



Appeal Decision

Hearing Held on 18 December 2018

Site visit made on 19 December 2018

by R.W Allen B.Sc (Hons) PGDip MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th January 2019

Appeal Ref: APP/Q1445/W/18/3192649 1-3 Ellen Street, Hove BN3 3LN

- 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 Matsim Properties Limited against the decision of Brighton & Hove City Council.
 - The application Ref BH2016/02663, dated 15 July 2016, was refused by notice dated 7 July 2017.
 - The development proposed is demolition of existing commercial units to provide a mixed use development comprising 188 residential apartments, 1,988 sqm of office space and 226 sqm of retail space.
-

Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing commercial units to provide a mixed use development comprising 186 residential apartments, 1,317 sqm of office space and 228 sqm of retail space at 1-3 Ellen Street, Hove BN3 3LN in accordance with the terms of the application, Ref BH2016/02663, dated 15 July 2016, subject to the conditions set out in the Schedule of Conditions at the end of this decision.

Application for Costs

2. An application for costs was made by Matsim Properties Limited against Brighton & Hove City Council. This application is the subject of a separate decision.

Preliminary Matters

3. The main parties confirmed at the Hearing that the quantum of residential units and the floor space for the commercial elements of the scheme before me differs from that originally sought, which is set out in the banner heading above. This is because the design evolved during the application stage. I have subsequently determined the appeal on those changes.
4. Common ground exists between the main parties in respect of the forecast revenues and costs associated with the commercial elements of the proposed development. As no other party has raised any concerns, I am content to accept these as correct and I make no further finding on them in my decision.
5. Prior to the Hearing, I noted a number of errors and inconsistencies between the stated plans as set out in the Council's decision notice; the plans as listed in suggested condition (2); and those plans before me. I requested the parties

correct these anomalies, and I have taken the post-Hearing submissions into consideration in my decision.

6. A Legal Agreement under s106 of the Town and Country Planning Act 1990 (as amended) was submitted at the Hearing which provides for financial contributions towards local facilities and infrastructure. Further consideration is given to this later in this decision.

Main Issue

7. The main issue is whether or not the proposed development would make adequate provision for affordable housing.

Reasons

8. City Plan¹ policy CP20 requires the provision of affordable housing for new residential development on sites of five dwellings or more. The policy's starting position is for a 40% onsite provision, but that in itself may be flexibly applied where the Council considers this to be justified, and having regard to five criteria. The main parties agree that the Council reduced its initial requirement of affordable housing to 25%; which is its current position. While it offered 18.8% at the application stage, the appellant is offering 10% affordable housing for the appeal.
9. The main parties hold differing views as to the gross development value (GDV) of the proposed residential flats. The appellant states that its valuation was undertaken and reviewed by a local property agent in 2017 and was specific to the site and the immediate area. Valuations were calculated by applying a price per-square-foot (ppsqf) or price per-square-metre (ppsqm) for each unit, taken on a floor-by-floor and a block-by-block assessment. The appellant further states that it has accounted for uplift in value by applying the UK House Price Index data supplied by the Land Registry. This, the appellant says, contributes towards the different and fluctuating GDV figures set out in its January and August 2018 viability reports; why the latter is a lower value than the former; and why the affordable housing offer has been reduced.
10. I share the Council's view that the appellant could have provided an updated valuation for the appeal. This I find would have been helpful not only in ascertaining a clearer picture on the likely sales values of the proposed units at the time of the appeal, but also how they would compare against the 2017 assessment and against other developments in the locality as identified by the Council. Having said that, the Council has not suggested, and I have read and heard little evidence which casts doubt that the appellant's approach has been incorrect or misleading; indeed the Council itself cites the UK House Price Index data in its own evidence.
11. I acknowledge the Council's alternative revenue calculations of the proposed units, based on sales data of other new developments coupled with local market trends, are indeed a useful barometer in ascertaining the likely going rate for new residential development. However, I do not find the proposal can be solely judged on this, and the evidence of a local expert for the appeal site itself must in my judgement hold the greater weight, particularly in the absence of any directly comparable evidence to the contrary.

¹ The Brighton & Hove City Plan Part One – Brighton & Hove City Council's Development Plan March 2016

12. I do not find that the ppsqf/ppsqm values on those other developments cited by the Council are significantly adrift of the appellant's. But in any event, I do not have the specific details to be able to conclude with any degree of clarity or certainty as to the circumstances which warranted the higher values at those sites, and whether they would be realistic or justified for the appeal site. I therefore accept the possibility, as advanced by the appellant, that the particular surroundings of the appeal site may indeed have a bearing on market revenues for the proposed units compared with other nearby developments, or indeed that those cited locations advanced by the Council may be in more sought after areas which may have had a bearing on elevating those values.
13. In the same way, I am satisfied that the appellant's assessment does validly take account of, and as such calculates the appropriate increased ppsqf and ppsqm value on the units on the upper floors, and this is consistent with the written and oral evidence from both parties regarding the increased values of residential units the higher up they are.
14. Notwithstanding the discrepancies identified by the Council between the drawings and the stated floor areas of the proposed units, I am satisfied that overall the differences are very small and have occurred through an exercise of rounding up and down, and conversion between imperial and metric calculations. I am also satisfied that the financial evidence advanced by the appellant is based on the total floor space as agreed by both parties in the statement of common ground. Therefore for those reasons, I afford the appellant's GDV with greater weight.
15. Construction and other costs associated with the proposed development are another area of dispute between the parties. The appellant states that its construction cost plan has been assessed specifically for the appeal site. The Council relies on the Building Cost Information Service (BCIS) database, but my attention has been drawn, both in written evidence and at the Hearing, to the BCIS guidance notes and in particular its conditions of use; wording of which was not disputed by the Council at the Hearing. This states that the BCIS database should not substitute specific site analysis undertaken from a qualified person.
16. The Council argues that, amongst other things, the appellant's cost plan is lacking in supporting data; has been assessed on incomplete information; and relies on estimated allowances to fill in voids in information. Even if I accept this to be true, little evidence is before me which persuades me that it is not nonetheless a sufficient and robust document as it currently stands. Being the only site specific cost plan before me, I afford it the benefit of the doubt in my decision.
17. I do however cast doubt of the appellant's contingency costs. Here, the appellant considers 10% is reasonable. But, where I am told by the parties that the industry standard is to allow for a 5% contingency, I am not persuaded on the evidence before me that the appellant has sufficiently justified the necessity or reasonableness for this increased provision.
18. I am also doubtful of the appellant's cost allowance for an off-plan sales incentive or discount amounting to a 10% reduction from the market price. The main parties agree that off-plan sales would amount to 50% of the total, and I have no reason to disagree. However, I find little persuasive evidence to

justify its need. Indeed and to the contrary, the Council advances a number of examples, including the opinion of a local agent, which states that no nearby development has undertaken any such off-plan discount.

19. Moreover, given the uncontested evidence advanced by the Council of the dire and pressing housing and affordable housing need in the Brighton housing market area, it seems incredulous to me that the appellant would need to go to such measures to incentivise the sale of the residential units. Indeed, the evidence suggests in fact the opposite would be true, and there would likely be considerable and early interest particularly having regard to its location close to transport hubs and local shops. Notwithstanding the appellant's explanation I find little credibility exists for an off-plan discount.
20. The final main area of dispute between the parties concerns the existing use value (EUV) and the benchmark land value (BLV) of the current site. Notwithstanding its current warehouse usage, the main parties agree that for the purposes of establishing a value, an office use should be considered. This is because two of the existing units now currently either have planning consent² or lawful use³ to be used for offices. The parties informed me at the Hearing that the third unit is subject to an appeal against a failure of the Council to determine an application within the given time period; though the Council stated that it saw no obvious impediment to the change of use being granted. The parties also agree that in establishing the BLV, a 15% incentive should be added to the EUV. In both cases, I have no reason to disagree.
21. Both main parties agree that an office use of the existing building would command £18psf, generating a yield of 6.75%. On the evidence before me of comparable office accommodation achieved in the local area I have no reason to disagree. However, the main parties agree that the appellant's valuation is a discounted rate for prospective tenants prepared to undertake the necessary refurbishment and extensions themselves to facilitate an office use, and thus they would bear the financial burden accordingly.
22. The financial outlay for undertaking such works would not be insignificant regardless of which figure of the main parties I were to accept, and I have grave doubts that any such tenant would be prepared to assume that financial burden. As the Council points out, a prospective tenant would need to be in-situ for a very considerable length of time in order to recoup such costs, and the parties informed me at the Hearing that this would go very much against the grain where the opposite is more common in practice. The appellant has not advanced sufficient evidence where this arrangement has been agreed elsewhere, and I do not find this would be a realistic proposition.
23. The appellant states that if it were to absorb the renovation costs, a price of £28psf would be commanded. But having regard to the evidence of surrounding office rents, I find this probability would be unrealistic and unachievable. Moreover, it would dwarf by some margin the ppsqf for the newly constructed office space to be provided in the proposed development; accommodation of which would in my judgement be arguably superior and more likely to be sought after. I therefore find the appellant's EUV and BLV to be exaggerated, and I find the Council's calculations should be afforded the benefit of the doubt.

² Council reference BH2017/03440

³ Council reference BH2017/00031

24. Drawing the above matters together and for the reasons given above, I find that the appellant's GDV accounting for a 10% affordable housing provision and its construction costs enjoy the greater weight, but I do have concerns in respect of the appellant's stated other costs associated with contingencies and off-plan sales, and with its BLV.
25. I acknowledge the Council's assertion that any changes to revenues or costs, however small or insignificant they may seem at face value, can have notable effects overall. Notwithstanding, it seems to me that taking the appellant's GDV calculations⁴ and applying the lower costs and BLV of the existing site that I find more plausible, the proposed development would nevertheless remain, albeit less severely, in a deficit position.
26. The appellant argued at the Hearing that it was hopeful of drawing on its experience and best practices to lower its construction costs further, as it became clearer what they would be at a more advanced stage in the process. This could allow the scheme to get close to or break even. Applying that same logic to the financial circumstances I have found to be more plausible, it seems to me that there could be an eventuality whereby the same said savings could lead to a surplus financial position. In that circumstance, I am alive to the fact the scheme could potentially provide more affordable housing. The submitted Legal Agreement includes the provision of a review mechanism, and I return to this matter below.
27. Taking the above into consideration, I am satisfied on the evidence before me that the proposed development would support only a 10% affordable housing contribution. This is not inconsistent with the National Planning Policy Framework's (the Framework) minimum expectation⁵. The proposed development would as such comply with City Plan policy CP20, details of which I have given above.

Other Matters

28. The appeal site lies within close proximity to the Hove Station and the Denmark Villas Conservation Areas. The Council states that the nearby Hove Railway Station building is Grade II listed. The main parties do not express an opinion as to the effect of the proposed development on the significance of the heritage assets, and the Council does not raise this as an objectionable matter for the appeal or advance conflict with the development plan on this matter.
29. Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special regard shall be paid to the desirability of preserving or enhancing a listed building or its setting and the character or appearance of that area. From my observations, I find the significance of both is defined by the character and appearance of its buildings, which display a remarkable consistency and regularity in terms of design, use of decorative materials, and layout.
30. I do not doubt that the proposed development would be visible from the said heritage assets, particularly given the height of some of the proposed buildings. However, I am satisfied that the proposed buildings would not be prominent; and they would not dwarf or overwhelm the heritage assets to the extent that their significance would be unduly altered, particularly in the ways

⁴ Paragraph 5.1 of the Appellant's Viability Statement dated August 2018

⁵ Paragraph 64

in which they are currently experienced. I do not therefore find that the proposal would considerably harm their character and appearance, and in discharging my statutory duty and I am satisfied that the significance of the heritage assets would be preserved.

31. I have noted concerns raised by residents in respect to the design of the proposed development; the proposed building heights and its quantity and density; and to the effect on their living conditions particularly in regard to outlook and overshadowing. From my observations, I am satisfied that the proposed development would assimilate successfully into its surroundings, and it would be sufficiently distant from surrounding properties not to cause significant harm to the living conditions of the occupiers of those properties. The stated effect on local businesses and infrastructure including traffic has not been substantiated in evidence and I do not consider the matters further in my decision. The Council has not in any event raised any of the above as objectionable matters.

Conditions

32. I have considered the conditions suggested by the Council against the Framework⁶, and made changes necessary to comply with those requirements. I also note that the appellant has given its written acceptance of those conditions which require a discharge of a requirement prior to the development's commencement.
33. I have specified the approved plans so as to provide clarity and certainty as to the scheme approved. A condition relating to materials, landscaping, and the prevention of exposing unsightly cables and pipework et al is necessary to ensure the appearance of the development would be satisfactory. Conditions relating to soundproofing, a noise management plan (which I have merged the suggested two separate conditions into one), and the treatment of any plant or machinery are necessary to protect to the living conditions of the future occupiers of the proposed development from the commercial activities. For similar reasons and to allow the Council to retain control of any potential future use, I find a condition restricting any permitted change of use of the office element of the scheme is also necessary.
34. I am satisfied that conditions for details of the green roofs, green walling, nature conservation measures and bird and bat boxes are necessary in the interests of protection and promotion of biodiversity and wildlife. Conditions for BREEAM demonstration for the commercial elements, water and energy efficiency, surface water drainage, adaptable homes and the plant room future network connection capacity are necessary for a development of this size and scale in order to promote sustainable development and to accord with the site specific requirements in the City Plan.
35. Conditions to investigate potential contamination are necessary in the interests of protecting human health and the water from pollution. However, I find it unnecessary to impose two sets of very similarly worded conditions as suggested by the Council, and I find one set more succinctly put will suffice to discharge both matters. Conditions are necessary to ensure the provision of refuse and recycling facilities, control of deliveries and for adequate parking to ensure no detrimental effect on the local highway network, though I have

⁶ Paragraph 55

condensed a number of these suggested in the interests of brevity and succinctness.

36. I have not carried forward a condition on foul sewerage as no specific planning reason was advanced by either party for its need, and the matter is controllable under other legislation. Little evidence was advanced by the parties for the need for conditions in respect to odour control and I have subsequently not imposed them.

Legal Agreement

37. The Council seeks a legal agreement to secure 10% of the dwellings to be provided as affordable housing, equating to 19 dwellings, as well as a review mechanism. It also seeks a financial contribution towards open space recreation, indoor sports provision, education, public art, local employment scheme and sustainable transport methods. These requirements are duly provided for in the Agreement before me, and neither main party has advanced any objections to it.
38. The Planning Practice Guidance⁷ states that review mechanisms contained within legal agreements may be appropriate in such circumstances where contributions are below requirements in policy, and I widen this definition to include areas where some degree of viability uncertainty exists, as is the case here. I take a great degree of comfort in the knowledge that such a provision exists in the signed Legal Agreement before me. This requires a review of the viability of the scheme to be undertaken and a financial contribution to be made in the event of a surplus subsequently being found.
39. Because of my findings above, I am satisfied that it is a necessary requirement of the Legal Agreement, as it would strengthen the Council's ability to seek compliance with City Plan policy CP20 over the lifetime of the project and ensure the appropriate affordable housing provision is made. While I am being invited to do so by the appellant, I do not for the reasons given above exercise my judgement and strike out the said schedule.
40. The Framework⁸ says requests for planning obligations must meet three tests, which are: (i) necessary to make the development acceptable in planning terms; (ii) directly related to the development; and (iii) fairly and reasonably relate in scale and kind to the development.
41. On evidence before me, I am satisfied that the Legal Agreement would be consistent with the tests of Framework. I am further satisfied on the evidence before me including those submissions made at the Hearing, that the requirements are site specific and as such would comply with provisions contained within the Community Infrastructure Levy Regulations in respect of pooled contributions.

Planning Balance

42. The main parties agreed at the Hearing that the Council cannot demonstrate a five-year housing land supply. In such circumstances, the Framework's presumption in favour of sustainable development⁹ is engaged. This states

⁷ Paragraph 009 Reference ID: 10-009-20180724

⁸ Paragraph 56

⁹ Paragraph 11d

that where policies which are most important for determining applications are out-of-date, which is the case here by reason of the absence of a five-year housing land supply, planning permission should be granted for development unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

43. The main parties are agreed on the benefits of the scheme. The site is designated as a strategic allocation area within the City Plan where policy DA6 C applies. This policy seeks a comprehensive mixed use redevelopment of over the appeal site and wider commercial units along Conway Street. While there are some areas where the appeal scheme differs from the requirements of the policy, the Council confirmed at the Hearing that the proposed development generally accords with it. I have no reason to disagree, and being the first scheme to come forward I acknowledge that the proposed development could in effect kick-start this process of the wider regeneration of this area.
44. It would provide much-needed new market and affordable housing and commercial space, and has the potential to open opportunities for employment during construction and operation stages. I also find that the proposed development would result in an improvement to character and appearance of the area against the existing situation. I attach considerable weight and importance to these benefits.
45. I acknowledge that the level of affordable housing provision where pressing need exists is undoubtedly on the low side. But as I have found on the evidence before me the scheme cannot reasonably provide more. However, the provision of a review mechanism in the Legal Agreement, as discussed above, allows provision for payments to be made should the proposal demonstrate a surplus, and this reduces the any harm in this regard. It would also preserve the significance of the heritage assets.
46. In my judgement, and applying the so-called tiled balance, I find that the adverse impacts of the proposed development do not significantly and demonstrably outweigh the benefits. The proposed development would amount to sustainable development for the purposes of the Framework, and would comply with the development plan as a whole.

Conclusion

47. For the reasons given above I conclude that the appeal should be allowed.

R Allen

INSPECTOR

Schedule of 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 be carried out in accordance with the following approved plans:
15897-PA-010 Rev A; 15897-PA-011 Rev A; 15897-PA-100 Rev C; 15897-PA-101 Rev E; 15897-PA-102 Rev D; 15897-PA-103 Rev D; 15897-PA-104 Rev D; 15897-PA-105 Rev C; 15897-PA-106 Rev C; 15897-PA-107 Rev C; 15897-PA-108 Rev C; 15897-PA-109 Rev D; 15897-PA-110 Rev D; 15897-PA-111 Rev C; 15897-PA-112 Rev B; 15897-PA-113 Rev C; 15897-PA-114 Rev C; 15897-PA-115 Rev C; 15897-PA-116 Rev D; 15897-PA-117 Rev C; 15897-PA-118 Rev C; 15897-PA-200 Rev D; 15897-PA-201 Rev D; 15897-PA-202 Rev D; 15897-PA-203 Rev D; 15897-PA-204 Rev B; 15897-PA-205 Rev B; 15897-PA-210; 15897-PA-211; 15897-PA-212; 15897-PA-213; 15897-PA-250 Rev B; 15897-PA-251 Rev B; 15897-PA-252 Rev B; 15897-PA-253 Rev B; 15897-PA-254 Rev B; 15897-PA-300 Rev B; 15897-PA-301 Rev B; 15897-PA-302 Rev B; 15897-PA-303 Rev B; 15897-PA-304 Rev B; 15897-PA-305 Rev B; 15897-PA-306 Rev B; 15897-PA-307 Rev B; 15897-PA-314; 15897-PA-315; 15897-PA-316; 15897-PA-317; 15897-PA-400 Rev C; 15897-PA-401 Rev C; 15897-PA-402 Rev C; and 15897-PA-403.
- 3) No development above ground floor slab level of any part of the development hereby permitted shall take place until samples of all materials to be used in the construction of the external surfaces of the development have been submitted to the Local Planning Authority for approval in writing. Development shall be carried out in accordance with those approved details.
- 4) No cables, wires, aerials, pipework (except rainwater downpipes as shown on the approved plans), meter boxes or flues shall be fixed to any elevation facing a highway.
- 5) Notwithstanding the submitted drawings no development above ground floor slab level of any part of the development hereby permitted shall take place until a scheme for landscaping including its management and maintenance, and a timetable for implementation, has been submitted to the Local Planning Authority for approval in writing. The scheme shall include the following: Details of all hard and soft surfacing, including durability and maintenance; details of all boundary treatments, including durability and maintenance; details of all external plant, machinery, extract flues and vents and their location; details of all proposed planting, including numbers and species of plant, details of size and planting method of any trees and cultivation. Species should be included that mitigate pollution in the gas and particulate phases and wherever possible native species of local provenance should be provided. Development shall be carried out in accordance with those approved details.
- 6) No development shall commence until a scheme for the soundproofing of the building has been submitted to the Local Planning Authority for approval in writing, including enhanced glazing and specially designed ventilation throughout all buildings to enable noise attenuation by closing

windows. The party walls/floors between sensitive receptor units and noisier source uses should be designed to achieve a sound insulation value of 5dB better than Approved Document E performance standard, for airborne sound insulation for floors of purpose built dwelling-houses and flats. A scheme of testing should be carried out post construction but prior to occupation to demonstrate that levels in BS 5228-1:2009+A1:2014 BS5228:2014 parts 1 and 2 are met. The measures shall be implemented in accordance with the approved details prior to the occupation of the development and shall thereafter be retained as such.

- 7) The development hereby permitted shall not be occupied until a Noise Management Plan which includes details of the types of vehicles, how deliveries servicing and refuse collection will take place and the frequency of those vehicle movements has been submitted to the Local Planning Authority for approval in writing. All deliveries servicing and refuse collection shall thereafter be carried out in accordance with the approved plan.
- 8) No development shall commence until a scheme for the suitable treatment of all plant and machinery against the transmission of sound and/or vibration has been submitted to the Local Planning Authority for approval in writing. The measures shall be implemented in accordance with the approved details prior to the occupation of the development and shall thereafter be retained as such.
- 9) The hereby permitted office premises shall be used as an office (Use Class B1(a)) only and for no other purpose (including any other purpose in Class B 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.
- 10) No development above ground floor slab level of any part of the development hereby permitted shall take place until details, including a timetable of the construction of the green roofs have been submitted to the Local Planning Authority for approval in writing. The details shall include a cross section, construction method statement, the seed mix, and a maintenance and irrigation programme. The roofs shall then be constructed in accordance with the approved details and completed shall be retained as such thereafter.
- 11) No development above ground floor slab level of any part of the development hereby permitted shall take place until details of the proposed green walling together with its maintenance and irrigation programme has been submitted to the Local Planning Authority for approval in writing. The walls shall thereafter be constructed, maintained and irrigated in accordance with the approved details.
- 12) Prior to first occupation of the development hereby permitted a scheme to enhance the nature conservation interest of the site shall have been submitted to the Local Planning Authority for approval in writing. Development shall be carried out in accordance with the approved details

- and completed prior to the first occupation of the development hereby approved.
- 13) Prior to first occupation of the development hereby permitted details showing the type, number, location and timescale for implementation of the compensatory bird and bat boxes shall have been submitted to the Local Planning Authority for approval in writing. The scheme shall then be carried out in strict accordance with the approved details prior to its first occupation and thereafter retained.
 - 14) Unless otherwise agreed in writing by the Local Planning Authority, the non-residential development hereby approved shall not be occupied until a BREEAM Building Research Establishment issued Post Construction Review Certificate confirming that the non-residential development built has achieved a minimum BREEAM New Construction rating of 'Excellent' has been submitted to the Local Planning Authority for approval in writing.
 - 15) None of the residential units hereby approved shall be occupied until each residential unit built has achieved a water efficiency standard using not more than 110 litres per person per day maximum indoor water consumption.
 - 16) None of the residential units hereby approved shall be occupied until each residential unit built has achieved an energy efficiency standard of a minimum of 19% CO2 improvement over Building Regulations requirements Part L 2013 (TER Baseline).
 - 17) No development shall take place until a detailed design and associated management and maintenance plan of surface water drainage for the site using sustainable drainage methods as per the recommendations of the Sustainable Drainage Report and Flood Risk Assessment (Ref: 14808/01/SDR) and dated January 2016 has been submitted to the Local Planning Authority for approval in writing. The approved drainage system shall be implemented in accordance with the approved detailed design prior to the building commencing.
 - 18) No development above ground floor slab level of any part of the development hereby permitted shall take place until details of the quantum, which must be a minimum of 5% of the total, and the design of the residential units that are to be wheelchair accessible and those which are to be affordable rented units have been submitted to the Local Planning Authority for approval in writing. Development shall be carried out in accordance with those approved details.
 - 19) Prior to the first occupation of any part of the development hereby approved, details of demonstration that the energy plant has capacity to connect to a future district heat network in the area has been submitted to the Local Planning Authority for approval in writing.
 - 20) No development shall commence until an assessment of the risks posed by any contamination, which shall include a desk top study of previous uses of the site and a site investigation report, has been submitted to the Local Planning Authority for approval in writing. The results of those risks identified together with the required remediation measures and timescales to render it suitable for the approved development shall be submitted to the Local Planning Authority for approval in writing. The

- site shall be remediated in accordance with the approved measures and a verification report including a monitoring and maintenance plan of pollutant linkages and contingency action shall be submitted to the Local Planning Authority for approval in writing.
- 21) If during construction, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing by the Local Planning Authority), shall be carried out until a method statement identifying and assessing the risk and proposing remediation measures, together with a programme for such works, shall be submitted to the Local Planning Authority for approval in writing. The remediation measures shall be carried out as approved and in accordance with the approved programme.
 - 22) All existing infrastructure should be protected during construction with no excavation, tree planting or mounding being carried out within four metres of the public water main without consent. Any public sewer found during construction shall be surveyed before any further works commence on site.
 - 23) No drainage systems for the infiltration of surface water drainage into the ground is permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters. The development shall be carried out in accordance with the approved details.
 - 24) Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.
 - 25) The development hereby approved shall not be occupied until the refuse and recycling storage facilities indicated on the approved plans have been fully implemented and made available for use. These facilities shall thereafter be retained for use at all times.
 - 26) No delivery vehicular movements nor any loading or unloading of vehicles to the A1 unit shall take place except between the hours of 7am and 7pm on Monday to Saturdays or between 8am and 6pm on Sundays, Bank or Public Holidays.
 - 27) The development hereby permitted shall not be occupied until a Delivery and Service Management Plan for the commercial elements of the scheme, which includes details of the types of vehicles, how deliveries servicing and refuse collection will take place and the frequency of those vehicle movements has been submitted to the Local Planning Authority for approval in writing. All deliveries servicing and refuse collection shall thereafter be carried out in accordance with the approved plan.
 - 28) The development hereby permitted shall not be first occupied until details of a comprehensive parking and management plan, to include a detailed parking layout drawing, details of secure cycle storage, disabled parking provision, motorcycle parking and signage have been submitted to the Local Planning Authority for approval in writing. Development shall be

carried out in accordance with those approved details and completed prior to occupation of any part of the development and shall thereafter be retained.

- 29) The vehicle parking area(s) shown on the approved plans shall not be used otherwise than for the parking of private motor vehicles and motorcycles belonging to the occupants of and visitors to the development hereby approved and shall be maintained so as to ensure their availability for such use at all times.
- 30) Within six months of commencement of the development hereby permitted, a scheme shall be submitted to the Local Planning Authority for approval in writing to provide that the residents of the development, other than those residents with disabilities who are Blue Badge Holders, have no entitlement to a resident's parking permit. The approved scheme shall be implemented before occupation.
- 31) The development hereby permitted shall not be commenced until details of electric vehicle charging points have been submitted to the Local Planning Authority for approval in writing. These facilities shall be fully implemented and made available for use prior to the occupation of the development hereby permitted and shall thereafter be retained for use at all times.

APPEARANCES

FOR THE APPELLANT:

Ms Felicity Thomas	Counsel for the Appellant
Mr Nick Bignall	Viability Consultant
Mr Simon Lambor	Appellant
Mr Andrew Lambor	Appellant
Mr Oliver Tuckley	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Chris Swain	Planning Officer
Mrs Hilary Woodward	Solicitor
Mr Jeffrey Solomon	Viability Consultant
B.Sc (Hons) MRICS	
Mr Lee Jackson	Viability Consultant

INTERESTED PERSONS:

Professor Mike Gibson	Local Resident
Mr Michael O'Connor	Local Businessman
Councillor Jackie O'Quinn	Ward Councillor

DOCUMENTS SUBMITTED AT THE HEARING

1. Position Statement submitted by the appellant.
2. Updated and correct Decision Notice submitted by the Council.
3. CIL Compliance Statement submitted by the Council.
4. Signed Legal Agreement submitted by the Council.
5. Response to application for costs submitted by the Council.
6. Extracts from the BNP report submitted by the Council.