

# PLANNING COMMITTEE

## Agenda Item 91 Brighton & Hove City Council

<b>Subject:</b>	<b>Clarification and amplification of the reasons for refusal of Planning Application BH2007/03454, Land at Brighton Marina</b>
<b>Date of Meeting:</b>	<b>2 September 2009</b>
<b>Report of:</b>	<b>Director of Environment</b>
<b>Officer:</b>	<b>Sue Dubberley      Tel: (01273) 292322 Kevin Goodwin</b>
<b>Wards Affected:</b>	<b>Rottingdean Coastal</b>

### 1. Purpose of the report

- 1.1 To agree the points of clarification and amplification in relation to the reasons for refusal of the planning application prior to the forthcoming public inquiry due to commence on 3<sup>rd</sup> November 2009.

### 2. Recommendation

- 2.1 That the planning committee agree the clarification and amplification of the reasons for refusal nos.1, 2, 3, and 4 as set out below and the conditional removal of reason for refusal no.6.

### 3. Information/background

- 3.1 A planning application for major development at Brighton Marina for the Inner Harbour site was submitted in September 2007 (ref: BH2007/03454) by X-Leisure and Explore Living. The application was considered by the council on 12th December 2008 and was refused. The applicant has now submitted an appeal in respect of the council's decision to refuse the planning application and a public inquiry has been scheduled to commence on 3 November 2009.
- 3.2 The Council has appointed the planning consultant Kevin Goodwin Director and Head of Planning of CgMs as the lead witness for the Inquiry. The other witnesses are Adam Roake of Urbanise (architect), David Allen managing Director of Allen Pyke Associate (landscape architect), Dr Nicholas Doggett of CgMs (Heritage expert). The Council's appointed advocate is Morag Ellis QC.
- 3.3 Conference with Counsel took place on Friday 24 July. One of the items discussed was the reasons for refusal and on the advice from Counsel and in agreement with the witnesses and Cllrs the amplification and clarification below is proposed to Planning

Committee. In particular the policies of the Structure Plan have been replaced by those of the South East Plan and also the two letters received from the appellant's agents in respect of inviting the Council to reconsider their position on Reasons for Refusal 4, 5 and 6.

- 3.4 Each of the reasons for refusal is considered in turn below. The reason for refusal as set out in the decision notice appears first followed by the clarified and amplified version:

#### **Reason for Refusal No. 1**

The proposed development, by reason of siting, layout and height, would be overly dominant and would not relate satisfactorily to existing development within the Marina and would fail to preserve the setting of views of strategic importance, in particular views into and out of the Kemp Town Conservation Area, the Sussex Downs Area of Outstanding Natural Beauty and the Cliff which is a Site of Special Scientific Interest. The proposal would therefore fail to comply with policies QD1, QD2, QD3, QD4, HE3, HE6, HE11 and NC8 of the Brighton and Hove Local Plan and policies S1, S6, EN1, EN2, EN3 and EN26 of the East Sussex and Brighton and Hove Structure Plan.

Proposed wording: (includes relevant replacement policies from the South East Plan, the East Sussex and Brighton and Hove Structure Plan, having been superseded since the date of the decision). Additional text is in **bold** and text to be removed is in *[italics]*.

The proposed development, by reason of **design**, siting, layout and height, would be **unacceptable, overly dominant and would fail** *[overly dominant and would not relate satisfactorily to existing development within the Marina, and would fail]* to preserve the setting of views of strategic importance, in particular views into and out of the Kemp Town Conservation Area, the Sussex Downs Area of Outstanding Natural Beauty and the Cliff. **The proposal would therefore fail to comply with policies QD1, QD2, QD3, QD4, HE3, HE6, HE11 and NC8 of the Brighton and Hove Local Plan policies CC1, CC6, CC8, C2, C3, HO4 and BE1 of the South East Plan, PPS1 and PPG15.**

#### **Reason for Refusal No. 2**

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

Proposed wording:

Additional text is in **bold** and text to be removed is in *[italics]*.

The proposed *[development would cause material nuisance and loss of amenity to residents living opposite and within the Marina. In addition by reason of north facing views and overshadowing the proposed development would cause loss of amenity to occupiers of the residential units in the Cliff Building. The proposal would therefore be contrary to the requirements of policy QD27 of the Brighton and Hove Local Plan]*  **dwellings within the Cliff Building would not provide good quality accommodation by reason of a preponderance of single aspect dwellings and shaded courtyards, the size of units, coupled with their poor relationship to the cliff, ramps and access road, giving rise to cramped and unsatisfactory living conditions, contrary to policies QD1, QD3 QD27 and HO4 of the Brighton and Hove Local Plan and PPS 1 and PPS 3”.**

### **Reason for Refusal No. 3**

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

Proposed wording:

Additional text is in **bold** and text to be removed is in *[italics]*.

*[The applicant has failed to demonstrate that the proposed scheme reflects and responds to the current housing need in the City. In particular, through the provision of the appropriate housing unit mix and size. The proposal is therefore contrary to policy HO3 of the Brighton and Hove Local Plan]*  **The proposed development with its preponderance of one and two bed units and its affordable housing tenure mix, fails to respond adequately to identified housing needs within the City contrary to policies HO2, HO3 and QD3 of the Brighton and Hove Local Plan. Furthermore, the disposition of affordable units within the proposed development would not counter social exclusion or foster the creation of cohesive sustainable communities contrary to PPS 3, in particular paras 9, 10 and 12 and PAN 04 in particular paras 3.2, 13.3 and 16.0, of the Brighton Marina Masterplan.**

### **Reason for Refusal No. 4**

The applicant has failed to demonstrate that the proposed development would result in a scheme with an adequate provision of outdoor amenity and recreational space. The proposal is therefore contrary to the requirements of policy HO6 of the Brighton and Hove Local *Plan*.

Proposed wording:

Additional text is in **bold** and text to be removed is in *[italics]*.

The applicant has failed to demonstrate that the proposed development would result in a scheme with adequate **design and** provision of outdoor amenity and recreational space. The proposal is therefore contrary to the requirements of [policy] **policies QD1, QD2, QD3, HO4 and HO6** of the Brighton and Hove Local Plan **and PAN04 in particular paras 3.2, 8.4, 12.1, 12.2, 12.3 and 13.3 of the Brighton Marina Masterplan.**

#### **Reason for Refusal No. 5 – no alteration**

The applicant has failed to demonstrate that educational facilities would be provided to meet the needs of the residents of the proposed development. The proposal would therefore be contrary to the objectives of policy HO21 of the Brighton and Hove Local Plan.

#### **Reason for Refusal No. 6 – conditionally withdrawn**

The proposed development would be in a High Probability Flood Zone as defined in PPS25: Development and Flood Risk and does not pass the Exception Test as set out therein.

The terms of this reason for refusal have been considered. It is recognised that the Environment Agency reached a qualified position of not objecting. They did, however, seek express reassurance in relation to the maintenance of current sea defences and the provision of future upgrades to sea wall defences. The Environment Agency expressly sought measures to secure these through the s106 obligation. Therefore it is recommended that on a without prejudice basis the committee agree that they would be prepared to withdraw this reason for refusal, provided that there is prior agreement of suitable wording for insertion in the s.106 obligation.

Background Documents:

Planning Application BH2007/03454

Letters from Nathaniel Litchfield and Partners dated 29 June 2009 and 15<sup>th</sup> July 2009