Appeal Decision

Inquiry held on 18 and 19 May 2010
Site visit made on 20 May 2010

by David Prentis **BA BPI MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email:enquiries@pins.gsi.gov.uk

Decision date:
18 August 2010

Appeal Ref: APP/Q1445/A/09/2119295
Covers Yard, Melbourne Street, Brighton BN2 3LH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Hyde Housing Association against the decision of Brighton and Hove City Council.
- The application Ref BH2009/00655, dated 18 March 2009, was refused by notice dated 8 July 2009.
- The development proposed is described as *residential development of 39 units comprising: 3 storey terrace along eastern boundary of site, 4 and 7 storey apartment building along northern boundary of the site, cycle and car parking to rear.*

Applications for costs

1. At the Inquiry applications for costs were made by Hyde Housing Association against Brighton and Hove City Council and by Brighton and Hove City Council against Hyde Housing Association. These applications are the subject of separate decisions.

Decision

2. I allow the appeal, and grant planning permission for residential development of 39 units comprising: 3 storey terrace along eastern boundary of site, 4 and 7 storey apartment building along northern boundary of the site, cycle and car parking to rear at Covers Yard, Melbourne Street, Brighton BN2 3LH in accordance with the terms of the application, Ref BH2009/00655, dated 18 March 2009, and the plans listed in the attached Schedule 1 subject to the conditions contained in the attached Schedule 2.

Preliminary matters

3. The appeal was lodged in the names of Hyde Housing Association and Mr Tom Shaw. At the Inquiry the appellant confirmed that the appeal should proceed solely in the name of Hyde Housing Association.

4. Three Section 106 Agreements dated 14 May 2010 were submitted at the Inquiry. The Agreements are the same except insofar as they relate to affordable housing. The affordable housing provisions are contingent upon my findings in relation to the current use of the appeal site. The provisions which would come into effect as a result of my findings on this issue, which are set out below, are such that 16 of the 39 units (approximately 40%) would be affordable housing.

5. The Agreements provide for financial contributions relating to education, recreation, sustainable transport, a traffic order and public safety. There are also covenants relating to public art, a construction environmental management plan and the establishment of a car club. Having regard to the development plan and the evidence before me, I consider that the provisions relating to affordable housing, recreation, sustainable transport, (including the traffic order and car club), public art and the construction environmental management plan are necessary, reasonable, related to the development and generally in accordance with the advice of Circular 05/2005 *Planning Obligations.* I shall therefore take these matters into account in reaching my decision. I shall comment further on the provisions relating to affordable housing, recreation and sustainable transport in the appropriate sections of this decision.

6. There was little information before the Inquiry relating to the need for education facilities. The public safety contribution is intended to provide CCTV equipment, the need for which appears to be unrelated to the scheme. I am not satisfied that these contributions have been shown to be directly related to the appeal proposal and I shall not therefore take them into account.

7. On 6 July 2010 the Secretary of State announced the revocation of Regional Spatial Strategies. The views of the parties were sought and I have taken account of the responses which were received.

Main issues

8. The main issues are:

- the effect of the proposal on the character and appearance of the area;
- whether the proposal would provide satisfactory living conditions for future occupiers; and
- the effect of the proposal on the supply of employment land.

Reasons

The character and appearance of the area

9. The site, which is currently vacant, comprises a predominantly open yard with two commercial buildings. It lies to the rear of shops, service businesses and community uses fronting Lewes Road, a busy radial route leading into central Brighton. This block of properties includes residential accommodation on some of the upper floors and there is a house at No 130 Lewes Road. The appeal site is bounded on its northern and eastern sides by Melbourne Street which forms a one-way loop leading off Lewes Road.

10. There are vehicle repair workshops and a joinery workshop to the north of the site and to the east is Enterprise Point, a large multi-storey building which has been subdivided to provide business units. This is a rather harsh environment, characterised by utilitarian buildings and quite extensive open areas around Enterprise Point which are generally hard surfaced. By contrast, the southern part of Melbourne Street is a small scale residential enclave characterised by two storey terraced houses. St Martin's Primary School has an access from Melbourne Street although its main entrance is from Hartington Road. Lewes

Road runs along the floor of a valley with the land rising up quite steeply on either side.

11. Policy QD3 of the Brighton and Hove Local Plan 2005 (LP) states that new development should make efficient and effective use of a site and that higher development density will be appropriate where the site has good public transport accessibility and is close to services and facilities. Policy HO4 states that residential development will be permitted at higher densities subject to consideration of design, housing mix, accessibility and the capacity of the area to accommodate additional dwellings. The Council accepted that the proposed housing mix would be appropriate for this locality. The appeal site is close to frequent bus services along Lewes Road. There is a good range of local facilities within walking distance and central Brighton is readily accessible by bus or cycle. In my view this is a location where higher density development would, in principle, accord with the objectives of the LP, subject to design considerations.

12. The 7 storey element of the proposal falls within the definition of a "tall building" in the Council's Supplementary Planning Guidance Note 15: *Tall Buildings* (SPG15). This document has been approved by the Council following public consultation and I therefore take it into account in reaching my decision. SPG15 identifies areas which, at a strategic level, are regarded as suitable for tall buildings. These include the Lewes Road corridor, which is noted as being an academic corridor and a major route into the city with excellent bus and rail services and existing tall buildings along the valley bottom. The Council did not dispute that the site should be regarded as falling within this corridor and I see no reason to take a different view.

13. The scheme would have 3 distinct elements. Flats and maisonettes along the eastern frontage would have the appearance of 3 storey terraced houses. Repeated features such as bay windows and stair enclosures would provide a scale and rhythm which, in my opinion, would be well related to the adjoining terraced housing. There would be a 4 storey building on the northern frontage which would have more restrained detailing and this element would respond to the more commercial nature of its immediate surroundings. The third element would be a 7 storey tower at the north east corner of the site. Whilst the height of the tower would be comparable with Enterprise Point its proportions would be very different. Enterprise Point has a very large footprint and its design has a horizontal emphasis. The design of the tower, which would incorporate features such as contrasting materials and a distinctive glazed stair enclosure, would emphasise the verticality of its proportions.

14. The Council drew attention to the comments of the Inspector who considered a previous appeal relating to Covers Yard[1] and concluded that the 6/7 storey block of flats proposed in that scheme would not sit comfortably so close to the existing terraced houses in Melbourne Street. The massing of the current scheme is however quite different to that of the previous appeal. In particular, the tower would be separated from the existing houses by a new 3 storey building. Whilst there would be a significant contrast between the tower and the lower buildings, this contrast would form an integral part of a coherent

[1] Ref APP/Q1445/A/08/2065312 – that appeal concerned a scheme for 54 flats and 6 offices on a site which incorporated the current appeal site together with additional land which is now in separate ownership.

scheme for the site as a whole. It was suggested that the tower would appear unduly dominant as seen from Melbourne Street. I agree that there is no precedent for a building of this scale so close to the footway of Melbourne Street. Nevertheless, I consider that the scheme would introduce a new focal point in an area which is currently lacking in environmental quality.

15. The Council also expressed concerns regarding the lack of landscaping within the scheme and I note that there would be only limited scope for planting. However, having regard to the urban context of the site, I consider that siting the development close to the footway to Melbourne Street is a valid design approach. The internal courtyard, although predominantly hard surfaced, would be generously proportioned and in my view would not appear unduly cramped. The proposed sedum roof to the disabled parking bays would provide some visual softening in views from upper storey windows and there would be scope for some incidental planting around the parking area and in the small courtyard gardens. Subject to appropriate surfacing materials, boundary treatments and planting details, I consider that the design for the external areas is satisfactory. These matters could be covered by a condition.

16. To conclude on the first main issue, I note that the appeal proposal is for a relatively high density of development. Nevertheless, in my opinion the proposed design is a well considered response to the challenges of developing a higher density scheme on this site. It would represent good quality design which would not be harmful to the character and appearance of the area. Indeed, it would enhance the street scene. I find no conflict with LP Policies QD3 and HO4. Nor do I find any conflict with Policies QD1, QD2, QD5 and QD15 which, together, seek a high quality of design, including the design of the spaces between and around buildings.

Living conditions of future occupiers

17. The Council's main concerns related to the outlook available to some of the ground floor units, the adequacy of private amenity space and the lack of children's play space within the scheme. With regard to outlook, the living rooms and bedrooms of flats 00A-00D would have glazed doors opening onto a small private patio. Whilst the outlook from the living rooms would be restricted by a section of flank wall, longer oblique views could be obtained from these large openings. These rooms would also have high level windows giving natural light and a view of the sky[2]. The kitchen windows to these flats would have obscure glazing but, given that the main living spaces would have an adequate outlook, I do not think this would be harmful to living conditions. The kitchen/living rooms of flats 00E and 00F would have an easterly aspect, over small private terraces, towards Enterprise Point. As that building is set well back within its own site I do not consider that these units would feel unduly enclosed.

18. LP Policy HO5 requires the provision of private amenity space where appropriate to the scale and character of the development. The LP does not contain any quantitative standards for private amenity space but does indicate that balconies will be taken into account. The appeal scheme would include private amenity spaces for all ground floor units. Whilst these would be small,

[2] In the case of unit 00D the high level window would be obscure glazed.

they would be of sufficient size to accommodate a sitting out area with some incidental planting. The units on the upper floors would have individual terraces or balconies. In addition, a roof terrace on the 4 storey building would provide a larger communal amenity space for all residents. I agree with the Council that there would be considerable inter-visibility between the various terraces/balconies. Nevertheless, in my view this is not unusual for higher density schemes. To my mind the proposal would provide amenity space which would be appropriate to the character of the development, in accordance with Policy HO5.

19. LP Policy HO6 deals with the provision of outdoor recreation space within residential developments, including children's equipped play space, informal play space and youth/adult sports facilities. The policy states that, where it is not practicable or appropriate for all or part of the requirement to be provided on site, contributions to provision elsewhere may be acceptable. The Council has also prepared draft Supplementary Planning Guidance Note 9: *A guide for residential developers on the provision of outdoor recreation space* which states that, ideally, a local area for play (LAP) should be located within a walking time of one minute from home. Whilst I take account of this guidance, the weight to be attached to it is limited because it is in draft. In this case the Council accepted that the need for children's equipped play space and youth/adult provision could be met elsewhere and would be satisfied by the relevant provisions of the S106 Agreements. I see no reason to disagree. However, the Council considers that provision should be made on site for a LAP of around 100sqm.

20. There are two public parks nearby which, in my opinion, would contribute to meeting the recreational needs of future occupiers. Saunders Park appears to have received recent investment and is relatively well equipped. Nevertheless, there is scope for further improvements, including improvements to facilities for younger children. William Clarke Park has more basic facilities and there is scope for improvements to the play equipment and the ball games area. In order to reach Saunders Park from the appeal site it is necessary to cross Lewes Road and a traffic gyratory system and to reach William Clarke Park it is necessary to cross Hartington Road. Safe crossing places are available in both cases although it seems likely that younger children would need to be accompanied in order to make use of these facilities.

21. I consider that the S106 recreation contribution could be used to fund improvements to either, or both, of these spaces which would mitigate the lack of on site provision. Even so, I consider that it would be desirable to make some provision on site for younger children to cater for active play close to home at times when they cannot be taken to the local parks. The appellants argued that it would not be practical to make such provision but, on the available evidence, I am not persuaded on that point. It seems to me that with careful design a space of around 100sqm could be provided. The consequence of this would be to reduce the space available for parking which might, in turn, reduce the number of housing units that could be provided at the site.

22. My conclusion on this matter differs from that of my colleague who considered the previous appeal relating to Covers Yard. In that case the Inspector formed the view that there would be a limited number of children whereas at this Inquiry the appellant accepted that a significant number of children would be

present[3]. Moreover, I was provided with a diagram showing the effect of providing a LAP at the appeal site which I have taken into account. I have also noted a recent appeal decision elsewhere in Brighton and Hove[4]. However, that was a larger scheme in a different part of the City and, insofar as it relates to this issue, I consider that it has limited relevance to the current appeal.

23. In forming my overall assessment of living conditions for future occupiers I take account of the appellant's daylight analysis which showed that all rooms would achieve a good standard of natural lighting. I also note that all units are designed to achieve lifetime homes standards and that 4 units have been designed as wheelchair accessible units.

24. I conclude that, in general terms, the scheme would provide satisfactory living conditions for future occupiers in accordance with LP Policy HO5 and also in accordance with Policy QD27, which seeks to protect amenity. However, I regard the lack of any on site play provision as a disadvantage of the scheme. To that extent the scheme does not accord with LP Policy HO6 or with Policy QD3, insofar as that policy deals with recreation space.

Employment land

25. LP Policy EM3 states that land in industrial use, or allocated for industrial purposes, will not be released for other uses unless the site is unsuitable for modern employment needs. For the purposes of this policy "industrial use" is defined as Use Classes B1, B2 and B8. The appeal site is not an allocated employment site and there is no planning permission or Certificate of Lawful Use which defines the use of the land. At the Inquiry the Council argued that its use should be regarded as Class B8 whereas the appellant argued that it should be regarded as sui generis.

26. The site was last occupied by Covers, who described their business as "timber importers and builders' merchants". Covers occupied the site from 1988, when they took over from another builders' merchant, until August 2005 when they relocated to another part of Brighton. The company occupied the current appeal site together with additional land including Nos 124, 128 and 129 Lewes Road and Connaught House, Melbourne Street. Various activities took place, including storage and sales, but it appears that these activities all contributed to the single main purpose of supplying construction materials. Consequently, it is my view that the starting point for assessing the use of the land is to identify the relevant planning unit as the whole of the land formerly occupied by Covers.

27. Sales figures for the period January 2004 to August 2005 show that sales collected by customers amounted to around half of total sales. Around 60% of transactions were in cash and the average value of each cash transaction was relatively low. This pattern of trading indicates to me that a large number of customers travelled to the premises to make relatively small purchases. I consider that the business had a significant retail component and cannot be regarded as having been a purely Class B8 (storage) use.

[3] The appellant's planning witness estimated that, based on assumed occupancy figures, up to 14 children could be living at the site.
[4] APP/Q1445/A/09/2111696 – Park House, Old Shoreham Road, Hove BN3 6HU

28. The Council points out that the sales figures relate only to the last 20 months of Covers' occupation of the site. Nevertheless, there is no evidence to suggest that the nature of the business changed in any material way during Covers' period of occupation. Reliance was also placed on a comment, made on behalf of Covers at a meeting in 2006, that only 5% of group sales were retail. That comment, it seems to me, was making a distinction between trade customers and members of the public buying supplies for DIY purposes. In my view that distinction is of little relevance to the nature of the use in planning terms and I attach limited weight to it. I note that Covers accepted limitations on its retail activity when it relocated to another site but that is not relevant to my consideration of the use at Melbourne Street.

29. I conclude that, for the purposes of Policy EM3, the use of the appeal site should be regarded as a sui generis use, including components of both storage and retail use. It follows that it does not fall within the definition of "industrial use" contained within Policy EM3 and the policy is not therefore applicable. There was evidence before the Inquiry regarding the suitability of the site for continued employment use. However, given my conclusion on Policy EM3 it is not necessary for me to comment further on that matter. On the third main issue, I find that there is no development plan policy objection to the redevelopment of the appeal site for housing and that the proposal would not be harmful to the supply of employment land.

Other matters

Affordable housing

30. The appellant gave evidence, which was not disputed, of the pressing need for affordable housing within Brighton and Hove. Current rates of delivery are not keeping pace with the identified need. The S106 Agreement would ensure that about 40% of the units would be affordable. This level of affordable provision would accord with LP Policy HO2 and is the most that could be required at the appeal site by way of a S106 Agreement. Having regard to the level of need, I attach significant weight to this provision. Furthermore, it is the appellant's intention to develop the scheme entirely for affordable housing. Given that the site is within the ownership of the appellant, an established provider of affordable housing, it appears that there is a reasonable prospect that this intention would be realised. This is a further factor weighing in favour of the appeal although the weight to be attached is reduced because affordable housing provision in excess of 40% is not secured by an Agreement.

Housing land supply

31. At the Inquiry the Council accepted that it could not demonstrate an identified 5 year supply in relation to the housing requirements of the South East Plan (SEP). However, as the SEP has now been revoked those requirements are no longer of relevance to the appeal.

Passive surveillance of Melbourne Street

32. The Council argued that the design of the units facing the eastern arm of Melbourne Street would provide insufficient passive surveillance of the public realm. Whilst I note that the ground floor kitchen windows would be obscure glazed, there would be windows at first and second floor levels providing views

over the street. Views would also be available from flats in the corner block. The scheme includes front doors accessed from Melbourne Street which would generate pedestrian traffic along the footway. Overall, I consider that the appeal scheme would be an improvement on the current level of passive surveillance within Melbourne Street, particularly at times when the business premises are not in use.

Sustainable building design

33. LP Policy SU2 states that planning permission will be granted for proposals which demonstrate a high standard of efficiency in the use of energy, water and materials. It does not set specific performance standards. Supplementary Planning Document No 8: *Sustainable building design* (SPD08) has been adopted by the Council following consultation and I shall therefore take it into account. The document sets out various recommended standards for sustainable building design including a recommendation that housing developments of more than 10 units should achieve a minimum Code for Sustainable Homes (CSH) rating of Level 4. The scheme was originally designed to achieve CSH Level 3 although at one stage in discussions with the Council the appellant agreed to meet Level 4. At the Inquiry the appellant's position was that the scheme would meet Level 3 whilst the Council argued that it should meet Level 4. Both parties agreed that this matter should be covered by a condition.

34. The Supplement to Planning Policy Statement 1: *Planning and Climate Change* states that any local requirements for sustainable buildings must be set out in development plan documents. SPD08 has been adopted by the Council but it is not a development plan document. CSH Level 4 is in excess of the requirements of the current Building Regulations and the appellant is not now offering to meet this level. In these circumstances I do not think it would be reasonable to require, by condition, that the scheme should meet Level 4. In my view it would be reasonable to require that the scheme should meet Level 3 because the scheme has been designed to achieve that level and because such a condition would satisfy LP Policy SU2.

Effect on nearby residents and St Martin's Primary School

35. Local residents are concerned about impacts on sunlight and daylight, privacy, noise, traffic and parking. There are also concerns about overshadowing of the school playground and overlooking of classrooms. The tallest element of the scheme would be in the north east corner of the site. The appellant submitted shadow diagrams which show that any shadowing of residential properties and the school playground would be limited. I consider that the size of the courtyard within the scheme would be sufficient to ensure adequate daylight to the rear of the Lewes Road properties.

36. Views toward the Lewes Road properties would be at an oblique angle and would not result in harmful overlooking of windows. Gardens would be overlooked to some extent from the proposed windows and balconies. However, some overlooking of gardens is commonplace in urban areas. Having regard to the distance between the proposed balconies and the affected gardens I do not consider that the degree of overlooking would be so significant as to be harmful to living conditions. The separation distance

between the scheme and the primary school would be sufficient to avoid harmful overlooking of classrooms. I note that some of the proposed parking spaces would be close to the gardens of properties in Lewes Road which would introduce a potential source of noise and disturbance. However, only a few spaces would be close to the boundary so the degree of disturbance would not be great. Subject to appropriate boundary treatment, which could be controlled by a condition, I do not consider that any noise or disturbance would be so significant as to be harmful to living conditions.

37. The application was supported by a transport statement which concluded that the scheme would result in a reduction in the number of vehicle trips to the site as compared with the previous use. It also commented that the site is well served by public transport which has the capacity to accommodate trips generated by the development. The Council accepted these conclusions and I see no reason to disagree. The scheme includes 17 car parking spaces, 52 cycle bays and funding for 2 car club bays. I consider that the proposed level of parking is appropriate to this accessible location and that the S106 provisions relating to sustainable transport would mitigate the travel impacts of the scheme.

Conclusions

38. I have concluded that the proposal would not be harmful to the character and appearance of the area or to the supply of employment land. In general terms it would provide satisfactory living conditions. However, I consider that the lack of an on site area for children's play is a disadvantage of the scheme. In my view that disadvantage is only partially mitigated by the availability of public parks nearby where the S106 contribution could be used to improve play facilities.

39. On the other hand, the proposal would bring a vacant site back into use and would make a significant contribution to the delivery of affordable housing in an area of pressing housing need. Furthermore, it would enhance the street scene and successfully achieve a higher density scheme in an accessible location, in accordance with the objectives of the development plan. I attach significant weight to these benefits which, in my opinion, outweigh the disadvantage I have identified. I conclude that the appeal should be allowed.

Conditions

40. The Council has suggested conditions which I have considered in the light of Circular 11/95 *The use of conditions in planning permissions*. In some cases I have adjusted detailed wording to reflect that advice. I have referred above to the need for conditions relating to landscaping and boundary treatment (paragraphs 15 and 36) and the CSH (paragraph 34). In addition, conditions relating to materials, storage of refuse and external lighting are needed to protect the character and appearance of the area. Car parking should be provided as shown to avoid adding to parking stress in the locality. Cycle parking should be provided as shown in the interests of sustainable transport. Conditions relating to contaminated land and foundation design are needed to minimise the risk of pollution and to protect groundwater sources. A scheme of surface water drainage is required to manage flood risk and to minimise the risk of pollution. Development should be carried out in accordance with the

approved plans to reflect the advice in *Greater flexibility for planning permissions* and also to ensure that the accommodation is built to Lifetime Homes Standards as shown on the plans.

41. In my opinion the suggested conditions relating to the following matters are not needed. It is not necessary to require obscure glazing in windows in the west elevation as these would not cause harmful overlooking of nearby properties. As I have imposed a condition requiring the scheme to meet CSH Level 3, consistent with the evidence before the Inquiry, it is not necessary to require further pre-commencement approvals in relation to this matter. Any works to the footway to Melbourne Street would not be within the appeal site and, in any event, would be controlled by other legislation.

David Prentis

Inspector

Schedule 1 – approved plans

3020.EXG.01	
3020.EXG.02	Rev A
3020.EXG.03	
3020.EXG.04	
3020.PL.001	Rev C
3020.PL.002	Rev D
3020.PL.100	Rev F
3020.PL.101	Rev D
3020.PL.102	Rev D
3020.PL.103	Rev D
3020.PL.104	Rev D
3020.PL.105	Rev D
3020.PL.106	Rev D
3020.PL.200	Rev D
3020.PL.201	Rev B
3020.PL.300	Rev C
3020.PL.301	Rev C
3020.PL.303	Rev B
3020.PL.304	
3020.PL.350	Rev A
3020.PL.351	Rev A
3020.PL.400	Rev A
3020.PL.401	Rev A
3020.PL.402	Rev A
3020.PL.700	Rev B
3020.PL.701	Rev B

Schedule 2 – conditions

1) The development hereby permitted shall begin not later than three years from the date of this decision.

2) The development hereby permitted shall not be occupied until the refuse and recycling storage facilities have been provided in accordance with details shown on submitted plan No 3020.PL.100F. The refuse and recycling storage facilities shall be permanently retained as such thereafter.

3) No development shall take place until samples of the materials (including colours of render and paintwork) to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

4) The dwellings shall achieve a Code Level 3 in accordance with the requirements of the Code for Sustainable Homes: Technical Guide (or such national measure of sustainability for house design that replaces that scheme). No dwelling shall be occupied until a Final Code Certificate has been issued for it certifying that Code Level 3 has been achieved.

5) The vehicle parking areas shown on submitted plan No 3020.PL.100F shall be provided before the occupation of the development hereby approved and shall thereafter be permanently kept available for the parking of the vehicles of the occupiers of, and visitors to, the development.

6) The cycle parking facilities shown on submitted plan No 3020.PL.100F shall be provided before the occupation of the development hereby approved and shall thereafter be permanently kept available for the parking of the cycles of the occupiers of, and visitors to, the development.

7) The development shall be carried out in accordance with the submitted External Lighting Details and Light Pollution Assessment (Reference 3020.ELA.01) and shall thereafter be permanently retained as such.

8) No development shall take place until an assessment of the nature and extent of contamination has been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a competent person and shall assess any contamination on the site, whether or not it originates on the site. Moreover, it must include:

   i) a survey of the extent, scale and nature of contamination

   ii) an assessment of the potential risks to:
   - human health
   - property (existing or proposed) including buildings, pets, service lines and pipes
   - adjoining land
   - groundwaters and surface waters
   - ecological systems

9) No development shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural environment has been submitted to and approved in writing by the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, an appraisal of remediation options and proposal of the preferred option(s), and a timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

10) The remediation scheme approved pursuant to Condition 9 shall be implemented in accordance with the approved timetable of works. Within 2 months of the completion of measures identified in the approved remediation scheme, a validation report (that demonstrates the effectiveness of the remediation carried out) must be submitted to the local planning authority.

11) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing within 3 days to the local planning authority and once the local planning authority has identified the part of the site affected by the unexpected contamination development must be halted on that part of the site. An assessment must be undertaken in accordance with the requirements of Condition 8 and, where remediation is necessary, a remediation scheme, together with a timetable for its implementation, must be submitted to and approved in writing by the local planning authority in accordance with the requirements of Condition 9. The measures in the approved remediation scheme must then be implemented in accordance with the approved timetable. Following completion of the measures identified in the approved remediation scheme, a validation report must be submitted to and approved in writing by the local planning authority in accordance with Condition 10.

12) No development shall take place until a monitoring and maintenance scheme to include monitoring the long-term effectiveness of the proposed remediation over a period of 5 years, and the provision of reports on the same, has been submitted to and approved in writing by the local planning authority. The monitoring and maintenance scheme shall be implemented as approved.

13) No development shall take place until details of foundation designs have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

14) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include means of enclosure; hard surfacing materials; the proposed sedum roofing and planting plans.

15) All hard and soft landscape works shall be carried out in accordance with the approved details. The hard landscaping works and means of enclosure shall be carried out prior to the occupation of any part of the

development and shall be permanently retained thereafter. The planting shall be carried out in the first planting season following completion of the development or in accordance with a programme agreed with the local planning authority. Any trees or plants which within a period of 5 years from the completion 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, unless the local planning authority has given written consent to any variation.

16) No development shall take place until details of surface water drainage have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

17) The development hereby permitted shall be carried out in accordance with the approved plans listed in schedule 1.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mrs H Woodward	Solicitor, Brighton and Hove City Council
She called	
Miss K Brocklebank BA DipTP MRTPI	Senior Planning Officer, Development Control team, Brighton and Hove City Council
Mrs E Thomas BA MCD	Senior Planning Officer, Planning Strategy and Projects team, Brighton and Hove City Council
Ms P Goncalves BA AADip MPhil DPhil MA	Senior Planning Officer, Planning Strategy and Projects team, Brighton and Hove City Council

FOR THE APPELLANT:

Mrs H Townsend	of Counsel, instructed by Mr S Bareham, Lewis and Co
She called	
Mr S Atkins BA(Hons) DipArch RIBA	ABIR Architects Ltd
Mr C Oakley MRICS	Oakley Commercial Estate Agents and Valuers
Mr S Bareham BSc(Hons) DipTP MRTPI	Lewis and Co Planning South East Ltd

INTERESTED PERSONS:

Ms C Hubert	Trustee of Fresh Start
Mr J Bebb	Trustee of Fresh Start
Ms J Attwood	Local resident
Mrs P Stokes	Local resident

DOCUMENTS SUBMITTED AT THE INQUIRY

1 Document list submitted by the appellant
2 Roger Tym and Partners Employment Land Study 2006, plus summary, appendices and update report of 2009
3 Extracts from the South East Plan
4 Extracts from the draft Core Strategy
5 Housing land supply tables – December 2009
6 Plans relating to Appeal Ref APP/Q1445/A/08/2065312
7 DCLG Advice Note on 5 year land supply
8 Plans relating to Appeal Ref APP/Q1445/A/09/2111696
9 Opening submissions for the appellant
10 Opening submissions for the Council
11 Extract from PPS1 Supplement *Planning and Climate Change*
12 1st S106 Agreement dated 14 May 2010
13 2nd S106 Agreement dated 14 May 2010

14 3rd S106 Agreement dated 14 May 2010
15 Site plan submitted by Mr Atkins
16 Conditions suggested by the Council
17 Email detailing potential improvements to local parks
18 Planning history of No 124 Lewes Road
19 Closing submissions for the Council
20 Report of *Burdle and Another v Secretary of State for the Environment and Another* [1972]
21 Closing submissions for the appellant