, the Appellant notes that the Enhancement Plan makes no mention of the appeal site as part of the setting, despite there being some consideration in the document of impacts from development outside the KTCA. Finally, none of the extensive secondary sources, including ones produced by BGC’s heritage witness, identifies any such contribution.
- 9.37 While the appeal site is at the eastern extremity of the KTCA’s setting with some views of gasholders from Eastern Road, those relationships do not contribute to any appreciation of what is architecturally special about Kemp Town. The site’s contribution is therefore neutral in its current condition. Against that background the proposals would not cause harm to the KTCA. Referring to the checklist in Enhancement Plan, none of the special characteristics are eroded.

East Cliff Conservation Area

- 9.38 There is no intervisibility between the ECCA and the appeal site other than from Viewpoint 34 (the Pier). In that view the Council accepted the change was indiscernible. There is, therefore, no harm. The Council’s assessment of harm relies on the notion of ‘experiential’ approach which the Appellant argues is simply unsupportable.

French Convalescent Home (Grade II listed)

⁸³ CDF.02

9.39 The FCH's historical interest arises from its purpose which is as the seaside component of a French hospital in London, patronised by the French Government and reflecting that in its Loire Valley chateau design. The historical interest is therefore reinforced by its architecture. That interest has already been subject to unsympathetic changes in the form of rendering and a prominent lift shaft. The Appellant accepts there is a low level of harm as a result of the encroachment of some of the appeal scheme above the roof in a small number of views. However, the impact reduces the closer one gets to the building, and so it is short lived.

Church of St Mark (Grade II listed)

9.40 The Church of St Mark is in an 1830s gothic revival style, which stands out in the local area but is typical of a number of churches built at that time following the Peel government reforms. The style is typical of the time, though its construction material is concrete-like, an example of how churches in this period were experimenting with new forms of construction. Its setting is defined principally by the churchyard. It is set back from the road. The area and townscape around it are much changed given the petrol filling station opposite. While it has a relationship with the historic hall to the north, nobody alleges interference or damage to that. The key view in assessing the setting impact on the Church of St Mark is along Eastern Road.⁸⁴ In those views, the appeal scheme is partially screened by vegetation and would not therefore be a distracting feature. The Council appears to rely in part on distant views of the spire. However, this slender and elegant feature is difficult to identify in longer distance views due to the dominance of the hospital buildings. Overall, the Appellant considers there would be no harm to the Church of St Mark.

Marine Gate

9.41 Marine Gate derives architectural interest from being a very good example of interwar flat development of the type found by the sea. It is a steel-frame design by architects who are known in the period and is a stylish building which the local list description identifies as having landmark value as one travels along the coast. Once built, the appeal scheme would not challenge that landmark status. There may be some blocking of views from the north and east, but Marine Gate's principal elevation is south facing, and that is not affected. Furthermore, the terrace on the southern end of the site would have a positive effect on the setting, providing an opportunity to see and appreciate Marine Gate. The effect is therefore neutral overall or, at the very worst, a negligible impact on a NDHA.

Conclusions on heritage assets

9.42 Based on the above the SoS can safely conclude there is compliance with the relevant heritage policies CPP1 CP12(4) and CPP2 Policies DM28 and DM29.

9.43 In contrast to the above findings, the Council's approach is wholly unreasonable. High levels of LTSH to the KTCA and Marine Gate, and moderate levels of harm to the Church of St Mark, the FCH and the ECCA (when one cannot even see the appeal scheme from it) have proven impossible to substantiate in any meaningful way. It also flies in the face of the Inspector/SoS's conclusions in the Brighton Marina appeal.

⁸⁴ CDJ.04 - VVM 6W (Winter), pg. 69-71

9.44 The Council's assessment of harm is predicated on an experiential approach. This is where "*a setting interaction exists in the mind, through memory (I surmise), even where the senses cannot perceive such an interaction through the direct evidence of the senses.*". Put another way "*These impressions and resulting awareness create, it is asserted, a kind of mental picture in which something remembered is held up against something seen. That perceived contrast produces harmful setting effects.*"⁸⁵ Understood properly, the experiential approach advocated by the Council suffers from the following insurmountable obstacles:

- First, and as the Council's witness accepted, the approach cannot be objectively tested or verified. Different people may walk the same walk and have different emotions, feelings, impressions and memories. That does not translate into an objective and testable method of analysis.
- Second, the experiential approach has been pushed beyond all reasonable limits in this case. To find harm to the ECCA, for example, you would need to be convinced that a mental picture of that area is held within one's mind over a 650m/8-10-minute walk, only to be harmed when one viewed the appeal site. That is simply not credible.
- Third, and as the Council's witness again accepted, the average person, their appreciation of the heritage assets comes primarily from their aesthetic qualities i.e. their form and fabric. That is the principal driver of the appreciation and significance in this case. Cognisant to the Edith Summerskill House decision, it is therefore very difficult to see how the impact can advance a long way along the less than substantial scale.
- Fourth, the experiential approach is entirely novel, with no clear support in any published document, appeal decision or legal judgement.

9.45 Accordingly, the Appellant considers the Council's assessment of harm is poorly calibrated. This is apparent from the Council witness' acceptance that substantial harm is a "*very high bar*", for example if all or most of an asset's significance was eroded. The Appellant's visualisations demonstrate there is no rational basis on which you could suggest the level of harm to the KTCA was even approaching substantial.

9.46 The Council's assessment is also out of step with SoS decisions most notably the recently refused Brighton Marina development⁸⁶ which featured a 28-storey building which could be very clearly viewed from the most sensitive parts of the KTCA such as Lewes Crescent.⁸⁷ The Inspector, and the SoS considered this would result in a low level of LTSH.

Living conditions

9.47 The focus of the Council's case is entirely on the amenity and light for future residents, not existing residents. It is worth noting at the outset that the matters in dispute are now relatively narrow, as:

⁸⁵ CDK.02 Chris Miele PoE paragraph 2.6

⁸⁶ CDG.01

⁸⁷ ID.04 View 17, View 27, 29, 33, 35 and 38.

- The Council's evidence confirmed that notwithstanding the use of the words "*in particular*" in RfR3, the only substantive matters relied on as giving rise to living condition harms are height and spacing.
- The single policy alleged to be breached in RfR3 was DM20 and not Policies DM1 and DM18 which are referred to in the Council's written evidence. Moreover, the Council now accepts there is no breach of Policy DM20 in respect of daylight/sunlight impacts.
- In oral evidence the Council withdrew the suggestion that any of the daylight/sunlight impacts were unacceptable and instead agreed they were merely "*sub-optimal*", by which she merely meant in some regards failed to meet the non-binding targets in the BRE Guidelines

9.48 In light of the above, there is not a remotely credible basis on which it could be said that any harms under RfR3 outweigh the benefits of the scheme, particularly given the new requirements of NPPF paragraph 125(c).

9.49 In response to the Council's concerns that this would be a "*cramped form of development*", it is accepted by the Council that all the homes meet or exceed the Nationally Described Space Standards (NDSS).

9.50 A daylight/sunlight assessment was submitted with the application⁸⁸. This was supplemented by a daylight/sunlight chapter in the ES⁸⁹, three BRE reviews in January 2022, December 2022 and February 2024⁹⁰, a comprehensive OR which dealt at length with daylight/sunlight matters, and Mr Pagani's PoE and Rebuttal PoE.⁹¹ Sunlight and daylight requires a two-stage approach. Stage 1 involves looking at numerical compliance with the BRE Guidelines. Stage 2 then goes on to look at whether sunlight and daylight is acceptable and has regard to wider contextual matters (see the *Rainbird* case⁹² and associated appeal decisions).

9.51 In relation to existing neighbouring properties, there would be some harm to neighbouring properties through the loss of sunlight and daylight to the backs of properties of Arundel Street and daylight to the west facing flank of Marine Gate. As noted in the OR "*as an empty site, neighbouring properties benefit from levels of light that [are] not representative of an urban area*" and any deliverable redevelopment of this allocated site would inevitably be of a density which result in some negative amenity impacts.

9.52 The OR also recorded that the Appellant submitted all necessary daylight/sunlight assessments for future residents and that the BRE had found the methodology to be robust. While some units (on the lower levels) would fall below the guidelines on daylight "*the overall daylight provision for a high-density scheme such as this is considered acceptable.*", In terms of sunlight, the OR found "*Overall ... the scheme is considered to have a good level of sunlight provision*". Every residential unit above podium level would have a balcony. While a benefit in amenity terms, balconies reduce daylight and sunlight provision to units below. While the sunlight provision in the private townhouse gardens falls below the BRE Guidelines "*they are still considered to provide a beneficial amenity space for future occupiers, who*

⁸⁸ CDA.06

⁸⁹ CDA.30

⁹⁰ CDB.16(a)-(c)

⁹¹ CDJ.06 & CDK.06

⁹² CDG.05

still also have the option of also using the main communal gardens and the scheme is acceptable overall in respect to sunlight to private amenity areas.

Finally, in relation to the public open space and private communal amenity areas, the OR concluded these would meet the BRE Guidelines overall.

- 9.53 RfR3 alleges overdevelopment as a result of *“particularly the excessive height and limited spacing between the buildings”* which it is said *“would result in an unacceptable standard of accommodation for future residents by reason of poor levels of amenity and light to some dwellings”*. However, and particularly in light of the clear advice in the OR, it is difficult to understand the evidential basis for these concerns. The Minutes record, *“the Chair stated that they felt the north and west of the scheme were successful, but expressed concerns about light levels between blocks, stating that this was an indication of overdevelopment”*. That is the only mention of any amenity issues in the discussion as recorded in the Minutes.
- 9.54 In terms of the extent of any shortfall as against the non-binding targets in the BRE Guidelines, the Council’s Supplementary SoC⁹³ (SSoC) identified a sub-set of habitable rooms as being a concern in terms of daylight, namely those on the inner facing elevations. This amounts to 753 proposed habitable rooms. Of those 89.5% meet or exceed the BRE Guidelines, leaving 51 rooms below the BRE Guidelines.
- 9.55 For sunlight, the Council’s SSoC identified a sub-set of dwellings as being a concern in terms of sunlight, namely those on the inner facing elevations, this amounted to 332 proposed dwellings. Of the 332 identified dwellings within the appeal scheme, 249 (75%) meet or exceed the BRE Guidelines within at least one of their habitable rooms so are BRE compliant and have not been considered further. This leaves 83 dwellings that require further consideration.
- 9.56 It should be remembered that the NPPF paragraph 130c) advises *“authorities should take 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)”*. The BRE also emphasise the importance of a sensible and flexible application of their guidance.
- 9.57 Despite the shortfalls identified by the Council, the Appellant considers this does not mean there should be any daylight or sunlight objection to this scheme, given the need for a Stage 2 Assessment. This is a quintessential part of a daylight/sunlight assessment. However, no such assessment was undertaken by the Council. Instead, it has looked solely at numerical compliance under Stage 1 and jumps from that to there being an issue sufficient to refuse planning permission. Even at the appeal stage, the Council has failed to offer any further evidence or comments on the reasons for non-compliance and whether there are contextual matters that justify any non-compliance.
- 9.58 That is the wrong approach (being contrary to High Court authority and appeal decisions) and was always fatal to the Council’s case on daylight and sunlight at the Inquiry. A Stage 2 assessment is required to be undertaken by an expert on such matters. The Council never called any evidence from such an expert. Moreover, it is telling that the Council’s SSoC and PoE both misunderstood and

⁹³ CDI.08.

misreported the Stage 1 position as summarised in the final BRE report which it commissioned.

9.59 When pressed on the matter, the Council's witness accepted that any departures from the BRE Guidelines were sub-optimal and not unacceptable and so did not amount to a breach of Policy DM20. The Appellant's Stage 2 assessment⁹⁴ was barely challenged at the Inquiry and confirms there would be no unacceptable impacts raising the following salient points:

- An assessment without balconies shows that only 17 of the 51 rooms identified at Stage 1 in terms of daylight would be below BRE Guidelines.
- For those 17 rooms the Appellant has looked at a wide range of factors including: distance between blocks, NDSS compliance and the extent of any BRE Guidelines shortfall. By looking at these matters and comparative examples in Brighton, it is concluded that there would be no unacceptable sunlight impacts, and overall, the scheme achieves a high standard of accommodation from a daylight perspective.

9.60 In terms of overshadowing, the Council has referred to the area of public space about the buildings. Rather than the "marginal pass" referred to by the Council, 69% of the public open space around the buildings would see at least 2 hours of sunlight on the 21 March where only 50% is recommended by BRE. While 13 back gardens of the 14 townhouses do not meet BRE's suggested target, 10 would meet the recommendation within 17 days from the 21 March. Moreover, all the townhouses' gardens have been purposefully designed to have direct access to the South West Residents Gardens which exceed the BRE Guidelines, offering sunlit amenity year-round.

9.61 The Council identifies five instances of the distances between the blocks being less than 18m in places and where it is said that "*the proximity of the bedroom and living room windows would be such that occupiers would get a clear view of residents in the units opposite*". In addition, it alleges inadequate privacy to private balconies and gardens and appropriate separation from public and communal spaces particularly in relation to units at ground floor and podium level.

9.62 Notwithstanding the lack of evidence that Members were concerned by privacy matters, the Appellant's witness explained that where privacy may be an issue, windows would be provided with a directional outlook.⁹⁵ This was the view reached in the OR which stated that separation distances were sufficient to achieve privacy.

9.63 Turning to the units at ground floor level and at podium level, the Appellant has shown that the layout is common in modern developments and can be seen in other successful Berkeley schemes. There is also a condition proposed to provide further details in relation to screening/planting to protect the amenity of any residential occupiers with private terraces fronting onto the residential podium gardens.

9.64 In response to concerns raised by BGC, the Appellant would highlight that no expert witness was called on amenity matters and those that did give evidence admitted to finding the daylight/sunlight evidence "*impossible to comprehend*".

⁹⁴ CDJ.06

⁹⁵ CDK.03 Pullan Rebuttal PoE, paragraph 1.33 & Fig. 65

BGC sought to advance their own version of the 'vertical skylight component' but paragraph 2.37 of Mr Pagani's PoE explains this approach is flawed and inappropriate. In response to concerns about health impacts, the Appellant explained that while daylight and sunlight is inherently linked to health and wellbeing there is no minimum threshold in the BRE Guidelines below which health may be impacted. Neither the Council nor BGC made any comment on the Appellant's Health Impact Assessment.⁹⁶

9.65 In response to the Right of Light Consulting letter⁹⁷ which raised the issue of amenity impacts on existing residents, the Appellant would highlight the following:

- It goes beyond the scope of what BGC confirmed to be its case, and it raised matters not raised by the Council;
- It was produced very quickly and in a matter of only a few days;
- It is reviewing the daylight/sunlight chapter of the November 2023 ES. It does not reference the Appellant's daylight/sunlight PoE and is not therefore rebuttal evidence;
- It appears the authors of the letter were not provided with a copy of the Appellant's PoE nor the BRE reports that had already reviewed the ES, and
- The Right of Light Consulting letter raises nothing new that has not already been considered during this application.

Other Matters

9.66 The appeal scheme has been subject to extensive viability assessment undertaken by the Appellant's consultants Quod.⁹⁸ The Council's independent third-party assessor DVS provided a number of independent reviews of this work since March 2022.⁹⁹ The DVS has concluded, rightly, that the appeal scheme cannot provide any affordable housing. That is the position agreed by the Council and the Appellant.¹⁰⁰ Although BGC raised various concerns these have been comprehensively responded to in the Appellant's Rebuttal PoE.¹⁰¹

9.67 BGC set out, at length, the concerns of local people regarding the negative health impacts that can arise at contaminated sites. Those health impacts would not arise, because a number of planning conditions have been agreed with the Council which would manage any risk to the public (see conditions 9-12, Appendix B). It should also be noted that the Berkeley Group, of which the Appellant forms part, has extensive experience bringing forward complex regeneration sites (including former gasworks), and is supported in this case by AtkinsRéalis, a market leader in remediating contaminated land. The Appellant's assessment has been independently reviewed by LEAP Environmental on behalf of the Council. Based on those reviews, no objection is raised by the Environment Agency or the Council's Environmental Health team.

⁹⁶ CDA.12

⁹⁷ CDK.13

⁹⁸ CDA.10

⁹⁹ CDB.025

¹⁰⁰ Mr Wheaton's Rebuttal CD1.16, paragraph 9.28

¹⁰¹ CDK.05

9.68 BGC have raised concerns regarding micro-climate conditions and the creation of wind tunnels within the development. The Appellant considers the issue has been comprehensively assessed in the ES.¹⁰² It is also the subject of several conditions and is not a matter contested by the Council (or any of its consultees).

9.69 The appeal scheme would result in a net reduction in vehicle movements and so there would be local improvements to traffic. As confirmed by the Council's Air Quality officer, the result is a positive effect on air quality in the local area compared to the existing (baseline) site use.¹⁰³

9.70 Although Policy DA2 does not seek to retain the existing uses on site, BGC has suggested that the redevelopment of the appeal site this would result in the loss of 145 jobs. That is wrong for the following reasons:

- ES chapter 7 contains an assessment of existing employment on the site. Because the exact number of jobs is unknown a calculation based on the built floor area has been applied to the standard job densities set out in the Homes and Communities Agency Guidance. This calculation provides a figure of 25 FTE jobs which is in line with an informal estimate provided by the site managers. The ES considers that the displacement of these jobs would be a low magnitude impact.
- BGC's suggestion that there are anything like 145 jobs currently on the appeal site lacks credibility for the reasons set out in detail in the Appellant's Planning Rebuttal PoE.¹⁰⁴
- Both the ES Chapter and the OR conclude that the appeal scheme would result in a net increase in jobs.
- The Big Lemon bus company (which the Coalition estimates provides 45 jobs on site) has in any event recently lost the contract to run bus services for the Council, ending March 2025.

9.71 In terms of the alternative scheme put forward by BGC, there is a chapter in the ES that looks at reasonable alternatives considered by the Appellant. BGC's scheme has not been subject to pre-application discussion and has not been tested in respect of the analysis required by the Council's application validation list including daylight/sunlight impacts. The scheme also seeks to build on Council owned land, and decks over Marina Way, proposing homes directly above the carriageway. It also builds over gas mains which the proposed development has been required to avoid. The alternative scheme is therefore not deliverable. For these reasons it can be given no weight.

9.72 The only remaining dispute between the Appellant and the Council in terms of the s106 obligation is the surplus share in relation to the viability review mechanism. This is the provision which allows for a share of any surplus identified through a viability review to be apportioned between the Appellant and the Council. The Council argues that 100% of any surplus arising from the review is paid to the Council. The Appellant disagrees and proposes that any surplus is shared 60/40 between the Council and the Appellant.

¹⁰² CDA.29 ES Chapter 11 (Wind Microclimate)

¹⁰³ CDB.11

¹⁰⁴ Mr Ford's Rebuttal PoE, CDK.01 paragraphs 14.2.3-14.5

9.73 The Appellant makes a number of points in support of that position:

- The Council does not have any adopted policy or guidance regarding the form of viability review mechanisms, nor has it produced any evidence supporting its position on it being entitled to 100% of the surplus.
- The Council's Affordable Housing Brief - while not policy or guidance - sets out the Council's approach to review mechanisms generally: "*where a scheme does not comply with the council's policy requirements for affordable housing for viability reasons and following an independently assessed open book appraisal of the scheme's costs and revenue, a review mechanism (or re-appraisal of scheme viability) will be incorporated into the Section 106 agreement, This is to ensure that any future uplift in development value is shared with the council ...*".¹⁰⁵ The notion that the surplus is shared is thus embodied in the Brief.
- On a more fundamental point, a share is required to offer the Appellant an incentive to expend time / resources in optimising scheme viability – there would be no incentive to do this if 100% of any benefit were paid to the Council.
- The Appellant has provided many examples including in Brighton & Hove where the Council, has agreed to a 60/40 split, following a review of the relevant policy or guidance.¹⁰⁶

9.74 For all these reasons the Appellant says that the s106 unilateral obligation is appropriate and reasonable. It is in a carefully crafted form which offers the absolutely best chance of there being affordable housing provided on the site.

Development Plan compliance

9.75 Case law establishes that:

- Section 38(6) of the Act requires consideration of whether there is compliance with the Development Plan as a whole.
- Policies in a development plan may pull in different directions - that is to say some policies may support a scheme while there is conflict with others.
- The fact there is conflict with one relevant policy (or part of one relevant policy) does not mean that a scheme is not in accordance with the development plan as a whole.
- In deciding whether the development plan is accorded with as a whole, a decision-maker must consider:
 - a. The importance of the policies breached and complied with;
 - b. The degree of any breach, in terms of how far the policy in question sets its face against what is proposed; and
 - c. The significance of the breach.

¹⁰⁵ CDF.18

¹⁰⁶ CDJ.05 Wheaton Professional Statement paras 4.27 – 4.28.

9.76 The NPPF is a clear and up to date expression of government policy, an important material consideration in every case. This makes clear that:

- Development Plan policies can become out-of-date and thereby carry reduced weight. This can be the case if national policy changes and the Development Plan policies are inconsistent with it; or because there is a failure to provide a 5YHLS, or because of a failure in the Housing Delivery Test.
- In such circumstances, the NPPF indicates permission should be granted unless the application of the footnote 7 policies provide a “strong” reason for refusal, or the adverse impacts would significantly and demonstrably outweigh the benefits.

9.77 In terms of the Development Plan, it is agreed that there are 42 policies in CPP1 and CPP2 that are relevant to the appeal.¹⁰⁷ Of those 42 (i) the outstanding RfRs allege breach with parts of seven policies: (i) DA2(C)2c, (ii) CP12, (iii) CP15, (iv) DM18, (v) DM28 and (vi) DM29 and (vii) DM20. At the appeal stage the Council introduced Policy DM18 under RfR3 and Policies CP14, DM19 and SS1. With these additions, it is only nine of the 42 relevant policies of the Development Plan which the Council allege are breached.

9.78 The Council’s assessment has only considered the policies alleged to be breached. It has therefore failed to take a view on compliance with the Development Plan as a whole as required by section 38(6) of the Act. That is a fundamental and irremediable failing in the Council’s evidence to this Inquiry.

9.79 The starting point is that the appeal site is allocated. On any view the most important policy in play must be the allocation policy itself: Policy DA2. The Council’s allegation of breach of DA2 is narrowly confined and limited to the first bullet of DA2 and DA2(C)-2c. The latter states “*Design – development proposals should demonstrate high quality design which positively contribute to the varying character of existing residential and commercial properties in the vicinity to create a cohesive and attractive urban environment*”. The Appellant’s evidence is that the appeal scheme clearly complies with this criterion.

9.80 In a similar vein, the first bullet of DA2 deals with achieving “*a high quality of building design ... townscape and public realm*”. While the Appellant considers that the appeal scheme accords with that objective, it should be noted that Policy DA2 goes on to say that all the objectives must recognise “*the potential for higher density mixed development in accordance with the aims of the Spatial Strategy to optimise development on brownfield sites*”. Again, the Appellant would say that this criterion is fully met.

9.81 Even if the Council’s case were taken at its highest, it is agreed that the appeal scheme complies with at least 26 limbs of the policy such that, on any view, there is compliance with Policy DA2 as a whole.

9.82 The Appellant says there is no breach of any of the other policies in dispute and that the appeal scheme accords with the NPPF which is an important material consideration. The tilted balance in NPPF paragraph 11d) is clearly engaged. There is no 5YHLS, and the minor harm to three heritage assets cannot

¹⁰⁷ CDI.16 SoCG Table 7-1

reasonably be considered to provide a “*strong*” reason for refusing the appeal scheme. The harm is in any event outweighed by the public benefits.

9.83 As the tilted balance does apply, the Council’s suggestion that the adverse impacts significantly and demonstrably outweigh the many benefits of this scheme is simply untenable which is why it is not the view reached by the professional officers of the Council.

9.84 For these reasons, the Appellant asks the SoS to allow the appeal and grant planning permission for the appeal scheme.

10.0 The Case for Interested Parties

10.1 There were many written representations from interested persons at the application and appeal stages. 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. The principle issues raised in the representations are summarised below:

- Overdevelopment of the site, too dense, buildings too close together
- Inappropriate height, mass and bulk, does not respect character of area,
- Detrimental impact on views of the South Downs National Park, create an ugly visual barrier between the South Downs and the sea,
- Generic architecture, poorly designed, lacks quality and imagination, not a holistic design approach, inappropriate colours and materiality,
- The gas holder structure should be retained / listed,
- Poor quality of public realm,
- Excessive footprint and poor layout,
- Lack of views, permeability through site.
- Fails to respect existing architectural built form,
- Brighton’s character becoming lost with numerous poorly designed largescale
- Utilising cheap materials in the design,
- Building C brick colour should be toned down to a pastel shade and the bricks should have a matte finish to avoid reflections.
- Balconies and detailing detract from scheme,
- Harms the setting of conservation areas, setting of the Grade I Listed Kemp Town Estate, numerous listed buildings within the local area and the Brighton seafront, harm to locally listed buildings including Marine Gate
- Removal of historic Rottingdean/Brighton flint wall which marked parish boundary,
- Harm to Area of Outstanding Natural Beauty.

- Excessive in density and way beyond the minimum of 2000m² of commercial and 85 residential units set out within policy DA2 of CPP1,
- The site is not within a designated Tall Buildings Area or special node,
- The proposal does not integrate well into the Marina or Black Rock and has
- Increased road and junction congestion especially on A259 and Eastern Road, impact on emergency services, hospitals, on race days at racecourse,
- Highway safety issues for pedestrians, cyclists and vehicles,
- Insufficient vehicle and cycle parking proposed,
- Boundary Road is an unadopted road owned by the freeholders on Arundel Street,
- Site poorly connected by public transport,
- Land is contaminated and not suitable for development, insufficient land contamination information to safely determine application,
- National concern about gasworks sites and an All-Parliamentary Group has been set up to investigate - other redeveloped gasworks sites have resulted in health complaints from local residents,
- Could result in negative health issues for local residents in respect of gases, vapours, odours, waste or dust that could be harmful, hazardous, noxious or contaminated during remediation and construction,
- Construction time is too long and will exacerbate noise/vibration and pollution issues,
- Previous application to remove the gasholders on the site was rejected on grounds of insufficient information on contamination,
- Pollution will impact upon local food growing,
- World Health Organisation air quality guidelines for both nitrogen dioxide and particulate matter will be exceeded, and adverse impacts upon the local populace are inevitable,
- Not safe to develop over gas pipelines and infrastructure,
- Risk of unexploded bombs - area was heavily bombarded during the Second World War,
- UK Health Security Agency have expressed concerns that there is insufficient information contained within the planning application to be able to fully assess the impact of the proposed development on public health.
- Proposed units will appeal to foreign investment and holiday lets and offers little benefit to the area - properties will not be affordable to local people,
- Lack of affordable housing on site,
- Poor housing mix - too many smaller units rather than family accommodation,

- Poor quality of housing, lacking in daylight, sunlight, privacy, outlook and suitable external amenity space,
- Proposed housing is too small / cramped with poor levels of sunlight and daylight
- Lack of privacy and outlook,
- Amenity spaces are too small / lacking in quality,
- Excessive wind impacts through public and private areas,
- Insufficient number of larger trees,
- Impact on Beachy Head West Marine Conservation Zone and marine ecology,
- Low biodiversity net gain score, detrimental to wildlife and loss of opportunity to make a genuine gain.
- Lack of renewable energy proposed, gas boilers should be removed from scheme,
- Loss of light and daylight and overshadowing of neighbouring residents does not meet BRE guidance,
- Overbearing and enclosing impact, loss of outlook and privacy
- Poor public engagement from the developer,
- Results in the loss of existing commercial operators which may not be able to be relocated in the city and would result in a loss of jobs and services,
- Lack of medical, dental, nursery, schools, sports and other civic facilities,
- Does not benefit local residents in one of the most deprived areas of Brighton,
- Appellant's FVA is flawed, does not conform to national guidance and has inaccurate assumptions,

10.2 At the Inquiry itself, there were two contributors who spoke. I summarise briefly below but the fuller, written submissions, which I have added as Inquiry Documents, should be considered too.

10.3 **Stephen White**, a member of BGC also spoke as a local resident. He criticised the Appellant for an absence of genuine listening, dialogue or negotiation with the local community. He was also critical of the design which had not been tailored to respect the local residential pattern and would result in a very significant uplift in density.¹⁰⁸

10.4 **Daniel Harris**, on behalf of Whitehawk & Manor Farm Community Association (on Teams) raised a number of concerns around wider government housing policy. Although he supported more housing, he did not feel the appeal scheme would benefit local people.

¹⁰⁸ See ID12 for Mr White's speaking notes.

11.0 Planning Conditions

- 11.1 The main parties provided a list of agreed planning conditions prior to the Inquiry. I reviewed those conditions and provided 'without prejudice' comments to help narrow and refine the list. The conditions were discussed at a round-table session following which further amendments were made with a final list being submitted after the close of the Inquiry.¹⁰⁹ I have considered the agreed conditions against the advice in the PPG. In some instances, I have amended or amalgamated the conditions in the interests of brevity, to avoid repetition or to ensure compliance with the PPG.
- 11.2 BGC suggested a number of additional conditions at the Inquiry including ownership restrictions. For reasons that were canvassed at the Inquiry, the additional conditions suggested by BGC would not meet the legal tests for conditions set out in NPPF paragraph 57.
- 11.3 To provide certainty, standard conditions covering time limits, the approved plans and reports would be necessary [Conditions 1-3]. A phasing plan is necessary to ensure the development comes forward in a coherent and planned manner [4]. Various conditions are necessary to ensure all aspects of site preparation and construction adhere to best practice to minimise adverse effects on local residents [5-8].
- 11.4 Land contamination conditions are necessary to ensure the land is suitable for a residential use and to protect the health of local residents [9-12]. A drainage condition is necessary to ensure satisfactory drainage of the site in the interests of flood prevention [13]. Materials and landscaping conditions are necessary to ensure the satisfactory appearance of the development [14-15]. To protect the living conditions of future and neighbouring occupiers, conditions relating to oriel windows, noise mitigation, servicing and operating hours for the commercial uses, external lighting, suppression of odours and waste storage and management would be necessary [16-23].
- 11.5 Conditions covering a site wide Travel Plan, cycling infrastructure, electric vehicle charging points, water and energy efficiency would be necessary to promote greener modes of travel, reduce reliance on fossil fuels and to generally comply with the Council's sustainability objectives [24-29]. An Archaeology condition would be necessary to protect any archaeological assets that may be present [30]. A scheme of recording for the flint wall along Boundary Road would be necessary to mitigate the harm to a NDHA [31]. A Landscape and Ecological Management Plan as well as details of the blue and brown roofs would be necessary to ensure the biodiversity gains are secured in the long-term [32-33].
- 11.6 A condition requiring 5% of the residential units to be suitable for wheelchair users would be necessary to ensure satisfactory provision of homes for people with disabilities [34]. Finally, a condition preventing the change of use of the commercial floorspace within 'The Yard' would be necessary to safeguard the supply of office floorspace [35].
- 11.7 Conditions 4-8, 10 and 13 are 'pre-commencement' form conditions and require certain actions before the commencement of development. In all cases the

¹⁰⁹ CDI.23

conditions were agreed between the main parties and address matters that are of an importance or effect that need to be resolved before construction begins.

11.8 Several conditions have been omitted where the requirements would be captured by the reports or plans listed in conditions 2 and 3. With the exception of the remediation works, separate conditions requiring post-construction assessment/verification reports would not be necessary because the details would have been approved by the Council in the first instance. Several conditions relating to noise and drainage have been amalgamated. Several of the suggested conditions encroached into areas covered by other regulatory regimes such as the Building Regulations and Health/Building Safety. The marketing of the units and the management of parking areas are matters best left to the Appellant's expertise, and I can see no persuasive reason why the Council would need to approve these details.

12.0 Planning Obligations

12.1 A completed bilateral s106 agreement as well as a UU were submitted after the close of the Inquiry. Advanced drafts of both documents were discussed at the Inquiry.¹¹⁰ I have assessed both documents in light of the CIL Regulations 2010 and NPPF paragraph 58 which state that planning obligations must only be sought where they meet 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.

12.2 The obligations in the bilateral agreement comprise; a Travel Plan Monitoring fee of £14,498, the provision of 10 electric Bikeshare bicycles, off-site highway works to Boundary Road; B2006 Roedean Road and Marina Way, public art obligations, a Local Employment Scheme contribution of £180,260, an Employment and Training Strategy, provision of permissive paths and a s106 Monitoring Fee of £9,013.

12.3 The above obligations are not in dispute and the information before me sets out the detailed background and justification for each of the obligations.¹¹¹ I am satisfied from the evidence before me that the obligations are necessary, directly related to the proposal and fair and reasonable in scale and kind to the appeal scheme. As a result, I have taken the obligations into account in forming the recommendation set out below.

12.4 It is common ground that the appeal scheme cannot on the basis of current figures provide any affordable housing given the high cost of remediating the site. Accordingly, there is no breach of local or national policy in this regard.¹¹² The affordable housing obligation in the UU would require the Appellant to use 'reasonable endeavours' to enter into a contract with a registered provider to dispose of 40% of the dwellings who in turn would secure grant funding for the delivery of affordable housing. The obligation demonstrates a commitment on the

¹¹⁰ CDH.04-05

¹¹¹ CDH.03 – CIL Compliance Schedule

¹¹² SoCG para 9.28.

Appellant's part to deliver affordable housing on the appeal site. This is a benefit that weighs in favour of the scheme in the planning balance.

12.5 The area of disagreement relates solely to any surplus that might arise in relation to the late viability review and how that might be apportioned between the Council and the Appellant. I have considered the submissions of both parties on this matter. However, I find that the Council's insistence that it receives 100% of any surplus to be unreasonable and unsupported by any Development Plan policy and its own guidance.¹¹³ As established at the Inquiry, the Council's position is somewhat out of kilter with the 60/40 approach it has taken in respect of other large schemes. Requiring a developer to pay 100% of any surplus may disincentivise developers to optimise the viability of their scheme. Based on the foregoing I am satisfied that the 60/40 clause in the UU is acceptable and that overall, the affordable housing obligation is reasonable, necessary and meets the statutory tests.

13.0 Inspector's Reasons

13.1 Considering the evidence in this case, including the submissions and representations on which I have reported above, I have reached the following conclusions. The numbers in square brackets [], refer to preceding sections of this Report from which some of my conclusions are drawn.

13.2 The main considerations are:

- The effect of the development upon the character and appearance of the area;
- The effect of the development on the setting of nearby heritage assets, and
- Whether the development would provide satisfactory living conditions for future residents.

Character and appearance

13.3 The crux of the Council's objection, supported by BGC, is that the appeal scheme would represent overdevelopment being too tall and dense and out of keeping with the urban grain of the surrounding area. As all parties accepted, concerns of this nature must be viewed in the context of; 1) a Development Plan which allocates the site for significant development and 2) the national and local planning policy imperative to maximise development on previously developed brownfield sites such as this. The latter is to be given additional weight in Brighton where there is acknowledged shortage of brownfield sites and an acute housing shortage. [1.5, 7.6-7.11, 7.13, 8.2, 8.16]

13.4 As part of any townscape/visual impact it is important to establish the baseline position. It is common ground that the character of the appeal site is "*varied, degraded, and makes a limited positive contribution to the character or environmental quality of the local area*".¹¹⁴ Having visited the site on multiple occasions, I find the inclusion of the words '*limited positive contribution*' difficult to reconcile with my own observations. As illustrated by Figure 1 to this report, the appeal site is predominantly laid to hard surfacing and occupied by a litany of poor-quality structures and unsightly storage uses. In no way can it be said these

¹¹³ The Council's Affordable Housing Brief (CDF.18) sets an expectation that any future uplift is shared with the Council.

¹¹⁴ SoCG para 10.2

contribute positively to the local townscape including setting of nearby heritage assets such as Marine Gate, the KTCA and the FCH. On the contrary, this underutilised and despoiled site has a negative effect on the varied and robust urban townscape of east Brighton. [2.1, 6.1, 9.6, 9.16, 9.36, 9.37]

- 13.5 The issue of tall buildings was discussed in some detail at the inquiry with the general feeling among objectors that the scheme should be reduced in scale. However, the appeal site's immediate surroundings include two highly prominent multi-storey buildings (Marine Gate and the Courcels Building). These are specifically referenced in PAN04 as being part of the existing urban grain surrounding the site. There is, thus, already a clear precedent for tall buildings in the immediate area something referenced in the Appellant's Tall Building Statement which the Council did not challenge. [2.3, 2.4, 7.12, 7.32-34, 9.16-20]
- 13.6 Indisputable evidence presented by the Appellant's landscape and heritage witnesses demonstrate that gasholders were intrinsic features of the appeal site for well over a hundred years up until 2007.¹¹⁵ The visualisations of the inflated gasholders provided by the Appellant's townscape witness versus the proposed development demonstrated that in most viewpoints the appeal scheme would sit comfortably within the mass and height of these historical structures. While I acknowledge only the steel frame of one of the gasholders remains today, the fact that the appeal site accommodated large industrial structures over such a long period is a relevant material consideration which further supports the principle of tall buildings on the site.¹¹⁶ [2.1, 7.18, 9.26]
- 13.7 Another material consideration weighing in favour of the tall buildings and the appeal scheme more generally, is the fact that the Council has assessed the appeal site as being suitable for 340 homes through the SHLAA. In response to concerns raised by the Council and others regarding overdevelopment and the height of some of the blocks, the Appellant carried out a crude but nonetheless unchallenged assessment which demonstrated that the 340-home scheme would likely require 7 and 8 storey buildings. Accordingly, I concur with the Appellant that significant change, including the introduction of tall buildings is inevitable if the Council is to make good on its own Development Plan policies which require the development potential of sites such as this to be 'maximised'. [5.15, 7.4, 7.9, 7.17, 8.5, 8.8, 9.8, 9.10]
- 13.8 It was argued by the Council and others that the appeal site lies outside the tall building area identified in Policy CP12, SPD17 and PAN04. However, it is accepted by all parties that these do not preclude tall buildings provided applications are accompanied by an acceptable Tall Building Statement. The Appellant has highlighted other cases where the Council has approved high rise buildings elsewhere in the city which fell outside specified tall building zones.¹¹⁷ In those cases, as with the appeal scheme, the applications were accompanied by a Tall Building Statement. The Council has made no substantive criticism of the Appellant's Tall Building Statement in this case. [5.16, 7.11, 7.14, 8.6, 9.20]
- 13.9 There was much discussion at the Inquiry about whether the appeal site was a 'gap' site. Whilst I accept the site affords views of the rising topography to the

¹¹⁵ Three large Gasholder frames are shown on historic maps from 1873 (title plan of the gasworks site), and four in 1897. The smaller frame was lost, and three remained on site for many years (at least until 1973) with the single guiding frame remaining today.

¹¹⁶ This is also consistent with the SoS's findings in the Edith Summerskill House decision (see paragraph 20) CDG.02

¹¹⁷ Coldean, Portslade and Preston Barracks

north, I find the ‘gap’ argument advanced by the Council to be unconvincing on several fronts, not least because the gasworks site is allocated for significant development in the Development Plan. The Council’s witness accepted the site could not be developed in a manner consistent with the 340-home SHLAA scheme and the gap retained. I do not therefore intend to comment further on the ‘gap’ argument. [7.15, 7.28, 9.10, 9.26]

- 13.10 Much has been made of the density of the appeal scheme being at odds with the surrounding area. However, there are other high-density developments in the immediate vicinity as well as an abundance of traditional terrace housing. This is not therefore an area that can reasonably be described as low density, suburban or even part-urban. The only density requirement in the Development Plan is a minimum of 100dph. That threshold would be comfortably met by the appeal scheme. It is also germane that Policy DA2 recognises the potential for higher densities to “*optimise development on brownfield sites*”. [2.3, 7.9-17, 8.3, 9.17, 9.26, 9.79, 9.80]
- 13.11 The SoS will also note that ‘density’ was recently deleted as a stand-alone restriction in NPPF paragraph 130. The reason given for the change was that the previous paragraph “*could bolster reasons to refuse development that would otherwise be considered sustainable, and restricting density is likely to have longer term negative impacts on achieving sustainable patterns of development – running counter to the government’s objectives of maximising the efficient and effective use of land and increasing the supply of new housing*”. While I accept that this and other similar policy statements do not support the notion of building “*at any cost*”, they do indicate a clear and deliberate intention on the government’s part to prioritise the efficient use of land. [2.3, 7.2, 7.9-17, 8.3, 9.4, 9.17, 9.26, 9.80]
- 13.12 There is also another significant material consideration in this case, which is that the redevelopment of the appeal site for a lower number of units is unlikely to be viable given the high cost of remediation. Therefore, in the event the appeal were to be dismissed it is less likely that this allocated site would be remediated and developed. [4.3, 7.46, 9.66, 12.4]
- 13.13 Turning to the impact of the appeal scheme, there is no doubt that the proposed development with its eclectic mix of tall buildings, townhouses and significant areas of public realm would represent a major change to appeal site, its immediate surroundings and east Brighton more generally. As the Appellant points out that is what the Development Plan expects. The Council takes no issue with the architecture of individual buildings or the proposed materials. Moreover, paragraph 10.3 of the SoCG confirms that the layout would “*mimic the urban grain of Brighton’s north-south oriented streets and to utilise the site’s sloping topography*”. [4.2, 7.51, 8.7, 9.19, 9.22, 9.25, 9.26]
- 13.14 As noted by the Council’s landscape officer, the scheme would have “*some localised impacts on townscape character and views*”. As with any large-scale scheme, those impacts would vary depending on the viewpoint with locations closest to the appeal site experiencing the most significant change. As demonstrated by the agreed viewpoints in the HTLVIA, in longer distance views such as from the SDNP or seafront, the development would be seen against a general backdrop of east Brighton which already contains tall buildings of varying age and design. Given the porosity of the scheme including the composition of tall buildings, the essential components that make Brighton special such as views of

the rural landscape to the north or the sea to the south would remain intact. [7.28, 9.21, 9.23, 9.24]

13.15 From those locations closer to the site, I consider the proposed development would radically transform a site that detracts from its surroundings into a vibrant, attractive and fitting transition between Marine Gate and the remainder of Brighton. Block C, the design of which was changed as a direct response to a DRP, would be of particular architectural merit. Taking its design cues from the existing gasholder frame, it would be a bold and totemic building adding to the rich architectural fabric of Brighton as well as serving as a fitting memorial to the site's industrial legacy. The scheme would establish a strong sense of place and positively contribute to its varied surroundings providing a cohesive and attractive urban environment in accordance with Policies DA2, DM18 and CP12(2). I am satisfied that the design has been carefully considered and would be high quality as required by the Development Plan and NPPF. The enhancement to the local townscape is a benefit that weighs in favour of the development in the overall planning balance. [5.14, 5.17, 7.4, 7.7, 7.26, 8.15, 8.35, 9.20, 9.23, 9.77, 9.79]

Figure 3 - Visualisations of block C.¹¹⁸



Heritage assets

13.16 The scope of the Appellant's heritage assessment including the representative viewpoints in the HTLVIA were agreed with officers and assessed 27 DHAs. Of these 17 of these were taken forward for further consideration by officers as part of their assessment in the OR. Having consulted with its own specialist heritage officers, the Council found a low level of LTSH to the Grade II listed FCH, Marine Gate and the highly compromised flint wall (both NDHAs). Those conclusions broadly align with the Appellant's evidence to the inquiry which concluded a low level of LTSH to the FCH, and a very low (negligible) level of LTSH to Marine Gate and harm to the flint wall from its removal. [2.4, 2.5, 5.19, 9.27, 9.28]

13.17 No specific heritage assets are identified in RfR1. It appears from the limited information before me that there was little or no meaningful discussion at the Committee Meeting in relation to individual assets nor the level of harm that would be caused. Accordingly, there appears to be very little basis for the extensive list of assets that subsequently emerged in the SSoC following a specific request for

¹¹⁸ Taken from 2023 Design & Access Statement

more information on my part.¹¹⁹ That list comprised 53 assets including 217 listed properties, two conservation areas (KTCA and ECCA) and the RPG. The Council alleges a high level of LTSH to the KTCA and various assets within it, the RPG, Marine Gate and a moderate level of LTSH to the ECCA, FCH and Church of St Mark. The party's positions are summarised in Table 1 of the Heritage SoCG. [7.24, 7.28, 7.30, 7.37-39, 9.27, 9.28]

- 13.18 I make a few general points first before going on to consider the individual assets. First, the appeal site itself does not contain or abut any listed buildings or conservation areas. Save for the heavily degraded flint wall along the western site boundary, the nearest assets are the FCH, the KTCA and the non-designated Marine Gate. In all cases, the assets are physically separated from the appeal site by existing roads and buildings and are clearly distinguishable from it.¹²⁰ While I recognise that a series of viewpoints, such as those presented in the HTLVIA and which the Council agreed, do not represent the totality of one's experience, they are a good indicator of one's likely experience of the assets which for most people, is going to be a visual experience. [7.24, 7.27, 7.33, 9.32, 9.44]
- 13.19 Second, the disagreement between the main parties relates solely to the impact of the scheme on the significance or special architectural or historic interest of the assets through a change to their setting, that is the surroundings in which they are experienced. On any fair-minded analysis, a varied and degraded former gasworks site is going to make a very limited contribution to one's appreciation of the assets. [5.7, 5.9, 5.19, 7.12, 7.21-25, 9.6, 9.30]
- 13.20 Third, the Council accepted that the significance of the assets is bound up in a visual appreciation of their form, fabric and aesthetic qualities. On that basis alone, the Council's allegation of high levels of LTSH to a number of assets does not bear scrutiny and runs counter to the *Summerskill* case, where it was found that setting is only ever likely to make a limited contribution to overall significance. While it might reasonably be argued that there is some contribution to significance from setting for example, from the grounds of the FCH and/or the relationship of the KTCA or Marine Gate to the seafront, the appeal scheme would not affect these relationships. [9.31, 9.44, 9.45]
- 13.21 Fourth, while all parties acknowledge that non-visual considerations can be relevant to the issue of setting, heritage assets are primarily experienced and appreciated through the senses, in particular sight. As held in *Catesby*, "*the decision-maker will be concentrating on visual and physical considerations*". In this case despite a significant amount of written material on Brighton's built heritage, there is no evidence of economic, social and historical connections between any of the identified heritage assets and the appeal site. [2.5, 6.1, 7.24, 7.25, 9.32, 9.36]
- 13.22 Fifth, the Council's assessment is predicated upon the concept of 'experiential' harm. This is where an individual uses their memory of the assets when observing the appeal scheme. The Council's approach is both novel, highly subjective and almost limitless in terms of its geographical application and can garner no support from the setting judgements cited above, HE guidance notes or recent appeal decisions. Moreover, it does not appear that experiential harm formed any part of the case made against the appeal scheme by the Planning Committee which

¹¹⁹ CDI.14

¹²⁰ Paragraph 11.9 of the Planning SoCG states: It is agreed that the development would not be visible from within Lewes Crescent, Sussex Square and the garden areas (which are part of the RPG) that the Grade I listed buildings frame

made only fleeting references to heritage which were not suggestive of anything other than limited harm to the KTCA. [7.30, 9.38, 9.44]

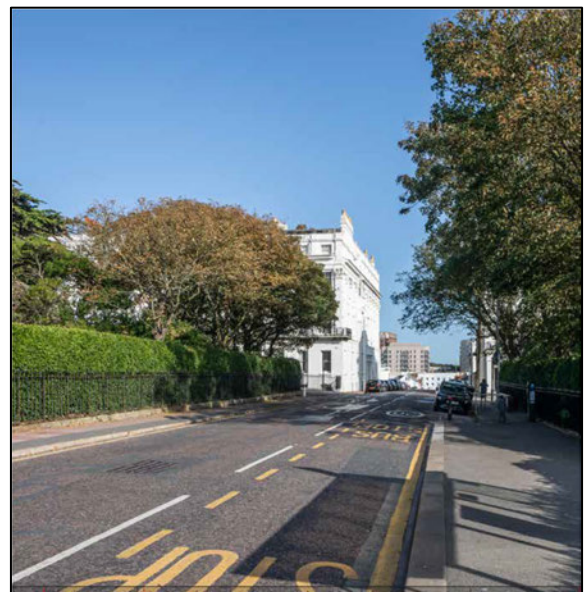
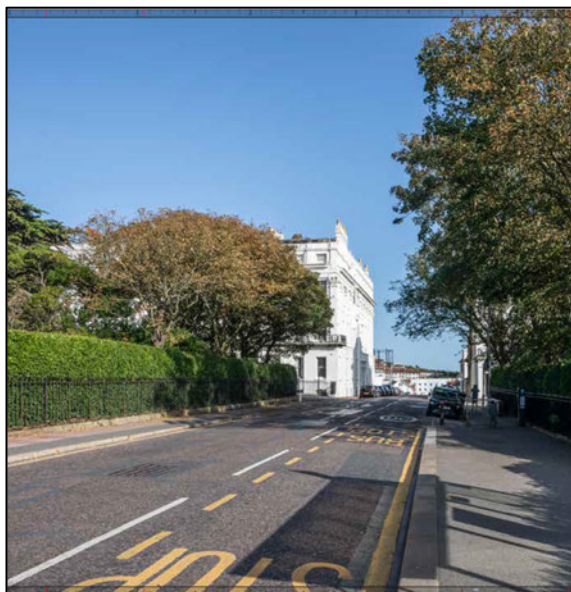
13.23 For the five reasons set out above, the Appellant's heritage assessment which conforms to HE guidance, is to be preferred. I set out my findings on the individual assets below.

Kemp Town Conservation Area

13.24 The KTCA and its listed terraces are outstanding examples of Regency period architecture forming part of a very important but visually contained planned ensemble. The enjoyment and the significance of the KTCA stems from a visual appreciation of the neoclassical architecture and the planned open spaces between the buildings and their relationship to the sea and beach/foreshore. Given its visual containment and the encroachment of urban Brighton to the north, east and west, there are relatively few places where one can experience long-distance views into the KTCA. Beyond the seafront, I consider that the land beyond the boundaries of the KTCA makes only a limited contribution to its setting. Although there are some outward views towards the appeal site along Eastern Road (see Viewpoints 7 & 8) these are limited and appear unlikely to have been designed given the gasworks were in situ from an early stage of Kemp Town's evolution. [9.33-37]

13.25 The key features of the KTCA are set out in Appendix 4 of the KTCA Study and Enhancement Plan. Among other things, this notes the contribution of visual and physical links to the sea and beaches, a sense of enclosure, the formal layout, the symmetry and uniformity of facades. There is no mention of the gasworks or any area to the east of the KTCA as having a positive or negative impact on its significance. Moreover, despite an extensive body of literature, the appeal site is not mentioned in any document as being a contributor to the significance of the KTCA. [9.35-37]

Figure 4 – KTCA (Viewpoint 7) along Eastern Road towards appeal site.¹²¹



¹²¹ VVM 7 Visualisation Type 1: Viewpoint Baseline Photograph & photomontage, pages 72 & 73 Smith PoE (CDJ.04).

- 13.26 The visual impact of the appeal scheme on the KTCA would be strictly limited. As demonstrated by Viewpoints 7-8, only the upper portions of some of the taller buildings would be visible in views along Eastern Road behind the terraced houses on Arundel Street. [9.36]
- 13.27 In respect of this heritage asset, the Appellant's finding of a low-level of LTSH is supported by the recent Brighton Marina decision. That scheme included, among other things, a 28-storey tower in a prominent setting position relative to the most sensitive parts of the KTCA including Sussex Square, Lewes Crescent and the RPG. The SoS, agreed with the Inspector's and Council's findings that despite the scheme's "*very strong visual presence*" it would result in a low level of LTSH. On any objective comparison, the level of impact of the Marina scheme considered by the SoS is significantly greater than the current appeal scheme. [8.20, 9.26, 9.43, 9.46]
- 13.28 For all the above reasons, I do not consider the proposed changes to the setting of the KTCA would harm its key features, the individual buildings within it or the RPG.

East Cliff Conservation Area

- 13.29 The ECCA is an area of special architectural and historic interest, due to its clear association with the growth of Brighton as a Regency and Victorian seaside resort. The seascape to the south is the most significant setting element contributing to an understanding and appreciation of the listed buildings.
- 13.30 The bulk of the ECCA is over 500m from the appeal site with the nearest listed buildings being some 700m away. At no point along this stretch of sea-fronting development within the ECCA is there any intervisibility with the appeal site. The only intervisibility is from Brighton pier (Viewpoint 34) from where the Council accepted the change would be indiscernible.
- 13.31 I have already set out my findings in relation to the Council's notion of experiential harm and do not need to repeat these again here. Accordingly, I conclude there would be no harm to the setting of the ECCA. [7.30, 7.42, 9.28, 9.29, 9.38]

French Convalescence Home

- 13.32 The significance of the FCH is derived from its French Renaissance Revival style architecture and its historical interest as the seaside component of a French hospital in London. The principal components of the building's setting are its landscaped grounds and its relationship to the sea. All parties accept the significance of the FCH has been compromised by physical alterations to the building itself as well as changes to its setting through the highly unsympathetic Courcels building which dominates the immediate area. [7.32, 9.39]
- 13.33 There is limited intervisibility between the FCH and appeal site. The impact of the appeal scheme would thus be limited to a relatively small area on the south side of Marine Drive where oblique frontal views of the building would be affected. From here, the upper portions of some of the tall blocks would be seen adjacent to the Courcels building (see Figure 5 below). This would dilute an appreciation of the roofline which is a defining feature of the FCH. The visual impact would however be strictly limited in terms of its spatial extent and would not materially alter the best views of the building from the southern end of Arundel Road/Street or the pedestrian footway along the southern boundary of the site. The proposals

would therefore fail to preserve the setting of the listed building, the desirability of which is anticipated by the PLBCAA and which the Courts have determined a matter of considerable importance and weight. Notwithstanding this consideration, given the limited extent of this harm, I consider there would be a low level of LTSH to the FCH. [2.4, 7.24, 7.31-34, 9.39]

Figure 5 – FCH (Viewpoint 2) existing versus proposed.¹²²



Church of St Mark

13.34 This impressive church is set back from the Eastern Road in an area of varied character which includes a prominent petrol filling station. The significance of the asset is primarily defined by its gothic revival style architecture with its setting is primarily limited to the churchyard. As demonstrated by Viewpoint 6 only a very small part of the appeal scheme would be visible in eastward views. Even then, given the intervening distance (approximately 400m) and existing built development, the development would be barely visible against the general townscape of east Brighton. As a result, I conclude there would be no harm to the setting of the church. [7.35-37, 9.40]

Marine Gate

13.35 Marine Gate is an imposing but stylish interwar block of flats occupying an elevated position to the east of the appeal site (see Figure 1). It derives architectural interest from being a landmark building and a good example of an inter-war flatted development of the type found by the sea. The appeal scheme would not challenge the principal drivers of the building’s significance which are its landmark status and its relationship to the sea. As a result, and notwithstanding some interference into some views of the building from areas to the west of the appeal site, I consider there would be a very low level of harm to Marine Gate. [2.3, 7.24, 7.38, 7.39, 8.16, 8.18, 9.20, 9.41]

Conclusion on heritage assets

13.36 I have found a low level of LTSH harm to the FCH. There would also be a very low level of harm to Marine Gate. Although the compromised and degraded flint

¹²² VVM 2 Visualisation Type 1: Viewpoint Baseline Photograph & photomontage, pages 51 & 53 Smith PoE (CDJ.04).

wall would be removed, I am satisfied any harm could be mitigated by a suitable scheme of recording (see Condition 31).

13.37 NPPF Paragraph 215 requires that a balancing exercise is undertaken to weigh the harm to the FCH against with the public benefits of the proposal. I undertake this exercise as part of the planning balance below.

Living Conditions

13.38 RfR3 refers to poor levels of amenity and light to some dwellings. The Minutes from the Committee meeting indicate that Members' concerns were limited to '*light levels between the blocks*' and the effect on future residents of the appeal scheme. [1.5, 7.45, 9.53]

13.39 Dealing with amenity first, all the proposed 495 residential units would meet the minimum space requirements in the NDSS, include private amenity space and have convenient access to communal gardens as well as external areas of public open space. The internal public open space and private communal areas would all meet daylight/sunlight targets in the BRE Guidance. Future residents would also benefit from excellent access to large areas of public open space at East Brighton Park and the seafront. I am therefore satisfied that adequate outdoor space would be available to occupiers of the new dwellings for their everyday informal recreational needs. [7.45, 8.2, 8.35, 9.49, 9.52, 9.60]

13.40 Turning to light, NPPF paragraph 130c) states that applications which fail to make efficient use of land, should be refused and also that decision makers should apply a flexible approach to daylight and sunlight matters, provided the resulting scheme would achieve acceptable living standards. [5.6, 8.9, 9.4, 9.56]

13.41 The application was submitted with a Daylight/Sunlight Assessment as part of the ES. This was reviewed by BRE on behalf of the Council who concluded that the methodology was robust. The OR contained a lengthy daylight/sunlight chapter which covered all relevant matters and summarised the findings of the technical studies. At the appeal stage these documents were supplemented by the Appellant's PoE. [9.50, 9.52, 9.59, 9.64, 9.65]

13.42 The BRE Guidelines provide more detailed guidance on how to undertake daylight and sunlight assessments including appropriate benchmarks and target values. As established by *Rainbird*, the correct approach is to adopt the two-stage assessment in the BRE. This involves an initial benchmarking exercise against the numerical values in the guidance followed by a more detailed consideration of all other relevant contextual matters. In this case only the Appellant has carried out a two-stage assessment. BGC's version of Vertical Skylight Component is not consistent with either the BRE guidance or the NPPF in terms of maximising the use of brownfield sites or the application of a flexible approach to sunlight/daylight matters. [8.22-25, 9.50]

13.43 At the Inquiry the Council conceded that the daylight/sunlight impacts would result in sub-optimal rather than unacceptable living conditions for a relatively modest number of future residents. Given, that local and national policy seeks to avoid unacceptable impacts, that concession appeared to sail close to a withdrawal of RfR3. [9.47, 9.59]

- 13.44 As is to be expected for a scheme of this size, a small number of rooms would fail non-binding BRE targets for daylight and sunlight.¹²³ When these are considered in the second stage of the BRE process, one can take account of the flexible approach in NPPF paragraph 130, the wider policy imperative seeks to maximise the development potential of brownfield sites such as this. In this case, the appeal scheme would benefit from good levels of daylight/sunlight including areas of public open space on, or close to, the appeal site. [9.47, 9.52, 9.54, 9.55, 9.59]
- 13.45 While most of the gardens to the townhouses fronting Boundary Road would be below the BRE Guidelines for sunlight on the 21 March, they would receive adequate levels of sunlight during the summer months when they are more likely to be in active use. Moreover, future residents of these properties would have direct access to the adjacent communal garden which would exceed BRE sunlight guidelines all year-round.¹²⁴ [9.60]
- 13.46 BGC raised concerns about the impact of the appeal scheme on existing residents living near the appeal site.¹²⁵ While I acknowledge some harm to occupiers on Arundel Street and the west facing flank of Marine Gate, the OR is correct to point out that the current use of the site contributes to standards of daylight/sunlight and outlook for these occupiers that are relatively high in the context of a built-up urban area. Given the appeal site is allocated for significant development, it is almost inevitable that there would be some change to the living conditions of neighbouring occupiers. However, in this case I do not consider the degree of change would result in unacceptable living conditions for neighbouring occupiers. [9.51, 9.65]
- 13.47 While concerns have been raised regarding separation distances and privacy between occupiers of opposing flats in some of the taller buildings, I consider these matters would be addressed by the proposed directional outlook between blocks F-G and Block G-H as well as planning conditions relating to privacy screens and oriel windows. [7.44, 7.45, 8.25, 9.61, 9.62]
- 13.48 Taking all the above matters into account, I conclude there would be no unacceptable daylight/sunlight or other amenity effects. The appeal scheme would thus accord with NPPF paragraphs 130c), 135f) and Policies DM20 and DM18. [5.6, 8.9, 9.4, 9.56, 9.64]

Other Matters

- 13.49 Local residents have expressed a wide range of concerns which are set out in section 5 of the OR. These include a lack of consultation with local residents, traffic impacts, the potential for adverse health effects from remediation works and the creation of wind tunnels. However, it is evident from the OR that the matters raised have been carefully considered by the Council and there is no compelling evidence before me which would lead me to disagree that these effects can be adequately addressed by planning conditions and/or obligations. [6.1, 8.26, 8.43, 8.46, 9.67, 9.68, 9.69, 11.1-8]
- 13.50 Regarding contaminated land, the SoCG confirms that there has already been a significant amount of investigation and remediation carried out and the potential for substantial areas of undetected contamination is limited. On that basis and

¹²³ 89.5% of habitable rooms and 75% of dwellings would exceed BRE Guidelines for daylight and sunlight respectively.

¹²⁴ 69% of the public open space would experience at least 2 hours of sunlight on the 21 March. The BRE recommend a minimum of 50%.

¹²⁵ Right of Light Consulting letter 7 March 2025 CDK.13

given NPPF paragraph 201 states that pollution control regimes should be assumed to operate effectively, I am satisfied that any risk arising from unknown contamination can be adequately mitigated by planning conditions. [8.43, 9.67, 11.4]

13.51 It is common ground between the Council and Appellant that the development cannot provide affordable housing given the high cost of remediating the site. The UU contains obligations which would require the Appellant to use 'reasonable endeavours' and a review mechanism to try and secure grant funding for the affordable housing. The Council agree that these commitments go over and above current policy requirements. The planning obligations in the UU, while not a guarantee that affordable housing would be provided, are nonetheless a modest benefit that weigh in favour of the development. [1.8, 4.3, 6.1i, j & m, 7.46, 7.47, 8.29-33, 9.13, 9.66, 9.73, 9.74, 12.4]

13.52 BGC and others have raised concerns regarding the effect of the development on the SDNP where there is now a legal duty on decision makers 'to seek to further' the statutory purposes of the National Park.¹²⁶ NPPF paragraph 189 states that "*Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks*". The first point to make is that the site is allocated in the development plan for significant development. One of the reasons given in CPP1 for directing growth towards Strategic Allocations concerns the protection of the SDNP. Neither the SDNP Authority nor the County Landscape Officer objected to the application.¹²⁷ The Appellant assessed the scheme's impact on views from the SDNP in the HTLVIA which concluded that the appeal scheme would be seen as part of the "*characteristic developed strip, the city of Brighton, that lies between the land and the sea*".¹²⁸ Having viewed the appeal site from various location in the SDNP on my site visits, I concur the effect on its landscape and scenic beauty would be neutral, these thus being conserved. Accordingly, there would be no conflict with the legal duty under Section 85 of the Countryside and Rights of Way) Act 2000 or CPP1 Policy SA5. [5.13, 8.4-8.5, 9.7]

13.53 Responding to concerns about a lack of engagement, the evidence before the Inquiry was that the scheme has been through an exhaustive iterative design process stretching back many years. The design of the scheme has been subject to many changes to reflect feedback from public consultation events, Council officers, statutory consultees and the DRPs. As set out in the Statement of Community Engagement and the 2023 DAS, this process resulted in material reductions to the quantum and scale of development. Thus, I am satisfied that the Appellant undertook appropriate consultation with the local community. [3.3, 6.1, 9.11]

13.54 Many objectors complained that the proposed units would be the 'wrong kind of housing' for Brighton primarily because they would be unaffordable for local people. In light of the lack of affordable housing currently proposed and the staggeringly high cost of housing in Brighton, these concerns are perhaps more understandable.] Nonetheless, one would struggle to escape the likely correlation between affordability or rather the lack of it, and the Council's persistent failure to provide a suitable supply of housing land for the houses its residents need. Looking at the issue from a slightly different perspective, it is appropriate to ask whether the interests of those hundreds, indeed thousands, of people including

¹²⁶ Section 85 of the Countryside and Rights of Way) Act 2000 and Section 245 (Protected Landscapes) of the Levelling-up and Regeneration Act 2023

¹²⁷ CDB01 &.06

¹²⁸ See Mr Smith's PoE paragraph 4.32-CDJ.04

families on the Council's waiting list would be better served by building 495 houses or leaving this '*varied and degraded*' site undeveloped for an extended period of time, which according to the Appellant would be the inevitable consequence of dismissing the appeal. [8.29-33, 9.2, 9.3,10.4]

13.55 The interests of those seeking to own a home, would be better served by the delivery of up to 495 homes on this site. Without affordable housing, families on the Council's waiting list are unlikely to directly benefit from the development. However, that oft-repeated argument somewhat misses the point. All parties accept that these homes would be occupied. At the inquiry, the Appellant confirmed that it intends to market the proposed development locally and has evidence that other similar schemes have seen a good uptake among local residents. It is likely therefore that as people move into the proposed new homes, properties in the local area would become vacant. Such a stimulus to the local housing market would likely result in more properties becoming available further down the housing ladder thus benefitting those in the greatest need potentially including residents on the Council's waiting list.

Planning Balance

13.56 Three overlapping harms have been alleged by the Council and BGC; visual, heritage and amenity. None of these concerns stood up to scrutiny at the inquiry principally because the site is allocated for significant development in the Development Plan, has a history of large structures and is adjacent to existing buildings of significant scale. I have identified LTSH to the FCH, very limited harm to Marine Gate (NDHA). All other heritage impacts would be neutral or beneficial given the current condition of the site.

13.57 NPPF paragraph 212 makes it clear that when considering the impact of a proposed development on the significance of a DHA, great weight should be given to the asset's conservation. Paragraph 215 requires that a balancing exercise is undertaken to weigh the harm against the public benefits of the proposal.

13.58 The benefits are largely agreed and comprise the redevelopment of an unsightly, underused and contaminated brownfield site in a highly sustainable urban location, the delivery of 495 energy efficient homes in an area of acute need in accordance with an agreed housing mix. The appeal scheme is therefore wholly consistent with the provisions of the NPPF, Development Plan as well as recent Government statements to maximise new homes on sustainably located brownfield land. In any location these benefits must carry very substantial weight even more so in a city which has consistently failed to meet the housing needs of its residents and is constrained in several important respects. [3.3, 3.4, 5.13, 6.1g, 7.49, 9.2, 9.3, 9.13]

13.59 Other notable benefits include a significant enhancement to the townscape of east Brighton, a bio-diversity net-gain of nearly 2,000%, the delivery of 2,791m² of commercial floorspace providing up to 195 new jobs and 11,276m² of new public realm, open space and new walking routes. Collectively these benefits command significant weight. [6.1, 9.13]

13.60 The scale of the public benefits arising from the proposed development manifestly outweigh the LTSH to the FCH. The paragraph 215 test is therefore passed and there would be no conflict with CPP1 Policy CP12(4) or CPP2 Policies DM28 and DM29 insofar as they seek to preserve the setting of heritage

assets.¹²⁹ On a further matter of judgement, I do not consider the identified heritage harm meets the ‘substantial’ threshold identified in NPPF paragraph 125c). [5.6, 5.19, 6.1, 7.1, 7.21, 7.49, 9.6, 9.15, 9.31, 9.42]

- 13.61 I have not identified any conflict with policies in the Development Plan including CPP1 Policies DA2-2(c), CP12, CP15 and CPP2 Policies DM18, DM20, DM28, DM29, PAN04 or SPD17. On the contrary, the Development Plan through Policy DA2-2(c) expressly supports the redevelopment of the appeal site. The appeal scheme therefore complies with the Development Plan as a whole and there are no material considerations to indicate that I should determine the appeal otherwise than in accordance with the plan. [5.14, 7.4-7, 9.8, 9.9, 9.77, 9.79-81]
- 13.62 Even if I had taken the Council’s case at its highest in relation to townscape, heritage and amenity harm, this would not necessarily have led to a recommendation to the SoS to dismiss the appeal. The Council cannot demonstrate a 5-year supply of housing. Moreover, there are no strong reasons for refusing the proposed development upon application of the policies of the NPPF that protect assets of particular importance, including consideration of DHAs. The ‘tilted’ balance under NPPF paragraph 11d) is therefore engaged. The effect of this is that permission should only be refused where the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in this Framework taken as a whole. [5.4, 7.26, 7.49, 7.51, 9.2, 9.15, 9.76, 8.82]
- 13.63 Even accounting for greater weight to townscape, heritage or amenity, given that the ‘tilted’ balance applies, I do not consider the harm identified by the Council would ‘*significantly and demonstrably*’ outweigh the very substantial benefits having particular regard to key NPPF policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination. In such instances the advice of paragraph 11d) is that permission should be granted. [5.4, 9.76, 9.83]
- 13.64 The titled balance would only be disapplied if the SoS concluded that the heritage harm provided a ‘*strong reason*’ for refusing the proposed development. In that scenario the SoS would need to consider the appeal scheme under section 38(6) of the Act. One of the material considerations in that balancing exercise would be NPPF paragraph 125c) which states the permission should be granted unless the harm arising from the proposed development is ‘*substantial*’ and not outweighed by the benefits. The SoS would therefore need to undertake the section 38(6) balancing act having particular regard to all relevant material considerations including NPPF paragraph 125c). [5.2, 7.48-53, 9.75-84]

14.0 Inspector’s Recommendation

- 14.1 In light of all the above points, my assessment of the planning balance leads to the overall conclusion that the proposal should be allowed, subject to the imposition of a number of conditions, set out in Annex B below.

D M Young

INSPECTOR

¹²⁹ As the Council agreed, its heritage policies should be read alongside the NPPF and so compliance would depend on the outcome of a public benefits test.

Appendix A

APPEARANCES

The Appellant

James Maurici KC (Landmark Chambers) *He called:*

Colin Pullan BA (Hons) Dip UD

Andrew Smith BSc (Hons) MSc CMLI

Simone Pagani MSc MSL

Dr Chris Miele MRTPI IHBC

Ben Ford BSc (Hons) DipTP DipSurv MRTPI

Pegasus Group

Fabrik

GIA

Montagu Evans

Quod

Brighton & Hove City Council

Celina Colquhoun of Counsel *She called:*

Eimear Murphy BSc (Hons), PGDip, MSc, MRTPI IHBC

BHCC's Planning Witness

The Brighton Gasworks Coalition

David Williams BSc (Hons) MRTPI

Dr Sue Berry FSA RHS

Planning Witness

Heritage Witness

Interested Persons

Daniel Harris

Whitehawk & Manor Farm
Community Association

Stephen White

Local resident

Conditions and Planning Obligations Round Table

Olivia Barton LLB (Hons) MSc

Chris Wheaton BSc

Ewan Grunwald BA MSc MRTPI

Chris Swain MA MRTPI

Alison Gatherer BA

Senior Associate, Ashurst

Quod

Quod

BHCC

Solicitor, BHCC

Appendix B

SCHEDULE OF PLANNING CONDITIONS

- 1) The development hereby permitted shall be commenced before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in strict accordance with the following approved drawings: 11268-EPR-01-00-TP-A-03-100, 11268-EPR-01-01-TP-A-03-102, 11268-EPR-01-02-TP-A-03-104, 11268-EPR-01-03-TP-A-03-106, 11268-EPR-01-04-TP-A-03-108, 11268-EPR-01-05-TP-A-03-110, 11268-EPR-01-06-TP-A-03-112, 11268-EPR-01-07-TP-A-03-114, 11268-EPR-01-08-TP-A-03-116, 11268-EPR-01-09-TP-A-03-118, 11268-EPR-01-10-TP-A-03-120, 11268-EPR-01-11-TP-A-03-122, 11268-EPR-01-12-TP-A-03-124, 11268-EPR-02-00-TP-A-03-101, 11268-EPR-02-01-TP-A-03-103, 11268-EPR-02-02-TP-A-03-105, 11268-EPR-02-03-TP-A-03-107, 11268-EPR-02-04-TP-A-03-109, 11268-EPR-02-05-TP-A-03-111, 11268-EPR-02-06-TP-A-03-113, 11268-EPR-02-07-TP-A-03-115, 11268-EPR-02-08-TP-A-03-117, 11268-EPR-02-09-TP-A-03-119, 11268-EPR-02-10-TP-A-03-121, 11268-EPR-02-11-TP-A-03-123, 11268-EPR-BA-ZZ-TP-A-04-100, 11268-EPR-BB-ZZ-TP-A-04-101, 11268-EPR-BC-ZZ-TP-A-04-102, 11268-EPR-BD-ZZ-TP-A-04-103, 11268-EPR-BH-ZZ-TP-A-04-107, 11268-EPR-BE-ZZ-TP-A-04-104, 11268-EPR-BF-ZZ-TP-A-04-105, 11268-EPR-BG-ZZ-TP-A-04-106, 11268-EPR-BI-ZZ-TP-A-04-108, 11268-EPR-ZZ-00-TP-A-01-100, 11268-EPR-ZZ-00-TP-A-01-101, 11268-EPR-ZZ-00-TP-A-01-102, 11268-EPR-ZZ-03-TP-A-03-001, 11268-EPR-ZZ-14-TP-A-01-103, 11268-EPR-ZZ-EL-TP-A-01-400, 11268-EPR-ZZ-EL-TP-A-01-401, 11268-EPR-ZZ-EL-TP-A-01-402, 11268-EPR-ZZ-EL-TP-A-01-403, 11268-EPR-ZZ-GS-TP-A-01-500, 11268-EPR-ZZ-XX-TP-A-05-100, 11268-EPR-ZZ-XX-TP-A-05-101, 11268-EPR-ZZ-XX-TP-A-05-102, 11268-EPR-ZZ-XX-TP-A-05-103, 11268-EPR-ZZ-XX-TP-A-05-104, 11268-EPR-ZZ-XX-TP-A-05-105, 11268-EPR-ZZ-XX-TP-A-05-106, 11268-EPR-ZZ-XX-TP-A-05-107, 11268-EPR-ZZ-XX-TP-A-05-110, 11268-EPR-ZZ-ZZ-TP-A-04-109, 11268-EPR-ZZ-ZZ-TP-A-04-110, 11268-EPR-ZZ-XX-TP-A-05-108, 11268-EPR-ZZ-XX-TP-A-05-109.
- 3) Unless otherwise agreed in writing with the Local Planning Authority the development hereby permitted shall be carried out in accordance with the following reports including any specified recommendations and mitigation measures: Energy Statement Rev 02, Arboricultural Impact Assessment Rev 01, Transport Assessment - 280419-00, Remediation Options Appraisal and Strategy - 5204803 RS, Air Quality and Odour Management Plan Rev 00, Operational Waste Management Plan Rev 02, Ecological Assessment8757.EcoAs.vf1, Windtech Pedestrian Microclimate CFD Study WF247-07F02-Rev 2 November 2023, Sustainability Statement Rev 2 and the Drainage Strategy Report (Appendix 3 to the Flood Risk Assessment).
- 4) The development hereby approved shall not commence until a phasing plan showing the location of phases and the sequencing for those phases has been submitted to and approved by the Local Planning Authority in writing. The development shall be carried out in accordance with the plan thereby approved. The phasing plan may be updated subject to the written approval in advance of the Local Planning Authority.

- 5) Prior to the commencement of any demolition, site preparation or enabling works within any relevant phase of the development, details of any demolition, site preparation or enabling works shall be submitted and approved by the Local Planning Authority. The above works shall be carried out in accordance with the approved details.
- 6) Prior to the commencement of the development hereby permitted, a scheme shall be submitted to and approved in writing by the Local Planning Authority detailing the establishment of a Community Liaison Group to include representation from the applicant and site contractor, the Council and local residents. The scheme shall include provision for:
 - i. The appointment of a chairperson,
 - ii. The appointment of a liaison representative from the developer or their appointee;
 - iii. A community complaints procedure;
 - iv. The production, approval and publication of Minutes of Community Liaison Group meetings;
 - v. Details of how the group will operate, including its terms of reference, and frequency of meetings; and,
 - vi. An implementation programme.

Thereafter, the scheme shall be implemented and adhered to in accordance with the approved details throughout the lifetime of the construction of the development.

- 7) No demolition shall take place until a Demolition Environmental Management Plan (DEMP) has been submitted to and approved in writing by the Local Planning Authority. The DEMP shall include:
 - i. The phases of the proposed demolition including the estimated completion date(s).
 - ii. 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).
 - iii. 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.
 - iv. Details of hours of demolition including all associated vehicular movements.
 - v. A plan showing demolition traffic routes.
 - vi. A method statement setting out practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts on ecology during construction and including a pre-works check for Schedule 9 invasive plant species.
 - vii. A Site Waste Management Plan

The demolition shall be carried out in accordance with the approved DEMP. Any such works approved under this condition are referred to in other conditions as 'demolition works'.

- 8) No development of a phase (excluding site preparation, demolition, enabling works), shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include:

- i. The estimated construction dates of the phase(s).
- ii. 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).
- iii. 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 employee and contractor parking arrangements.
- iv. Details of hours of construction including all associated vehicular movements.
- v. Details of the construction compound.
- vi. A plan showing construction traffic routes.
- vii. A method statement setting out practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts on ecology during construction and including a pre-works check for Schedule 9 invasive plant species.
- viii. A Site Waste Management Plan.

The construction shall be carried out in accordance with the approved CEMP.

- 9) All remediation works shall be carried out in accordance with the Air Quality and Odour Management Plan (AQOMP) (Atkins ref. 5204803 OMS, December 2023). The baseline monitoring identified in paragraph 4.3 of the AQOMP shall also include vapour monitoring (through vapour collection and laboratory analysis). Prior to commencing any remediation works, baseline monitoring results, together with analysis of the additional vapour results, shall be submitted to the Local Planning Authority and made available to the Community Liaison Group in accordance with Section 6 of the AQOMP. If these results indicate that any changes that will be required to the AQOMP, an updated version shall be submitted to and agreed in writing by the Local Planning Authority prior to commencing remediation works. The remediation shall be carried out in accordance with the approved AQOMP.
- 10) Prior to the commencement of any remediation works, further details of the exclusion zones as described in the Air Quality and Odour Management Plan (ref. 5204803 OMS December 2023), where excavated made ground or pile arisings containing potentially contaminated or odorous material (i.e. excluding chalk or concrete) shall not be stockpiled shall be submitted to and agreed in writing by the Local Planning Authority. Details shall include proposed locations, how the exclusion zones will be managed and timeframes for the movement of potentially contaminated or odorous material from excavations or piling within any exclusion zone. The remediation works will be carried out in accordance with the agreed details.
- 11) No phase of the development hereby permitted shall be occupied or brought into use until a Verification Report by a competent person has been submitted to and approved in writing by the Local Planning Authority. The Report shall confirm that the Remediation Strategy for that phase, as set out in the Remediation Options Appraisal and Strategy (Atkins ref. 5204803 RS, December 2023) has been fully implemented in accordance with the agreed details (unless varied with the written agreement of the local planning

authority in advance of implementation). Unless otherwise agreed in writing, the Verification Report shall comprise:

- a) drawings (if relevant) and photographs of the remediation works in progress;
 - b) results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met.
 - c) certificates demonstrating that imported and/or material left in situ is suitable for use in accordance with the Remedial Target Values set out within the approved Remediation Strategy.
 - d) details confirming the requirement and appropriate selection of gas/vapour membranes,
- 12) If during construction, contamination not previously identified is found to be present at the site that requires a change to the approved Remediation Strategy, as set out in the Remediation Options Appraisal and Strategy (Atkins ref. 5204803 RS, December 2023) then no further development (unless otherwise agreed in writing by the Local Planning Authority), shall be carried out within that area of the site until a Method Statement identifying and assessing the risk and proposing remediation measures, together with a programme for such works, is submitted to and approved in writing by the Local Planning Authority for approval in writing. The remediation measures shall be carried out as approved and in accordance with the approved programme.
- 13) No phase of the development hereby permitted (excluding demolition, site preparation or enabling works) shall be commenced until a surface water drainage scheme in accordance with the Flood Risk Assessment and Drainage Strategy Report for each phase has been submitted to and approved in writing by the Local Planning Authority. The scheme for each phase shall subsequently be implemented in accordance with the approved details and retained thereafter.
- 14) Notwithstanding any details shown on the approved plans, no development above ground floor slab level of any phase of the development hereby permitted shall take place until details of all materials to be used in the construction of the external surfaces of the buildings in that phase of the development have been submitted to and approved in writing by the Local Planning Authority, including (where applicable):
- i. Details of all brick, mortar, roofing materials (including details of the colour of render/paintwork to be used);
 - ii. Details of all cladding to be used;
 - iii. samples/details of the proposed window, door and balcony treatments,
 - iv. details of external materials maintenance plans, and
 - v. details of privacy screening and/or planting to protect the amenity of any residential occupiers with private terraces fronting onto the residential podium gardens.

Each phase of the development shall be carried out in accordance with the approved details.

- 15) Prior to occupation of each phase of the development hereby permitted, a scheme for landscaping shall be submitted to and approved in writing by the Local Planning Authority. The approved landscaping scheme for that phase shall be implemented in full, in accordance with the approved details in the first planting season after completion or first occupation of the development, whichever is the sooner. The scheme shall include the following:
- i. details of all hard and soft surfacing to include the type, position, design, dimensions and materials and any sustainable drainage system used.
 - ii. a schedule detailing sizes and numbers/densities of all proposed trees/plants including food-bearing trees/plants, and details of tree pit design, use of guards or other protective measures and confirmation of location, species and sizes, nursery stock type, defect period and maintenance plan.
 - iii. both shade and wind tolerant species of a mixture of native and exotic origin that are capable of thriving on the specific soil type found on the site should be included where planting locations receive low levels of annual sunlight and strong winds.
 - iv. measures to promote healthy root growth such as mulching and shared root trenches between planted specimens shall be included in the landscaping proposals to maximise the survival rate of replacement trees.
 - v. details of all food growing areas, including a maintenance plan and provision of storage for necessary tools and equipment.
 - vi. details of all existing and proposed boundary treatments to include type, position, design, dimensions and materials.
 - vii. details of proposals that show a visual reference to the position and extent of the historic flint boundary wall.
 - viii. details of the children's play areas including equipment to be installed and any boundary treatments.
 - ix. a landscaping plan for the Boundary Road.
 - x. Details of a wayfinding scheme.
 - xi. Details of the new pedestrian/cycle route though the site.
 - xii. Extents of permeable pavings to be confirmed following contamination studies and confirmation of all drain points and locations.

Any trees or plants which within a period of 5 years from the completion of each phase of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. The landscaping scheme, including all boundary treatments, food growing areas and children's play areas shall be retained thereafter

- 16) Notwithstanding any details shown on the approved plans, no development above ground floor slab of Block A, B, F and H shall take place until details of oriel windows designed to ensure sufficient privacy for future occupiers of the scheme, have been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out and completed fully in accordance with the approved details and shall be retained as such thereafter.
- 17) No development above ground floor slab shall take place until a Noise Mitigation Plan detailing how all future residents of the development will be

protected from sources of noise and vibration including from the commercial units, plant rooms and energy infrastructure has been submitted and agreed in writing by the Local Planning Authority. The mitigation measures for each phase shall be carried out in full prior to first occupation of any relevant phase and retained as such thereafter.

- 18) Noise associated with plant and machinery incorporated within the development shall be controlled such that the Rating Level measured or calculated at 1-metre from the façade of the nearest existing noise sensitive premises, shall not exceed the existing LA90 background noise level. The Rating Level and existing background noise levels are to be determined as per the guidance provided in BS4142:2014-A1:2019 (or the relevant updated Standard). For the avoidance of doubt, this relates to all plant on the site, whether roof top Air Source Heat Pumps or plant associated with the class E ground floor uses.
- 19) No servicing (i.e. deliveries to or from the commercial premises) shall occur except between the hours of 07.00 and 21.00 Monday to Saturday, and 09.00 to 17.00 on Sundays, Bank or Public Holidays.
- 20) The commercial uses (Class E) hereby permitted shall not be in use except between the hours of 07.00 and 22.30 Monday to Saturday, and 08.00 to 22.00 on Sundays, Bank or Public Holidays unless otherwise agreed in writing by the Local Planning Authority.
- 21) No phase of the development hereby permitted shall be occupied until an external lighting scheme for that phase has been submitted to and agreed in writing by the Local Planning Authority. The scheme shall include details of external lighting, levels of luminance at adjacent receptors, hours of operation, a lighting design strategy for biodiversity and details of maintenance. The external lighting for each phase shall be installed, operated and maintained in accordance with the approved details and thereafter retained.
- 22) Prior to first occupation of any non-residential unit hereby permitted within use class E(b) a scheme for the control of fumes, smells and odours has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in strict accordance with the approved details prior to first occupation that phase of the development and shall thereafter be retained as such.
- 23) Prior to the occupation of any phase of the development hereby approved a Waste & Recycling Management Plan, which includes details of the types of storage for residential and commercial residual waste and recycling materials (including separated food waste), provision for waste collection vehicle access, and the anticipated frequency of collections for that phase shall be submitted to and approved in writing by the Local Planning Authority. The approved Plan shall thereafter be implemented for each phase of the development.
- 24) Notwithstanding any details shown on the approved plans, no phase of the development hereby permitted shall be occupied until details of secure and covered cycle parking and associated changing/showering facilities for the occupants of, and visitors to, for that phase of the development have been submitted to and approved in writing by the Local Planning Authority. The

- approved facilities shall be fully implemented and made available for use prior to the first occupation of that phase of the development and shall thereafter be retained for use at all times.
- 25) Within three months of the date of first occupation of any phase of the development hereby permitted a Residential Travel Plan and Workplace Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall cover a minimum 5-year period and once approved, shall thereafter be fully implemented in accordance with the approved details. The Plans shall include as a minimum:
- i. Objectives, targets, actions, and measures/incentives to promote sustainable transport modes, reducing single occupancy trips by motor vehicles and reducing trips by delivery and servicing vehicles;
 - ii. Annual monitoring of trips rates including delivery and servicing movements;
 - iii. Monitor occupant awareness of travel plan objectives, targets, actions, and measures/incentives;
 - iv. Measures and incentives to support the delivery of Travel Plan objectives and targets, and shall include:
 - v. Residential travel pack to first residential occupiers to include 2 years of free or subsidised tickets/memberships for local buses and/or train service tickets, bike Share membership and use; and car club membership;
 - vi. Car club monitoring;
 - vii. Workplace travel pack, and
 - viii. Establishment of a Bicycle User Group
- 26) Prior to first occupation of a phase of the development hereby permitted, full details of electric vehicle charging points (EVCPs) for that phase shall be submitted to and approved in writing by the Local Planning Authority. These facilities shall be fully implemented and made available for use prior to the occupation of the that phase of development hereby permitted and shall thereafter be retained for use at all times. A minimum of 50% of the parking spaces in each phase shall have full EVCP. The remaining parking spaces shall have passive provision.
- 27) Within 6 months of first occupation of each non-residential (use class E) unit in each relevant phase, a BREEAM Building Research Establishment issued Post Construction Review Certificate confirming that a minimum BREEAM New Construction rating of 'Excellent' has been achieved shall be submitted to, and approved in writing by, the Local Planning Authority
- 28) The development hereby approved shall achieve a minimum Energy Performance Certificate (EPC) rating 'B' for new build residential and non-residential development.
- 29) None of the residential units hereby approved shall be occupied until each relevant residential unit built has achieved as a minimum, a water efficiency standard of not more than 110 litres per person per day maximum indoor water consumption.
- 30) No phase of the development hereby permitted shall be occupied until the archaeological site investigation and post - investigation assessment (including provision for analysis, publication and dissemination of results and archive deposition) for that phase has been completed and approved in

writing by the Local Planning Authority. The archaeological site investigation and post-investigation assessment will be undertaken in accordance with the programme set out in the written scheme of investigation approved under Condition 5.

- 31) Prior to removal/demolition of the flint wall running along the eastern side of Boundary Road a detailed photographic recording of the wall shall be made, and these records shall be submitted to and approved in writing by the Local Planning Authority.
- 32) A Landscape and Ecological Management Plan (LEMP) shall be submitted to, and approved in writing by, the Local Planning Authority prior to the occupation of each relevant phase of development. The content of the LEMP shall include the following:
 - i. description and evaluation of features to be managed;
 - ii. ecological trends and constraints on site that might influence management;
 - iii. aims and objectives of management;
 - iv. appropriate management options for achieving aims and objectives;
 - v. prescriptions for management actions, together with a plan of management compartments;
 - vi. preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
 - vii. details of the body or organisation responsible for implementation of the plan, and
 - viii. ongoing monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plans shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan will be implemented in accordance with the approved details.

- 33) No development above ground floor slab level of any phase of the development hereby permitted shall take place until final designs of the roof systems (including for blue and brown roofs) for that phase have been submitted to and approved in writing by the Local Planning Authority. The details shall include a cross section, construction method statement, drainage details, the seed mix, and a maintenance and irrigation programme. The roofs shall then be constructed in accordance with the approved details and retained as such thereafter.
- 34) A minimum of 5% of the total housing provision hereby permitted shall be built as wheelchair user dwellings in compliance with Building Regulations Optional Requirement M4(3)(2a) (wheelchair user dwellings – ‘adaptable’) prior to first occupation and shall be retained as such thereafter. All other dwelling(s) hereby permitted shall be completed in compliance with Building Regulations Optional Requirement M4(2) (accessible and adaptable dwellings) prior to first occupation and shall be retained as such thereafter. Evidence of compliance shall be notified to the building control body

appointed for the development in the appropriate Full Plans Application, or Building Notice, or Initial Notice to enable the building control body to check compliance.

- 35) A minimum of 2,000sqm of the commercial floorspace hereby permitted, including all of the floorspace within the four units within the area annotated as 'The Yard' shall be used solely as office, research and development or light industrial space (Use Class E(g) (i), (ii) and (iii)) only and for no other purpose (including any other purpose in Class E of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification). Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (or any order revoking and re-enacting that Order with or without modification), no change of use shall occur without planning permission obtained from the Local Planning Authority.

Appendix C

DOCUMENTS SUBMITTED AT THE INQUIRY

ID	Title
ID.01	The Appellant's Opening Statement
ID.02	The Council's Opening Statement
ID.03	Extract of David Williams 'Civilising Cities': Pages 80-81, 91, 310-311, 316-319, 324-326
ID.04	Brighton Marina THVIA Extract [2021] - APPQ1445W203259653
ID.05	Rydon Homes v Horsham DC: Partridge Green. Appeal Decision [2014] - APP/Z/3825/A/14/2219076
ID.06	Appellant - Urban Design Presentation
ID.07	Appellant - Urban Design Presentation Notes (as read)
ID.08	Appellant – Ben Ford Proof of Evidence (CDJ.01) – Correction to Para 8.35
ID.09	Photographs of the Appeal Site taken from Marine Gate
ID.10	Objection made by Silvia Capezzuoli
ID.11	Objection made by Nancy Platts
ID.12	Representation made by Stephen White
ID.13	Representation made by Claire O'Toole (26 th March 2025)
ID.14	Representation made by Claire O'Toole (21 st March 2025)
ID.15	Representation made by Paul Hobdell
ID.16	Representation made by Paul McDermott
ID.17	Rule 6 Party – Alternative Scheme Plan
ID.18	Council's Closing Statement
ID.19	Rule 6 Closing Statement
ID.20	Appellant's Closing Statement
ID.21	Appellant's Costs Application
ID.22	Council's Costs Response
ID.23	Appellant's Response to Council's Response

Appendix D

CORE DOCUMENTS

CDA	<u>Document</u>	<u>Revision</u>	<u>Submission Date</u>
CDA.01	Planning Application Forms		November 2021
CDA.02	Covering Letter and Documents List	R02	November 2023
CDA.03	CIL Form	-	November 2021
CDA.04	Planning Statement	R02	November 2023
CDA.05	Arboricultural Impact Assessment	R01	November 2023
CDA.06	Daylight and Sunlight Assessment (Internal)	R02	November 2023
CDA.07	Combined Design and Access Statement including Landscape Strategy; Appx 1 Design Policy and Guidance Assessment; Appx 2 Tall Building Statement	R01 and R02 Replacement chapters to R01: Chapter 5.5: Landscape (R02) Chapter 5.6: Residential Design Quality (R02) Chapter 5.7: Non-residential uses (R02) Chapter 6: Access (R02) Chapter 7: Technical considerations (R02)	October 2022 and November 2023
CDA.08	Economic Statement	R02	November 2023
CDA.09	Energy Statement	R02	November 2023
CDA.10	Financial Viability Appraisal Addendum and October 2022 Version	R01 and R00	November 2023 and October 2022
CDA.11	Fire Statement and Gateway One Form	R02	November 2023

CDA.12	Health Impact Assessment and SoC	R01 & SoC	October 2022 and November 2023
CDA.13	BLANK DOCUMENT		
CDA.14	Operational Waste Management Plan	R02	November 2023
CDA.15	Planning Application Changes and Summary	R01	November 2023
CDA.16	Statement of Community Engagement	R02	November 2023
CDA.17	Sustainability Statement	R02	November 2023
<u>Environmental Statement (ES) Non-Technical Summary</u>			
CDA.18	ES Non-Technical Summary	R02	November 2023
<u>ES Addendum Volume 1 – Environmental Statement Chapters</u>			
CDA.19	Chapter 1 - Introduction	R01	October 2022
		R02	November 2023
CDA.20	Chapter 2 - Site and Setting	R01	October 2022
		R02	November 2023
CDA.21	Chapter 3 - EIA Methodology	R01	October 2022
		R02	November 2023
CDA.22	Chapter 4 - Alternatives	R01	October 2022
		R02	November 2023
CDA.23	Chapter 5 - Description of Development	R01	October 2022
		R02	November 2023
CDA.24	Chapter 6 - Demolition and Construction	R01	October 2022
		R02	November 2023
CDA.25	Chapter 7 - Socio-Economics	R02	November 2023
CDA.26	Chapter 8 - Transport	R01	October 2022
		R02	November 2023
CDA.27	Chapter 9 - Air Quality	R01	October 2022
		R02	November 2023
CDA.28	Chapter 10 - Noise and Vibration	R01	October 2022
		R02	November 2023

CDA.29	Chapter 11 - Wind Microclimate	R02	November 2023
CDA.30	Chapter 12 - Daylight, Sunlight and Overshadowing	R02	November 2023
CDA.31	Chapter 13 - Ground Conditions and Contamination	R02	November 2023
CDA.32	Chapter 14 - Surface Water Flood Risk	R01	October 2022
		R02	November 2023
CDA.33	Chapter 15 - Biodiversity	R01	October 2022
		R02	November 2023
CDA.34	Chapter 16 - Effect Interactions	R01	October 2022
		R02	November 2023
CDA.35	Chapter 17 - Summary of Residual Effects and Mitigation	R01	October 2022
		R02	November 2023
<u>ES Volume 2 – Heritage, Townscape, Landscape and Visual Impact Assessment</u>			
CDA.36	Heritage, Townscape, Landscape and Visual Impact Assessment	R02	November 2023
<u>ES Addendum Volume 3 – Technical Appendices</u>			
CDA.37	Appendix 3.1 – Location of Specified Information in the ES	R00 Addendum	November 2023
CDA.38	Appendix 3.2 – EIA Scoping Report	R01	November 2021
CDA.39	Appendix 3.3 – BHCC EIA Scoping Opinion	R01	November 2021
CDA.40	Appendix 3.4 – List of Cumulative Schemes	R00 Addendum	November 2023
CDA.41	Appendix 5.1 – Selection of Planning Application Drawings	R00 Addendum	November 2023
CDA.42	Appendix 8.1 – Transport Assessment	R00 Addendum	November 2023
CDA.43	Appendix 8.2 – Framework Travel Plan	R00 Addendum	November 2023
CDA.44	Appendix 9.1 – Air Quality Assessment	R00 Addendum	November 2023
CDA.45	Appendix 10.1 – Noise and Vibration Technical Report	R01	November 2021
CDA.46	Appendix 11.1 – Pedestrian Microclimate CFD Study	R00 Addendum	November 2023

CDA.47	Appendix 12.1 - Drawings	R00 Addendum	November 2023
CDA.48	Appendix 12.2 – Daylight Distribution Contours	R00 Addendum	November 2023
CDA.49	Appendix 12.3 – Vertical Sky Components Results	R00 Addendum	November 2023
CDA.50	Appendix 12.4 – Window Maps	R00 Addendum	November 2023
CDA.51	Appendix 12.5 – Overshadowing Results	R00 Addendum	November 2023
CDA.52	Appendix 12.6 – Supplementary Assumed NSL Results	R00 Addendum	November 2023
CDA.53	Appendix 12.7 – Daylight and Sunlight Impacts to Neighbouring Properties Report	R00 Addendum	November 2023
CDA.54	Appendix 13.1 – Land Condition Report	R01	November 2021
CDA.55	Appendix 13.2 – Ground Investigation Report	R01	November 2021
CDA.56	Appendix 13.3 – Detailed Quantitative Risk Assessment	R01	November 2021
CDA.57	Appendix 13.4 – Draft Foundation Works Risk Assessment	R01	November 2021
CDA.58	Appendix 13.5 – Preliminary Intermediate Environmental Improvement Works, Factual Validation Report for the South-West Corner of the Site Remediation Validation Report	R01	November 2021
CDA.59	Appendix 13.6 – Additional Ground Gas and Vapour Assessment	R01	November 2021
CDA.60	Appendix 13.7 – Remediation Options and Appraisal Strategy	R00 Addendum	November 2023
CDA.61	Appendix 13.8 – Air Quality and Odour Management Plan	R00 Addendum	November 2023
CDA.62	Appendix 14.1 – Flood Risk Assessment	R00 Addendum	November 2023
CDA.63	Appendix 15.1 – Ecological Assessment	R00 Addendum	November 2023

CDA.64	Appendix 15.1a – Ecological Assessment – Biodiversity Net Gain Metric	R00 Addendum	November 2023
CDA.65	Existing Site Drawings	P1	November 2021
CDA.66	Proposed Site and Floorplans	P3	November 2023
CDA.67	Proposed Elevation Plans	P3	November 2023
CDA.68	Proposed Section Plans	P3	November 2023
CDA.69	Separation Distance Plan	-	2024
CDA.70	Brighton Gasworks Oriel windows	-	2024
CDA.71	Agreed Application Drawings	-	February 2025

CDB	<u>Application Consultation Responses</u>		
<u>Statutory consultee responses (external)</u>			
CDB.01	East Sussex County Council - County Landscape Architect (5 th February 2024 and 12 th January 2022)		
CDB.02	Environment Agency (1 st March 2024)		
CDB.03	Health and Safety Executive (15 th February 2024)		
CDB.04	Natural England (11 th January 2022)		
CDB.05	Historic England 26 th January 2024, 12 th December 2022 and 20 th January 2022, and)		
CDB.06	South Downs National Park Authority (28 th January 2024, 5 th December 2022 and 22 nd December 2021		
CDB.07	UK Health Security Agency (25 th July 2024 and 18 th January 2022)		
<u>Brighton and Hove Internal Consultation Responses, and others</u>			
CDB.08	BHCC Heritage (26 th March 2024, 25 th January 2024, 7 th December 2022 and 5 th January 2022)		
CDB.09	BHCC Urban Design (January 2024, 1 st February 2023 and 28 th January 2022)		
CDB.10	Air Quality and Odour Management Plan Review by RSK (14 th March 2024)		
CDB.11	BHCC Air Quality and Health (April 2024)		
CDB.12	Tetra Tech response to BHCC Environmental Health Officer (5 th March 2024)		
CDB.13	RWDI's Wind Microclimate (February 2024, January 2023 and 19 th January 2022)		
CDB.14	LEAP Environmental Review of Land Contamination Reports (26 th April 2024)		

CDB.15	Acoustic Associates Sussex Limited on behalf of Brighton and Hove Environmental Health (12 th April 2024)
CDB.16	CDB.16 (a) BRE's Independent Review of Daylight and Sunlight Assessment Issue 2 (14 th February 2024) CDB.16 (b) BRE's Independent Review of Daylight and Sunlight Assessment Issue (21 st December 2022) CDB.17 (c) BRE's Independent Review of Daylight and Sunlight Assessment Issue (13 th January 2022)
CDB.17	Public Health on HIA (February 2022)
CDB.18	BHCC Economic Development (11 th March 2024)
CDB.19	BHCC Housing (15 th April 2024)
CDB.20	BHCC Local Employment Scheme, Employment & Skills (24 th January 2023)
CDB.21	BHCC Planning Policy (8 th February 2024, 11 th January 2023 and 14 th January 2022))
CDB.22	BHCC Private Sector Housing (February 2024)
CDB.23	BHCC Sustainability (February 2024)
CDB.24	Design Southeast Place Panel Reports (6 th October 2022, 8 th January 2021 and 24 th April 2020)
CDB.25	DVS FVA Reviews (27 th March 2024, 3 rd May 2023 and 24 th June 2022)
<u>Application Comments from Brighton Gasworks Coalition (including those they represent)</u>	
CDB.26	North Laine Community Association (10 th January 2023)
CDB.27	The Brighton Society (14 th February 2024, 10 th January 2023 and 21 st January 2022)
CDB.28	AGHAST (18 th February 2024, 11 th January 2023 and 20 th January 2022 [including Professor Harrison Environmental Health Report])
CDB.29	Professor Stephen Walker's FVA Note prepared on behalf of AGHAST (November 2023 and October 2022)
CDB.30	The Kingscliffe Society (14 th February 2024)
CDB.31	The Kemp Town Society (17 th February 2024, 1 st December 2022 and 23 rd December 2021)
CDB.32	Regency Squares Community (17 th February 2024 and attachment dated 15 th February 2024)
CDB.33	Rottingdean Heritage (14 th February 2024)
CDB.34	Regency Society (1 st March 2024)

CDB.35	Amex Area Neighbourhood Forum (February 2024)
CDB.36	Brighton and Hove Heritage Commission (15 th February 2024 and 23 rd December 2022)
CDB.37	Montpelier & Clifton Hill Association (13 th February 2024)
CDB.38	Brighton Gasworks Coalition (April 2024, January 2023 and March 2022)
<u>Application Comments from other Heritage Groups</u>	
CDB.39	Save Britain's Heritage (1 st March 2024)
CDB.40	Hove Civic Society (20 th February 2024)
CDB.41	Brighton and Hove Conservation Advisory Group (February 2024)
CDB.42	Brighton and Hove Archaeological Society (December 2021)
CDB.43	The Georgian Group (8 th April 2024)

CDC	<u>Correspondence</u>
CDC.01	Letter from Sovereign Network Group to the Council (16 th May 2024)
CDC.02	Affordable Housing engagement letter by Berkeley (20 th September 2024)
CDC.03	PINS Secretary of State Recovery Letter (20 th January 2025)
CDC.04	Brighton Gasworks Coalition email to PINS (7 th February 2025)

CDD	<u>Committee Meeting & Decision Notice</u>
CDD.01	Officer's Report to Committee (14 th May 2024)
CDD.02	Appellant brochure to planning committee members (17 th May 2024)
CDD.03	Officer's Report to Committee Addendum (late list additional reps) (22 nd May 2024)
CDD.04	Officer presentation to Committee (22 nd May 2024)
CDD.05	Brighton and Hove City Council Decision Notice (BH2021/04167) (28 th May 2024)
CDD.06	Minutes of Planning Committee meeting (22 nd May 2024, issued 4 th September 2024)
CDD.07	Planning Committee agenda (4 th December 2024)

CDE	<u>National planning policy, guidance and ministerial statements</u>
CDE.01	National Planning Policy Framework (December 2024)
CDE.02	Government response to Framework consultation (December 2024)
CDE.03	National Design Guide (January 2021)

CDE.04	PPG – Historic Environment (2019)
CDE.05	PPG – Effective Use of Land (2019)
CDE.06	BRE Guidelines Daylight and Sunlight (2022)
CDE.07	Historic England’s: GPA 2 – Managing Significance (2015)
CDE.08	Historic England: GPA 3 – The Setting of Heritage Assets (2017)
CDE.09	The King’s Speech (17 th July 2024)
CDE.10	Secretary of State’s ministerial statement to parliament on building homes (30 th July 2024)
CDE.11	Secretary of State’s written ministerial statement “ <i>Building the homes we need</i> ” (30 th July 2024)
CDE.12	Secretary of State’s letter to Councils “ <i>Playing your part in building the homes we need</i> ” (30 th July 2024)
CDE.13	Chief Planner Letter (2 nd August 2024)
CDE.14	Brownfield passport policy (27 th September 2024)
CDE.15	PM statement in the Times on a ‘ <i>Plan for Change</i> ’ (5 th December 2024)
CDE.16	Matthew Pennycook statement ‘ <i>Building the homes we need</i> ’ (12 th December 2024)
CDE.17	Secretary of State’s letter to Councils “Building the homes we need” (12 th December 2024)
CDE.18	Chief Planner Letter (13 th December 2024)
CDE.19	National Model Design Code (June 2021)
CDE.20	Historic England Advice Note 4: Tall Buildings (2022)
CDE.21	PPG - Design – Process and Tools (2019)
CDE.22	Historic England: Statement of Heritage Significance: Analysing significance in Heritage Assets, Advice Note 12 (2019)
CDE.23	English Heritage’s ‘Conservation Principles: Policies and Guidance for the Sustainable Management of the Historic Environment’ (2008)
CDE.24	Building Better: Building Beautiful Commission report, Living with Beauty (2020)
CDE.25	PPG – Viability (2024)
CDE.26	BSI Standards Publication: Daylight in Buildings (2019)
CDE.27	Department for Environment, Food and Rural Affairs: Guidance for relevant authorities on seeking to further the purposes of Protected Landscapes (16 th December 2024)
CDE.28	Government Press Release – HM Treasury: £2 Billion Funding of Affordable Housing (25 March 2025)

CDF	<u>Local Planning Policy and Documents</u>
CDF.01	Brighton & Hove City Plan Part One (CPP1) (March 2016)

CDF.02	Brighton & Hove City Plan Part Two (CPP2) (October 2022)
CDF.03	Brighton & Hove Policies Map – East Area (October 2022)
CDF.04	SPD17 Urban Design Framework SPD (2021)
CDF.05	PAN04 (Planning Advice Note 4) Brighton Marina Masterplan (2008)
CDF.06	Brighton and Hove Urban Characterisation Study (2009)
CDF.07	Kemp Town Conservation Area Study and Enhancement Plan (1992) and Map (2008)
CDF.08	East Cliff Conservation Area Study and Enhancement Plan (2002) and Map (2008)
CDF.09	South Downs Local Plan (July 2019)
CDF.10	South Downs Policies Map Eastern Area
CDF.11	Natural England's 'National Character Area 125: South Downs (2015)
CDF.12	South Downs National Park: View Characterisation and Analysis study prepared by Land Use Consultants (LUC) (2015)
CDF.13	The South Downs Landscape Character Assessment, prepared by Land Use Consultants (LUC) (2020)
CDF.14	Brighton and Hove City Council: Strategic Housing Land Availability Assessment (March 2024)
CDF.15	Brighton and Hove Strategic Housing Market Assessment (August 2023)
CDF.16	BHCC Annual Monitoring Report (AMR) 2022/23
CDF.17	CIL Inspector Report (7 th February 2020)
CDF.18	BHCC Affordable Housing Brief (2022)
CDF.19	BHCC Nil CIL Sites Informative (January 2019)
CDF.20	BHCC Tall Buildings Study Supplementary Planning Guidance Note 15
CDF.21	Brighton and Hove Tall Buildings Study (October 2003)
CDF.22	BHCC's Local Development Framework: Viability Testing Strategic Sites (May 2012)
CDF.23	BHCC Strategic Housing Land Availability Assessment 2024 (March 2025)
CDF.24	Brighton Marina Neighbourhood Plan (February 2025)

CDG	<u>Legislation, case law and appeal decisions</u>
CDG.01	Brighton Marina Appeal Decisions [2021]: Secretary of State Decision and Inspector reports (APP/Q1445/W/20/3259653)
CDG.02	Edith Summerskill Appeal Decisions [2022]: Secretary of State and Inspector reports (APP/H5390/V/21/3277137)
CDG.03	Article 35 DMPO 2015
CDG.04	Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000 (Statutory Instrument 2000/1625) ¹³⁰

¹³⁰ Original version as made

CDG.05	R (Rainbird) v LB of Tower Hamlets: High Court Decision [2018] (CO/2034/2017)
CDG.06	Hertford Gasworks: Planning Appeal Decision [2020] (APP/J1915/W/19/3234842)
CDG.07	PINS Procedural Guide
CDG.08	Peter John Steer v The Secretary of State for Communities and Local Government, Catesby Estates Limited, and Amber Valley Borough Council: High Court Decision [2017] (CO/5004/2016)
CDG.09	South Lakeland DC v SSE & Carlisle Diocesan Parsonages Board [1992]: House of Lords
CDG.10	Forge Field Society v Sevenoaks District Council [2014]: High Court Decision (CO/735/2013 & CO/16932/2013)
CDG.11	North Norfolk District Council v Secretary of State for Communities and Local Government & Mack [2014]: High Court Decision (CO/6087/2013):
CDG.12	Barnwell Manor Wind Energy Ltd v East Northants District Council, English Heritage, National Trust & Secretary of State for Communities and Local Government [2014]: Court of Appeal Decision (C1/2013/0843)
CDG.13	William Davis Ltd and Anor v SSCLG & North West Leicestershire District Council [2013]: High Court Decision (10359/2012)
CDG.14	Dartford Borough Council v SSCLG & Landhold Capital Ltd [2014] : High Court Decision (CO/2082/2014)
CDG.15	Monkhill Limited v Secretary of State for Housing, Communities and Local Government [2020] Court of Appeal Decision (C1/2019/1955/QBACF)
CDG.16	Mead Realisations Ltd v SoS LUHC; Redrow Homes Ltd v SoS LUHC [2024] EWHC 279 (Admin), Para 5: High Court Decision (AC-2023-LON-002327)
CDG.17	Brighton Marina - Secretary of State Decision [2010]: Secretary of State Decision (APP/Q1445/A/09/2102048)
CDG.18	Brighton Marina – Extract of Inspector Report [2010] p.126-132 (APP/Q1445/A/09/2102048)
CDG.19	Catesby Estates Ltd v Peter Steer and Historic England: Court of Appeal Decision [2018] (C1/2017/1934) & Secretary of State for Communities and Local Government v Peter Steer and Historic England [2018] (C1/2017/1934)
CDG.20	Bedford Borough Council v Secretary of State for Communities and Local Government and NUON Ltd [2012]: High Court Decision (CO/9953/2012)
CDG.21	BOHM v Secretary of State for Communities and Local Government: High Court Decision (CO/1890/2017)
CDG.22	East Staffordshire Borough Council v Secretary of State for Communities and Local Government [2018]: Court of Appeal Decision (C1/2016/4569)
CDG.23	Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant) [2017]: Supreme Court
CDG.24	City of Edinburgh Council v. Secretary of State for Scotland and Others [1997]: House of Lords

CDG.25	The Queen on the application of James Hall and Company Ltd and City of Bradford Metropolitan District Council and Co-Operative Group Ltd and Dalehead Properties Ltd [2019]: High Court Decision (CO/1863/2019).
CDG.26	London Historic Parks & Gardens Trust v Minister of State for Housing & Anor [2022]: High Court Decision (CO/3041/2021)
CDG.27	Safe Rottingdean Ltd v Brighton & Hove City Council [2019]: High Court Decision (CO/1166/2019)
CDG.28	GG Oxford Investments Ltd v Cherwell District Council [2024]: Appeal Statement (APP/C3105/W/24/3351778)

CDH	<u>Section 106 Agreement</u>
CDH.01	250317 Draft Section 106 legal agreement - Agreed Form
CDH.02	250317 Draft Unilateral Undertaking
CDH.03	250317 Draft CIL Compliance Schedule
CDH.04	240324 Proposed Engrossment Section 106 legal agreement -
CDH.05	240324 Proposed Engrossment Unilateral Undertaking

CDI	<u>Appeal Documents</u>
CDI.01	Appellant Statement of Case (3 rd October 2024)
CDI.02	Appellant Statement of Case Appendix 2: St William Portfolio
CDI.03	Appellant Statement of Case with Appendix 9: Andrew Smith Peer Review (October 2024)
CDI.04	Appellant Statement of Case Appendix 10: Brighton Gasworks Heritage Peer Review (24 th October 2024)
CDI.05	Appellant Statement of Case Appendix 11: Design Peer Review (24 th September 2024)
CDI.06	Appellant Statement of Case Appendix 12: DSO (Update) (26 th September 2024)
CDI.07	Council Statement of Case (12 th December 2024)
CDI.08	Council Supplementary Statement of Case (20 th December 2024)
CDI.09	Rule 6 Statement of Case (12 th December 2024)
CDI.10	Rule 6 Statement of Case Appendices (12 th December 2024)
CDI.11	Rule 6 Statement of Case attachment 'Briefing Document' (12 th December 2024)
CDI.12	Ashurst letter to the Council on Statement of Case and Statement of Common Ground (13 th December 2024)
CDI.13	Council letter to Appellant on Statement of Case (13 th December 2024)

CDI.14	PINS email to Council on Statement of Case (16 th December 2024)
CDI.15	Quod letter to the Council on Statement of Common Ground (16 th August 2024)
CDI.16	Statement of Common Ground (18 th December 2024)
CDI.17	Appellant Statement to CMC (6 th January 2025)
CDI.18	Inspector's Pre-CMC Note (9 th January 2025)
CDI.19	Rule 6 Party (Brighton Gasworks Coalition) comments on Statement of Common Ground (18 th February 2025)
CDI.20	Inspector's Post-CMC Note (28 th January 2025)
CDI.21	Heritage Statement of Common Ground between BHCC and Appellant (12 th March 2025)
CDI.22	BLANK DOCUMENT
CDI.23	Agreed Planning Conditions (18 th February 2025)
CDI.24	Council Supplementary Statement of Case – Errata (27 th January 2025)
CDI.25	Rule 6 Party (Brighton Gasworks Coalition) comments on Planning Conditions and Core Documents (18 th February 2025)
CDI.26	Appellant response to Inspector's comments on Agreed Planning Condition (15 th March 2025)

CDJ	<u>Proofs of Evidence / Professional Statements</u>
CDJ.01	Appellant – Ben Ford – Proof of Evidence (Planning) and Appendices
CDJ.02	Appellant – Dr Chris Miele – Proof of Evidence (Heritage) and Appendices
CDJ.03	Appellant – Colin Pullan – Proof of Evidence (Design) and Appendices
CDJ.04	Appellant – Andrew Smith – Proof of Evidence (Landscape and Visual Matters) and Appendix
CDJ.05	Appellant – Chris Wheaton - Professional Statement (Affordable Housing & Viability) and Appendix
CDJ.06	Appellant – Simone Pagani - Proof of Evidence (Daylight and Sunlight) and Appendices
CDJ.07	Appellant – Gary Marshall - Professional Statement (Contamination) and Appendices
CDJ.08	Brighton and Hove Council - Eimear Murphy - Proof of Evidence (excluding technical sunlight / daylight matters) and Appendices
CDJ.09	Rule 6 Party (Brighton Gasworks Coalition) – Proof of Evidence 1 (Daylight Standards)

CDJ.10	Rule 6 Party (Brighton Gasworks Coalition) - Sue Berry - Proof of Evidence 2 (The Value of Heritage) and Appendices
CDJ.11	Rule 6 Party (Brighton Gasworks Coalition) – Proof of Evidence 3 (Housing Costs and Prices)
CDJ.12	Rule 6 Party (Brighton Gasworks Coalition) – Proof of Evidence 4 (Socio-Economics Impact)
CDJ.13	Rule 6 Party (Brighton Gasworks Coalition) – Proof of Evidence 5 (Contamination)

CDK	<u>Proof of Evidence - Rebuttals</u>
CDK.01	Appellant - Ben Ford - Rebuttal to Brighton and Hove Council and Rule 6 Parties' Proof of Evidence and Appendices
CDK.02	Appellant - Dr Chris Miele - Rebuttal to Brighton and Hove Council and Rule 6 Parties' Proof of Evidence
CDK.03	Appellant - Colin Pullan – Rebuttal to Brighton and Hove Council and Rule 6 Parties' Proof of Evidence
CDK.04	Appellant – Andrew Smith – Rebuttal to Brighton and Hove Council and Rule 6 Parties' Proof of Evidence
CDK.05	Appellant – Chris Wheaton - Rebuttal to Brighton and Hove Council and Rule 6 Parties' Proof of Evidence
CDK.06	Appellant – Simone Pegani - Rebuttal to Brighton and Hove Council and Rule 6 Parties' Proof of Evidence
CDK.07	Appellant – Gary Marshall - Rebuttal Rule 6 Party's Proof of Evidence
CDK.08	Rule 6 Party (Brighton Gasworks Coalition) - Supplementary Proof of Evidence 1: Daylight Standards
CDK.09	Rule 6 Party (Brighton Gasworks Coalition) - Supplementary Proof of Evidence 3 Housing Costs and Prices
CDK.10	Rule 6 Party (Brighton Gasworks Coalition) - Supplementary Proof of Evidence Rebuttal on Contamination
CDK.11	Rule 6 Party (Brighton Gasworks Coalition) - Supplementary Proof of Evidence: Alternative Gasworks Designs
CDK.12	Rule 6 Party (Brighton Gasworks Coalition) - Supplementary Proof on Heritage: The Legal Background
CDK.13	Rule 6 Party (Brighton Gasworks Coalition) - Right of Light Consulting – Letter to Black Rock Residents' Association
CDK.14	Rule 6 Party (Brighton Gasworks Coalition) - List of additional viewpoints for the Planning Inspectors Tour and Map

CDL	<u>Additional Documents</u>
CDL.01	Sue Berry, 'A resort town transformed: Brighton c.1815–1840', The Georgian Group Journal, Vol. XXIII [2015] pp. 213–230GIA
CDL.02	Sue Berry, 'Thomas Read Kemp and the shaping of Regency Brighton c.1818-1845', The Georgian Group Journal, Vol. XVII [2009], pp. 125-140
CDL.03	Clifford Musgrave, 'Life in Brighton – Buildings of the 1820s' [2011] pp. 167-181
CDL.04	Sussex Extensive Urban Survey: Brighton & Hove Historic Character Assessment Report (March 2007)
CDL.05	Schedule of Meetings with Brighton Gasworks Coalition Members
CDL.06	Rule 6 (Brighton Gasworks Coalition) Notes from meeting between AGHAST, BHCC and Berkeley Group (17 th March 2023)
CDL.07	Drafts of the Heritage Statement of Common Ground (17 th January 2025, 24 th January 2025, 29 th January 2025, 13 th February 2025, 14 th February 2025, 18 th February 2025, 24 th February 2025, 05 th March 2025, 07 th March 2025, and 11 th March 2025)
CDL.08	Greater London Authority: Housing Research Note 10 -The affordability impacts of new housing supply: A summary of recent research (August 2023)
CDL.09	BHCC Note on Amended PPG Paragraph 125(c) – Use of Brownfield Land
CDL.10	Rule 6 Party (Brighton Gasworks Coalition) Note on Amended PPG Paragraph 125(c) – Use of Brownfield Land
CDL.11	College Conservation Area Map (2008)



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, King's 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.



Ministry of Housing,
Communities &
Local Government

Mr Ewan Grunwald
Quod
Quod Limited
Manor House
21 Soho Square
London W1F 0EQ

Our Ref: APP/Q1445/W/24/3353409

22 September 2025

Dear Mr Ewan Grunwald

**LOCAL GOVERNMENT ACT 1972, SECTION 250(5)
TOWN AND COUNTRY PLANNING ACT 1990, SECTIONS 78 and 320
APPEAL BY ST WILLIAM HOMES LLP
AT BRIGHTON GASWORKS, LAND BOUNDED BY ROEDEAN ROAD (B2066),
MARINA WAY AND BOUNDARY ROAD, BRIGHTON AND HOVE, BN2 5TG
APPLICATION REF: BH2021/04167**

APPLICATION FOR AN AWARD OF COSTS

I am directed by the Secretary of State to refer to the enclosed letter notifying you of his decision on the above named appeal.

This letter deals with St William Homes LLP's application for a full award of costs against Brighton and Hove City Council. The application as submitted and the response of the Council are recorded in the Inspector's Costs Report (CR), a copy of which is enclosed.

In planning inquiries, the parties are normally expected to meet their own expenses, and costs are awarded only on grounds of unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process. The application for costs has been considered in the light of the Planning Practice Guidance, the Inspector's Costs Report, the parties' submissions on costs, the inquiry papers and all the relevant circumstances.

The Inspector's conclusions and recommendation with respect to the application are stated at paragraphs CR34-CR53. The Inspector recommended that a full award of costs is justified on the basis that:

Emma Hopkins, Decision Officer
Planning Casework Unit
Ministry of Housing Communities & Local Government
3rd Floor, Fry Building
2 Marsham Street
London SW1P 4DF

Email: PCC@communities.gov.uk

- the Council prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and all other material considerations (CR48);
- the Council failed to produce evidence to substantiate each reason for refusal on appeal, made vague, generalised or inaccurate assertions about a proposal's impact and failed to determine similar cases in a consistent manner (CR49); and
- there were substantial procedural failings on the Council's part including an obstructive and untimely approach to the Statement of Common Ground, the submission of a Statement of Case which was bereft of meaningful detail and a failure to review its case promptly following a material change in national policy (CR50).

Having considered all the available evidence, and having particular regard to the Planning Practice Guidance, the Secretary of State agrees with the Inspector's conclusions at CR51 that unreasonable behaviour resulted in unnecessary or wasted expense and that a full award of costs is justified. Accordingly, he has decided that a full award of costs, as recommended by the Inspector at paragraph CR53 is warranted on grounds of unreasonable behaviour on the part of Brighton and Hove City Council.

Accordingly, the Secretary of State, in exercise of his powers under section 250(5) of the Local Government Act 1972 and sections 78 and 320 of the Town and Country Planning Act 1990, HEREBY ORDERS that the Council shall pay to the developer its full costs of the inquiry proceedings, such costs to be taxed in default of agreement as to the amount thereof.

You are invited to submit to the Council details of those costs, with a view to reaching agreement on the amount. Guidance on how the amount is to be settled where the parties cannot agree on a sum is at paragraph 44 of the Planning Practice Guidance on appeals, at <http://tinyurl.com/ja46o7n>.

Right to challenge the decision

This decision on your application for an award of costs can be challenged under section 288 of the Town and Country Planning Act 1990 if permission of the High Court is granted. The procedure to follow is identical to that for challenging the substantive decision on this case and any such application must be made within six weeks from the day after the date of the Costs decision.

A copy of this letter has been sent to the Council.

Yours faithfully,

Emma Hopkins

This decision was made by Minister of State for Housing and Planning, Matthew Pennycook MP on behalf of the Secretary of State and signed on his behalf.



Costs Report to the Secretary of State

by D M Young JP BSc (Hons) MA MRTPI MIHE

Inspector appointed by the Secretary of State

Date 11 June 2025

TOWN AND COUNTRY PLANNING ACT 1990

BRIGHTON & HOVE CITY COUNCIL

APPEAL MADE BY ST WILLIAM HOMES LLP

COSTS REPORT

(ST WILLIAM HOMES LLP AGAINST BRIGHTON & HOVE CITY COUNCIL)

Inquiry Held on 18-21, 25-26 March 2025

Brighton Gasworks

File Ref: APP/Q1445/W/24/3353409

Appeal Ref: APP/Q1445/W/24/3353409

Brighton Gasworks, land bounded by Roedean Road (B2066), Marina Way and Boundary Road, Brighton and Hove, BN2 5TG.

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by St William Homes LLP for a full award of costs against Brighton & Hove City Council.
- The inquiry was in connection with an appeal against the refusal of planning permission for a comprehensive mixed-use redevelopment comprising site preparation and enabling works, demolition of existing buildings and structures; provision of new buildings comprising residential use (Use Class C3) and flexible non-residential floorspace (Use Class E), new private and communal amenity space, public realm, landscaping; car and cycle parking, highway works, access and servicing arrangements; associated plant, infrastructure and other associated works including interim works.

Summary of Recommendation: That the application for an award of costs be allowed.

Recommendation

1. It is recommended that an award of costs is allowed in the terms set out at the end of this Report.

Relevant Guidance

2. Both parties rely on guidance in the Planning Practice Guidance (PPG). To avoid repetition, I set out the relevant sections below.

Parties in planning appeals and other planning proceedings normally meet their own expenses. All parties are expected to behave reasonably to support an efficient and timely process, for example in providing all the required evidence and ensuring that timetables are met. Where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.

The aim of the costs regime is to:

- *encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case*
- *encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, not to add to development costs through avoidable delay,*
- *discourage unnecessary appeals by encouraging all parties to consider a revised planning application which meets reasonable local objections.¹*

Costs may be awarded where:

- a) *party has behaved unreasonably; and*
- b) *the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.²*

¹ Paragraph: 028 Reference ID: 16-028-20140306

² Paragraph: 030 Reference ID: 16-030-20140306

The word “unreasonable” is used in its ordinary meaning, as established by the courts in Manchester City Council v SSE & Mercury Communications Limited [1988] JPL 774.

An application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. This could be the expense of the entire appeal or other proceeding or only for part of the process.

Costs may include, for example, the time spent by appellants and their representatives, or by local authority staff, in preparing for an appeal and attending the appeal event, including the use of consultants to provide detailed technical advice, and expert and other witnesses.

Costs applications may relate to events before the appeal or other proceeding was brought, but costs that are unrelated to the appeal or other proceeding are ineligible. Awards cannot extend to compensation for indirect losses, such as those which may result from alleged delay in obtaining planning permission.³

Awards against a local planning authority may be either procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal. The examples below relate mainly to planning appeals and are not exhaustive. The Planning Inspectorate will take all evidence into account, alongside any extenuating circumstances.⁴

What type of behaviour may give rise to a procedural award against a local planning authority?

Local planning authorities are required to behave reasonably in relation to procedural matters at the appeal, for example by complying with the requirements and deadlines of the process. Examples of unreasonable behaviour which may result in an award of costs include:

- *lack of co-operation with the other party or parties*
- *delay in providing information or other failure to adhere to deadlines*
- *only supplying relevant information at appeal when it was previously requested, but not provided, at application stage*
- *not agreeing a statement of common ground in a timely manner or not agreeing factual matters common to witnesses of both principal parties*
- *introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen*
- *prolonging the proceedings by introducing a new reason for refusal*
- *withdrawal of any reason for refusal or reason for issuing an enforcement notice*

³ Paragraph: 032 Reference ID: 16-032-20140306

⁴ Paragraph: 046 Reference ID: 16-046-20140306

- *failing to provide relevant information within statutory time limits, resulting in an enforcement notice being quashed without the issues on appeal being determined*
- *failing to attend or to be represented at a site visit, hearing or inquiry without good reason*
- *withdrawing an enforcement notice without good reason*
- *providing information that is shown to be manifestly inaccurate or untrue*
- *deliberately concealing relevant evidence at planning application stage or at subsequent appeal*
- *failing to notify the public of an inquiry or hearing, where this leads to the need for an adjournment.*⁵

What type of behaviour may give rise to a substantive award against a local planning authority?

Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Examples of this include:

- *preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.*
- *failure to produce evidence to substantiate each reason for refusal on appeal*
- *vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.*
- *refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead*
- *Acting contrary to, or not following, well-established case law*
- *persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable*
- *not determining similar cases in a consistent manner*
- *failing to grant a further planning permission for a scheme that is the subject of an extant or recently expired permission where there has been no material change in circumstances*
- *refusing to approve reserved matters when the objections relate to issues that should already have been considered at the outline stage*
- *imposing a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all*

⁵ Paragraph: 047 Reference ID: 16-047-20140306

other respects, and thus does not comply with the guidance in the National Planning Policy Framework on planning conditions and obligations

- *requiring that the appellant enter into a planning obligation which does not accord with the law or relevant national policy in the National Planning Policy Framework, on planning conditions and obligations*
- *refusing to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal*
- *not reviewing their case promptly following the lodging of an appeal against refusal of planning permission (or non-determination), or an application to remove or vary one or more conditions, as part of sensible on-going case management.*
- *if the local planning authority grants planning permission on an identical application where the evidence base is unchanged and the scheme has not been amended in any way, they run the risk of a full award of costs for an abortive appeal which is subsequently withdrawn.⁶*

The submissions for St William Homes LLP ⁷

3. The costs application was submitted in writing. The Appellant's application seeks an award of full costs against the Council. In the alternative a partial award of costs is sought. The Appellant relies on the above sections of the PPG in support of its application.
4. One example of unreasonable behaviour by an appellant is "*prolonging the proceedings by introducing a new ... issue*". This would, of course, equally justify an award of costs against a local planning authority. This goes to what the Appellant has referred to as 'Case Creep' on the Council's part. Related to this point, Article 35(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 requires that when a local planning authority gives notice of a decision to refuse, it must "*state clearly and precisely their full reasons for the refusal, specifying all policies and proposals in the development plan which are relevant to the decision.*"
5. There have been a number of clear and admitted breaches of this legislative provision in this case. A failure to comply with legislative requirements imposed on a local planning authority must be unreasonable. The PPG explains that '*unreasonable*' is to be used in its ordinary meaning.⁸ As the Appellant pointed out in its Opening Statement "*this is the type of case the costs jurisdiction was made for*".⁹ In other words, this is a textbook example of where there needs to be an award of full costs in accordance with the three aims of the costs regime set out above.
6. It is especially important that costs are awarded given the thrust of this Government's planning agenda which seeks to build 1.5 million houses in 5 years

⁶ Paragraph: 049 Reference ID: 16-049-20140306X

⁷ Taken from ID.21

⁸ Paragraph: 031 Reference ID: 16-031-20140306

⁹ ID.01

and to make as much use as possible of brownfield land. As the Prime Minister has said, *“Britain is in the grip of the worst housing crisis in living memory. For too long, the country has been held to ransom by the blockers and bureaucrats who have stopped the country building, choked off growth and driven prices through the roof. They’re suffocating the aspirations of working families and obscuring the future of our country. Those days are over ...”*¹⁰ An award of costs in this case would send a clear message to other recalcitrant planning authorities that these days really are over.

7. As the Appellant noted in opening, the Planning and Infrastructure Bill published recently is looking to limit the ability of a planning committee to overturn officer recommendations especially on allocated sites. The Government has raised concern about cases where *“the development proposal was on an allocated site and in line with policy expectations, but the committee refused the application against officer advice... creating delays for all.”*¹¹ That is exactly what has happened in this case. Against that background it is not surprising that this appeal was recovered by the Secretary of State (SoS) because it significantly impacts on the Government’s objective to secure a better balance between housing demand and supply. The costs regime provides an existing tool to achieve the Government’s aims. If this Government wants to achieve its laudable ambition of building 1.5 million new homes then it must sanction this Council.
8. This case concerns development on an allocated, brownfield site. The Council’s professional officers recommended the grant of planning permission, but Members of the Planning Committee overturned this. Why? The Council’s Opening Statement¹² provides the answer:

*“39. The Appellant has in its evidence sought to emphasise not only the fact that the Council’s case officer supported the grant of permission for the Appeal scheme but that of the 17 departments within the Council and over 20 statutory consultees only 1 (UK Health Security Agency) formally objected to the scheme including the County Landscape Architect.”*¹³ They have been less keen to draw attention to the fact that some 1,700 representations were received by the Council from the public together with views from interested non statutory bodies ...”
9. The above indicates that Members acted as they did because they were influenced by the number of local objections. It is quite wrong to suggest that the number of such objections is in any way relevant. Planning decisions are not referendums. If they were, absolutely nothing would get built anywhere. What matters in planning decision-making is the underlying merits – or lack thereof – of the objections raised. It is the disappointing reality that all too often there is little or no incentive for the Members of a Planning Committee to pay any regard to the planning merits of an application that is before them. The unwillingness of elected Members to be held accountable for their decisions is reflected in the fact that not a single Member who opposed the proposals attended the inquiry to orate their objection.
10. There are often more votes to be won by local politicians in giving in to the loud objections of people (some of whom live locally, some of whom do not) than in

¹⁰ CDE.15

¹¹ <https://www.gov.uk/government/publications/planning-reform-working-paper-planning-committees/planning-reform-working-paper-planning-committees>

¹² ID.02

¹³ Reference to an objection from the County Landscape Architect is incorrect. The County Landscape Architect supports the Appeal Scheme [CDB.01].

doing the right thing and granting permission for a scheme, the planning merits of which are clear. Of course, planning has its own dynamic in that regard, especially on housing schemes. There is a demographic trend in those who have the time and resources to attend inquiries and oppose development - often over 65, often homeowners. The young, those who work, and those in most need are rarely seen in the planning process. Unless this Government can change the culture of planning and influence Member behaviour it is unlikely to deliver its ambitious planning agenda. An award of costs in this case, and cases like it, can be an important stepping stone on the path to securing this change in culture.

11. The Appellant contends that, in summary, the following matters justify a full award of costs in this case:
- a) The Council "*having regard to its accordance with the development plan, national policy and any other material considerations*" should not have refused planning permission. In doing so, it has delayed development which should clearly have been permitted. The entire costs of the appeal have thus been unnecessarily incurred.
 - b) Closely related to this, and because the refusal was itself clearly unjustified, the Council have failed to produce substantive evidence to justify the reasons for refusal (RfR). For the reasons set out below, nothing the inquiry heard from the Council's sole witness came close to justifying the refusal. In addition, the Council's case has been characterised by generalised and inaccurate assertions as to the scheme's impact which have not been supported in the evidence, and in some cases withdrawn late into the process.
 - c) The Council has greatly added to the costs of the appeal by its constant Case Creep.
 - d) The Council has been guilty of a number of other instances of procedural unreasonableness. These have further added to the costs of the appeal.
12. The following specific matters support a full award of costs:
- a) The planning merits of the scheme are overwhelming: it being an allocated brownfield site on which officers recommended the grant of planning permission;
 - b) The refusal followed very significant engagement between the Appellant and the Council going back five years, resulting in changes to the scheme¹⁴;
 - c) Seventeen internal Council departments considered and did not object to the scheme. This included the County landscape officer, the urban design officer and the Council's Heritage Team. Far from being a mark against the proposals, as presented in the Council's opening, the record of responses from the officers with competency to address the issues stands in favour of the grant of consent, or should have;
 - d) Further, and as set out in the Appellant's Opening, of the 20 external and statutory consultees, only one objected;
 - e) The Council's professional planning officers recommended approval, in a thorough and detailed 121-page report. The recommendation from Officers could

¹⁴ SoCG CDI.16 paras 4.20-4.25

not have been stronger: *“the public benefits of the scheme overall, which includes the provision of a significant amount of housing are such that they clearly outweigh the heritage harm identified, any limited impacts on landscape or townscape and the harm to neighbouring amenity.”*¹⁵

- f) Regarding the decision of Members to refuse, the Appellant notes:
- i. The Minutes of the 22 May 2024 committee meeting were issued late on 4 September 2024. The Minutes are not what could be described as fulsome in the detail of the Council’s concerns. During this 3 month plus period, the Council had ample time to ensure that the Minutes reflected the debate at committee, indeed it was their duty to do so. The Council heard the scheme again, 3 months later, at a 4 December 2024 committee. There were no amendments to the Minutes. Despite this, the Council sought to argue that the Minutes were not reflective of the debate at committee. In any event, the Minutes do not provide reasonable and substantive justification for the RfRs, or indeed any specificity on (for example) the heritage assets Councillors thought were in issue;
 - ii. The evidence of the Appellant’s landscape witness has also shown the inconsistency in decision-making by this Council in relation to the determination of this case and other similar cases.
- g) The Council then failed to revisit the case. The flaws here are twofold:
- i. There was an additional meeting on 4 December 2024 in which there was a discussion which led to the abandonment of RfR2 and “seascape” and “material palette” from RfR1. Two points arise:
 - 1) The fact that RfR2 and seascape were dropped is an indication of how spurious the refusal was.
 - 2) Clarity could have been sought on areas of ambiguity inherent in the Council’s decision-making so far, such as what heritage assets were in play, or which specific units were said to suffer unacceptable amenity impacts.
 - 3) At the time of this meeting, there was a draft revised NPPF and a large number of government statements on which the Appellant relies. The agenda had changed. There is no indication that Members even considered revisiting their overturn, which had by this point become even less tenable.
 - ii. The day after the meeting, the Prime Minister delivered his article in the Times.¹⁶ The NPPF (2024) came out a week later. Despite this, the Council failed to then go back to Members to ask them to reconsider whether to defend the appeal. Instead, the Council doubled down on its approach and (remarkably) sought to argue that there had been no change in Government policy.
- h) Turning to the Council’ Statement of Case, this added additional points and complaints; and led to the Council being directed to submit a supplementary

¹⁵ CDD.01

¹⁶ CDE.15

Statement of Case because its first was so devoid of salient information. It then produced an Errata sheet which made no mention of impacts to conservation areas and registered park and gardens, on which its evidence later relied. Even in opening, the Council's statement includes errors and Case Creep. This resulted in a case which is ill-thought out and confused.

- i) The Council's evidence to the inquiry, did not get anywhere close to actually justifying the stance taken by Members. The Appellant set out eight key shortcomings below, which show the approach taken by the Council was objectively unreasonable:
- i. First, as the Council's witness accepted in cross examination, there was a failure to mention let alone grapple with a very large number of Government statements emphasising the increased importance of housing delivery and the use of brownfield land. The suggestion that she had an "*implied general awareness*" when pressed on cross examination was unconvincing. A similar level of awareness was applied to the Appellant's Tall Building Study. This was not mentioned in the Council's written evidence and the witness seemed unsure about its existence following a series of questions from its own counsel.
- ii. Second, the Council's position on a number of key planning policy matters lacked any credibility. To take three examples:
1. It was argued that NPPF paragraph 125(c) and the many Government statements since July 2024 were no different to the position previously. The suggestion that the present Government's position on housing delivery is "*business as usual*" and not a fundamental shift from the previous Government shows a complete lack of understanding of where matters now sit in national planning policy;
 2. Evidence on the application of the presumption/tilted balance lacked any coherence or analytical rigour;
 3. The Council's evidence failed to consider the development plan as a whole. Only policies alleged to be breached were considered while the many policies that were agreed to be complied with were ignored. This is a startling and unacceptable omission given the statutory test under section 38(6) of the 2004 Planning and Compulsory Purchase Act that all planners have to apply.
- iii. Third, the Council's evidence was confused and laden with errors. For example, their Proof of Evidence alleged that Policy SA5 was breached in relation to the duties pertaining to National Parks, only to withdraw all evidence on impacts on the National Parks at the inquiry. Under "Planning Balance Conclusion" the Council failed to make any mention of the matters the subject of RfR3 justifying refusal having regard to the benefits of the scheme. Finally, it was argued that reference to non-RfR policies in the Statement of Common Ground (SoGC) were justified in opposing the appeal scheme.
- iv. Fourth, in relation to the heritage aspects of RfR1:

1. The Council sought to contend for a form of experiential harm – derived from memory – but under cross examination accepted: (i) no appeal decisions supported this; (ii) nor did the HE guidance; and (iii) nor was such a subjective concept capable of being tested objectively.
 2. Moreover, in answer to the Inspector’s questions, it was accepted that for the vast majority of people, the heritage significance was contained in what they could see of the assets, rather than their setting. This makes the Council’s assertions of less than substantial harm at the higher end of the scale impossible to justify for the reasons set out by the Inspector in the Edith Summerskill House decision¹⁷.
 3. Heritage was a particularly striking example of Case Creep. The Officers Report considered 17 designated and 2 non-designated heritage assets finding harm to the Grade II French Convalescent Home, Marine Gate and the flint wall (both non-designated heritage assets). In its Proof of Evidence the Council alleged harm to 53 designated heritage assets (comprising in total 217 listed properties, the two conservation areas and the RPG) and 1 non-designated heritage asset.
- v. Fifth, in relation to the design aspects of RfR the Council’s evidence failed to consider the architectural and design merits of the scheme, to which the Council did not object, and was thus only half an assessment.
- vi. Sixth, a fundamental plank of the Council’s case on RfR1 was that the appeal site was a positive gap site e.g. there was an absence of built development on it. Yet she accepted in cross examination that this was a “bizarre” argument given that the site is allocated.
- vii. Seventh, on RfR3:
1. It was accepted by the Council in oral evidence on RfR3 that the daylight, sunlight and overshadowing impacts were not in fact unacceptable but rather only sub-optimal and so not in breach of Policy DM20 (and, therefore, NPPF paragraph 130(c)).
 2. The claim that RfR3 alone could possibly have justified refusal lacked any credibility.
 3. The Council accepted it had undertaken no stage two assessment of sunlight and daylight issues despite this being clearly required by case-law.
 4. There were a number of matters on privacy which clearly can be dealt with by condition (e.g. oriel windows, planting between private and community open space) and despite agreeing these conditions the Council continued to pursue its objections.
 5. The Council relied upon Policies DM1, DM18 and CP14 in evidence for RfR3, which were not policies used in the RfR.
- viii. Eighth, Case Creep. The Council accepted its case went far and wide beyond the RfRs and the concerns expressed by Members in a number of

¹⁷ CDG.02

respects. The Case Creep has included the extensive number of heritage assets alleged to be harmed, the number of proposed homes that would experience unacceptable amenity effects and the policies alleged to be breached.

- ix. Ninth, The Council argued for a site capacity / density of anywhere between 75 and 293 homes, contrary to the long standing and recently endorsed published position of the Council that the site is suitable for 340 homes. In cross examination it was accepted that the difference between the Appellant and Council is only 155 homes.
13. Procedurally, the Council obstructed the timely preparation of SoCGs – first through obstructing the overarching SoCG (from which Heritage had to be all but removed), and then the Heritage SoCG itself. It is submitted that these matters clearly justify the award of full costs. In the alternative a number of the above matters would justify a partial award of costs. For example, in relation to the SoCG process, the SoC issues and withdrawal of RfR2 and parts of RfR1 post-appeal, and the expansion of RfR3.

Conclusions

14. Paragraph 52 of the Council's Opening stated "*[i]t is of particular note that the Appellant has at points chosen to take an unfortunately aggressive approach to the appeal in a number of its communications with PINs and with the Council. It has already determined to apply for costs as we understand it.*" This unreasonable allegation of an aggressive approach, made without any sort of evidential basis, is strongly refuted.
15. The fact is that the Appellant worked tirelessly for over 5 years to seek to achieve a consent for what is an allocated site. It won the support of officers through this lengthy and co-operative process which resulted in many, many changes to the scheme. The overturning of the clear views of professional officers by Members was unreasonable for all the above reasons. The Appellant has thus been put to the considerable expense and delay of this appeal.
16. On appeal the Council has failed to substantiate its case for refusal. Moreover, the Council's case has been characterised by Case Creep. The Appellant was entitled to, and has made clear throughout its intention to, seek costs if forced to pursue this appeal. There is nothing aggressive or untoward about that. The case for costs on this appeal is truly overwhelming. The Appellant in stating early it would seek costs allowed the Council the chance to reconsider whether it really wanted to carry on defending this appeal given the extreme weakness of its case. The Council determined to fight on. The award of full costs is thus clearly justified.

The response by Brighton & Hove City Council¹⁸

17. The response was made in writing. The behaviour the Appellant complains of is that the Council refused the application. This is of course does not amount to unreasonable behaviour even if it is counter to officer recommendations. In response to the Appellant's submissions about the Council's Opening, the relevant passages at paragraphs 52 to 57 need to be read in full. As is clear from those passages, attention had been drawn by the Appellant in particular to those statutory

¹⁸ Taken from ID.22

- representations where no formal objection was raised – including that of Historic England which of course did raise concerns and to which it is a matter of agreement should be given considerable weight.
18. The Appellant did not however draw attention to the fact that there were a considerable number of other parties, even if they are not statutory consultees, who raised perfectly valid objections to the scheme. Those objections were before the Council and the tenor of those objections were set out in the OR. They included bodies such as the Georgian Society and SAVE England. They also included 1,700 objections from residents and local bodies raising matters about design and overdevelopment, heritage as well as many other valid issues. The Planning Committee were obliged to have due regard to these objections
 19. The Appellant asserts by having regard to these representations the Council was “*influenced by the number of local objections*” and that in referring to these objections did so solely because of “*the number of such objections*”. The passages in the Council’s opening should be read in full.
 20. To be clear however, the Council does not suggest it was influenced by or refused this application because of the number of people who raised objections but because of the issues raised by those objections and because of the evidence before it. It never has suggested anything else, and the Appellant has misrepresented the position.
 21. The Appellant lists a series of complaints in paragraphs 11 and 12 above which it seems to be suggesting give rise to substantive unreasonable behaviour. These essentially are a ‘merits based’ argument i.e. that they consider that the Council should not have refused its application (in particular because its officer recommended in favour) and thereafter assert that the reasons for refusal are not justified. It is important to remember that the usual position is that parties bear their own costs on appeal.
 22. There was of course nothing unreasonable about concluding that the scheme was not acceptable in planning terms for all the reasons set out in the Council’s evidence including with respect to matters of heritage. It is significant that a number of the assessments before the Planning Committee at the decision stage were subsequently criticised and rejected by the Appellant’s own witnesses.
 23. The Appellant then complains that the Council failed to review its reasons but omits any recognition that it did that very thing and withdrew one reasons as well as amending another. None of this amounts to unreasonable behaviour. Thereafter the Appellant complains about the Council’s evidence picking up on certain errors. There is no evidence from any of this critique that the Appellant had been placed at any disadvantage or has not been able to respond to the Council’s case.
 24. The suggestion that there has been Case Creep, and that the Council has doubled down on its objections is not reasonable. This is nothing more than an attempt to tarnish the Council’s evidence to the inquiry.
 25. The Appellant has pointed to nothing that demonstrates it has incurred any wasted expense. The reasons for refusal stood up to scrutiny and to the extent that the Inspector and/or the SoS rejects any of the matters raised does not in itself give rise to proof of unreasonable behaviour and wasted costs.

26. This Costs application is a thinly disguised merits-based application. What is more the Appellant fails to recognise its own behaviour which the Council drew the Inspector's attention to prior to the inquiry. The Council would refer in particular to the letter sent to PINs dated 13 December 2024.¹⁹ It is clearly also a fact that there has been no procedural delay in pursuing this appeal.

Conclusion

27. In light of the above, the Inspector is duly asked to reject this application for costs. It is unsubstantiated and does not meet the relevant tests set out in the guidance.

Final response by St William Homes LLP²⁰

28. The Council alleges that refusing to grant planning permission is not unreasonable behaviour. In the circumstances of this case, where the merits of the scheme are overwhelming, the PPG makes clear that "*preventing or delaying development which should clearly be permitted*" is unreasonable behaviour. The suggestion that the RfRs "*stood up to scrutiny*" bears no relation to the evidence heard at the inquiry.
29. In that connection, the Council seeks to suggest that "that a number of the application assessments before the committee at decision stage (some of which found benefits were there were none) were subsequently criticised and rejected by the Appellant's own witnesses". It is not entirely clear if the Council's counsel was listening to the answers given by Mr Pullan and Smith and Dr Miele when questioned on these points. They made very minor comments and suggestions for improvement to the previous assessments submitted on behalf of the Appellant on a very small number of issues. It is inaccurate to say these assessments were "rejected", these minor disagreements were in line with the Council's own officers' views. The suggestion that this is cover for the Council's unreasonable conduct is manifestly a bad one.
30. The Council seeks to rely on the "*valid issues*" raised by the 1,700 objections, the Georgian Group, and SAVE Britain's Heritage, dismissing the Appellant's application as "*arrogance*". However:
- a) As the substantive evidence in this case has borne out, there really is no merit in any of the objections put forward by the Council, and certainly not enough to have refused permission. This is not "*arrogance*" but reflects the considered views of the Appellant's experienced professional team. It is worth noting that even at appeal stage, the Council's own witness failed to undertake the section 38(6) exercise.
 - b) The objections by SAVE and the Georgian Group do not reflect the case put by the Council at the inquiry. For example, SAVE alleged substantial harm in NPPF terms whereas the Georgian Group alleged harm to the registered park and gardens. If those were the basis for the Council's decision, it does not explain why (a) it took so long for the Council to particularise the assets alleged to be harmed and (b) why the Council went so far beyond either objection in the scope of its assessment. Neither, therefore, provide the cover the Council seeks for the expansion of its heritage case. Moreover, neither SAVE nor the Georgian Group, undertook the full planning balance exercise (only the Officer's Report

¹⁹ CDI.13

²⁰ Taken from ID.23

- did that for Members) and so neither provide cover for the Council's substantive decision to refuse.
- c) While the Council argues it did not pay attention to the number of objections, it is notable that the Coalition considers the numbers were one of their motivating factors: see the Coalition's closing arguments.²¹
31. In relation to the Council's revisiting of its reasons, the Council's cost response alleges that the Appellant "*omits any recognition that it did that very thing*". However, even a quick skim of the Appellant's application (see paragraph 12g-f above) demonstrates that is not true, and that the Council has failed to engage with the substance of the criticism made.
32. In relation to the Council's response to the criticisms of the Council witness' evidence:
- a) The Appellant picked up on errors in the evidence because it was forced to incur time and expense responding to points that were abandoned at the inquiry (e.g. on Policy SA5). The Council's attempt to suggest this is solely about procedural disadvantage (paragraph 23 above) is misplaced and again fails to meet the point the Appellant is actually making regarding increased cost and unreasonable conduct.
- b) The Appellant has highlighted the Case Creep because it has had to incur additional cost, time and expense responding to an ever-expanding case put on behalf of the Council. Moreover, it shows the basis on which Members refused was entirely untenable, as the Council had to expand its case. The Appellant is not "*seeking to provoke*" or being "*aggressive*" but is making clear that the way the Council has conducted itself and its appeal is unreasonable. Local authorities with Members who fail to discharge their duties responsibly cannot be surprised when they are then not afforded leeway to try and retroactively bolster an already weak case. This is not being "*aggressive*" but making clear to Members that unreasonable actions have consequences. It must be borne in mind that after that letter the Council was directed to provide its Supplementary Statement of Case because it had failed to provide the required information in its Statement of Case or thereafter. To the extent that letter shows anything, it is a continuing refusal by the Council to engage with its obligations.
33. The Council's costs response is a weak defence which only serves to highlight its own unreasonable conduct. Its suggestion that the Appellant has not had to incur wasted expense is plainly wrong, in light of the foregoing and the Appellant's costs application.

Reasons

34. The PPG advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The Appellant argues that the Council behaved unreasonably on both substantive and procedural grounds.
35. Dealing with the latter first, I have reservations about the Council's failure to take the matter back to the Planning Committee following the publication of the new

²¹ ID.19

- NPPF in December 2024. The changes therein, particularly those to paragraph 125c), were clearly material to the Council's case and it would have been helpful if clear guidance from elected Members on this change had been sought. The changes to the NPPF as well as Ministerial statements made around the same time were also material. Accordingly, I consider the Council's failure to review its case in light of the revised NPPF to be unreasonable.
36. There were also issues with the Council's SoC and the SoCG. The scant nature of the former necessitated a direct intervention from the Inspectorate. Letters between the Appellant and Council dated 16 August and 13 December 2024 demonstrate that the Council failed to engage in a timely and proactive manner on the production of the SoCG, contrary to the Procedural Guide: planning appeals – England (2024).
 37. It took the Council over 10 weeks to respond to the draft SoCG which was three days before the original deadline thereby necessitating an extension of time to be granted by the Inspectorate. At that stage the Council had still not provided the clarity sought by the Appellant regarding the scope of the RfRs (these details were first requested in August 2024). The draft SoCG returned by the Council on 6 December contained a significant number of deletions. I do not intend to provide a running commentary on each of these, but it is fair to note that many of the deletions related to matters that were not controversial and were later reinstated and/or conceded by the Council at the inquiry. I thus consider the Council's approach to the SoCG was unreasonable.
 38. Turning to the substantive grounds, it is a fundamental principle of local decision-making that a planning committee is not bound to follow the advice of its officers. Nonetheless, there is an expectation that where this occurs it should show reasonable planning grounds for taking a contrary decision and produce sound, substantive and defensible evidence on appeal to support the decision in all respects. Similarly, whilst the views of local residents and local organisations must be taken into account, the extent of local opposition is not in itself a reasonable ground for resisting development. To carry weight, opposition should be founded on valid planning reasons and supported by substantial evidence.
 39. RfR1 is primarily concerned with effect of the development upon the character and appearance of the area including heritage assets. This inevitably involves matters of judgement concerning the landscape and visual effects of the development. In such cases an award of costs will rarely be justified provided that realistic and specific evidence is provided about the consequences of the proposed development.
 40. However, the Council's objections failed to stand up to scrutiny at the inquiry for the reasons outlined in the Appeal Report. Principal among those reasons was the Council's failure to meaningfully engage with the fact that this is an allocated site and as such there are a range of landscape, visual and heritage impacts that flow from this.
 41. RfR3 also failed to stand up to scrutiny at the appeal given the Council accepted that living conditions for future occupiers would be 'sub-optimal' rather than 'unacceptable'. It was further accepted that the Council had not adopted the two-stage approach under the BRE guidance as is established practice in daylight/sunlight assessments. The Council's approach was thus flawed and failed

- to display any degree of flexibility as required by NPPF paragraph 130c). Issues relating to privacy were capable of being addressed by planning condition. I therefore conclude that the Council failed to produce substantive evidence to justify RfR3 and this amounted to unreasonable behaviour.
42. At the inquiry, the Council argued that the heritage harm provided a ‘strong reason’ for refusing the development. However, based on the published Minutes²², that does not appear to be what Members had in mind. The Minutes which were approved several months after the meeting, only contain two references to heritage (only one of these was during the debate). The first was a comment from Cllr Allen who stated there would be ‘*limited harm from Sussex Square*’ and the second from Cllr Davies, who was recorded as expressing concern regarding the ‘*effect on the Kemp Town estate*’.
 43. With regard to Cllr Allen’s comments²³, the Minutes show that despite his concerns about the view from Sussex Square, he was ‘*leaning in favour of the application*’. That strongly suggests that he did not feel the heritage harm was ‘substantial’ in the words of paragraph 125c) nor represented a ‘strong reason’ to refuse planning permission or indeed outweighed the public benefits of the scheme. Cllr Davies’ expressed concern about the effect on the KTCA²⁴ and pointed out that Historic England and SAVE Britain’s Heritage disagreed with the officer’s assessment of no harm.
 44. Accordingly, there is nothing in the Minutes of the Committee Meeting to support the stark broadening of the Council’s heritage case which alleged varying degrees (and in some cases high) levels of less than substantial harm to a vast number of assets across east Brighton. There was thus a clear element of Case Creep in that regard which amounts to unreasonable behaviour. It is notable that the Council has not provided any cogent rebuttal of the Appellant’s allegations in this regard.
 45. The Council’s assessment of harm to a number of assets was predicted at least in part on the novel concept of ‘experiential’ harm. This ‘*flew in the face*’ of established Historic England guidance, recent SoS decisions and established case law which have all considered the issue of ‘setting’ in some detail. At times the Council’s witness gave the impression that she had conflated ‘harm’ and ‘weight’ in her analysis.²⁵ The Council’s heritage case also contrasted sharply with the approach it took in relation to the recent Brighton Marina development and the conclusions reached by the SoS. In my view, the failure to determine similar cases in as like manner and the reliance on an experiential approach both amounted to unreasonable behaviour.
 46. Irrespective of the level of harm to individual heritage assets, the Planning Committee was obliged by NPPF paragraph 215 to weigh any harm they identified against the public benefits of the appeal scheme. There is no evidence that any such exercise was undertaken. Without this it is difficult to see how the heritage concerns expressed by the Committee amounted to a ‘strong reason’ to refuse development under NPPF paragraph 11d). The Committee should therefore have carried out the ‘tilted balance’ in NPPF paragraph 11d), or in the alternative, the statutory balancing act under Section 38(6) of the 2004 Planning and Compulsory

²² CDD.06

²³ Para 119.62 of the Minutes

²⁴ Para 119.49 of the Minutes

²⁵ Para 7.216 of the Council’s Proof of Evidence

Purchase Act 2004. Despite Informative 1 to the Decision Notice²⁶ there is no evidence that the Committee undertook any of the required balancing exercises.

47. Had it done so in an objective manner, I find it most unlikely that the application would have been refused. That is because the planning balance (the weighing of harms against benefits) is so overwhelmingly in favour of the development that to reach any other conclusion would have been unreasonable. The Council's decision to refuse permission thus reflected a fundamental breakdown in the approach to decision-making required under the 2004 Act and NPPF.

Conclusions

48. Had the Council had proper regard to its own Development Plan, the NPPF, other material considerations and carried out a proper balancing exercise, the application would most likely have been approved notwithstanding the concerns raised by Members. The Council therefore prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and all other material considerations.
49. The Council's objections did not stand up to scrutiny and therefore I find that the Council failed to produce evidence to substantiate each reason for refusal on appeal, made vague, generalised or inaccurate assertions about a proposal's impact and failed to determine similar cases in a consistent manner. It goes without saying that a decision to refuse planning permission on an allocated site against the professional advice of officers requires very careful consideration and highly robust reasoning.
50. There were also substantial procedural failings on the Council's part including an obstructive and untimely approach to the SoCG, the submission of a Statement of Case which was bereft of meaningful detail and a failure to review its case promptly following a material change in national policy.
51. The above unreasonable behaviour resulted in unnecessary or wasted expense, as described in the PPG. I therefore conclude that a full award of costs is justified.
52. While I understand that the above will come as a bitter blow to the Council, it is right that I acknowledge the important work of officers during what was a long pre-application and determination period. That work culminated in the production of a Committee Report which was of the very highest order. Officers were also beyond reproach for the way they assisted the inquiry.

Recommendation

53. It is recommended that the application for a full award of costs be allowed.

D M Young

INSPECTOR

²⁶ CDD.05