



Appeal Decision

Inquiry held on 9-11 December 2008
Site visit made on 12 December 2008

by **K Nield BSc(Econ) DipTP CDipAF 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:
21 January 2009

Appeal Ref: APP/Q1445/A/08/2081266

Land east of 55 Highcroft Villas, Brighton, East Sussex, BN1 5PT

- 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 Kingsbury Estate Ltd against the decision of Brighton and Hove City Council.
- The application Ref BH2007/03843, dated 12 October 2007, was refused by notice dated 24 January 2008.
- The development proposed is the erection of an apartment building containing 24 flats together with parking and access.

Decision

1. I allow the appeal and grant planning permission for the erection of an apartment building containing 24 flats together with parking and access at land east of 55 Highcroft Villas, Brighton, East Sussex, BN1 5PT in accordance with the terms of the application (Ref BH2007/03843, dated 12 October 2007) and the details submitted therewith as amended by Dwg. nos. P302E and P303E and subject to conditions set out at Annexe A to this decision.

Procedural Matters

2. At the Inquiry an application for costs was made by Kingsbury Estate Ltd against Brighton and Hove City Council. This application is the subject of a separate Decision.
3. Subsequent to the determination of the appeal application the appellant company has prepared drawings (Dwg. nos. P302E and P303E) providing an amendment to the internal layout to comply with the Council's requirements set out in policy HO13 of the adopted Brighton and Hove Local Plan (LP) that all new residential development should be built to a Lifetime Homes standard and for an agreed proportion of all new dwellings to be built to wheelchair accessible standards.
4. At the commencement of the Inquiry the appellant company requested that the revised scheme drawings be taken into account in the determination of the appeal. In my view the amendments satisfy the tests laid down by the Courts in *Wheatcroft V SSE*¹ in that the proposed modifications would not materially alter the nature of the application and interested persons would not be prejudiced by not having the opportunity to be consulted on the amendments at this stage. Consequently, I ruled that the amended layout be considered in

¹ Reported in Journal of Planning Law, 1982, P37

the determination of the appeal. The Council accepted² that the amended scheme drawings overcame the Council's reason for refusal in those regards set out in Reason 3 of the Council's Decision Notice and that the matters could be secured through a planning condition if all other matters were found to be acceptable. In the light of this it is not necessary for me to consider further evidence in respect of this matter.

Preliminary Matters

5. The application form does not identify whether the application is in outline or in respect of an application for full planning permission. As the Council dealt with the scheme as a full application I shall determine the appeal on the same basis.
6. A signed and dated Unilateral Undertaking (UU) prepared under the provisions of Section 106 of the Town and Country Planning Act, as amended, was submitted by the appellant company to the Inquiry³ which, in the event of the appeal being allowed, would provide for the provision of financial contributions to the Council towards the improvement of open space provision, sustainable transport and education facilities in the vicinity of the appeal site. In addition the UU makes provision for a financial contribution to allow the translocation of slow-worms from the appeal site to another site in the Council's ownership and for the provision of 10 affordable dwellings within the scheme. I am satisfied from the submissions made at the Inquiry that the UU meets the tests set out in Circular 05/2005: *Planning Obligations*.
7. The Council confirmed at the Inquiry that, on the basis of the provisions of the UU in respect of the translocation of slow-worms it would withdraw its objection set out at Reason 2 of its Decision Notice. In the light of this it is not necessary for me to consider further evidence in respect of this matter.
8. The Council objected to the provisions of the UU in respect of the proposed arrangements for affordable housing and I have therefore included this issue as part of my consideration of the merits of the proposal.
9. The site is currently being used for the siting of accommodation portacabins for contractors carrying out the demolition of the Old Pullman Shed on adjoining railway land to the north. The lawfulness of this activity and consequent effects for nature conservation interests on the site was questioned by the Council and some local residents at the Inquiry. There are measures within the Planning Acts that can be taken to establish the lawfulness of various activities but that is not a matter for me to consider in this appeal.

Main Issues

10. In the light of my remarks above in respect of the proposed arrangements for the translocation of slow-worms and for the scheme to be built to a Lifetime Homes standard with an agreed proportion of the new dwellings to be built to wheelchair accessible standards the only issue remaining from the Council's reasons for refusal is the effect of the proposed development on the provision of open amenity space in the locality. However a number of other issues are raised by the evidence which I intend to consider. These are:

² P Earp: Evidence

³ Document 3

- (i) the effect of the development on the character and appearance of the locality,
- (ii) its effect on housing supply, and
- (iii) whether the UU makes appropriate provision for affordable housing.

Reasons

Background

11. The appeal site formed part of the curtilage of the railway until it was sold to the appellant company. Evidence was provided to the Inquiry by the parties and some local residents that the site had been used prior to its sale as private allotments for railway workers but that activity had ceased at least ten years ago. I have no reason to reach a different view. At my visit I noted the remains of several sheds connected with that activity.
12. A recent appeal decision (Ref: APP/Q1445/A/07/2047264, dated 20 March 2008⁴), in respect of another site within the inner urban area of Brighton, considered a similar use of land adjacent to the railway. That Inspector stated (paragraph 52) that "*Notwithstanding the site's more recent history as allotments and, according to the Council, a managed "wildlife site", I do not question that it has, in the past, been part of the railway curtilage and thus fulfils the definition of previously developed (brownfield) land set out in Planning Policy Statement 3:Housing (PPS3)*". I take a similar view to that Inspector in respect of this appeal site. There is no cogent evidence before me to suggest that the use of the site as allotments was other than an ancillary use of operational railway land by railway employees which, as indicated above, ceased some years ago.
13. Outline planning permission was granted on appeal for residential development of the appeal site (Ref: T/APP/Q1445/A/99/1033742/P7 dated 20 June 2000). There is no dispute between the parties that that permission lapsed shortly before the purchase of the site by the appellant company. The previous Inspector considered that the main issue in that appeal was whether the use of the appeal site to meet any unsatisfied need for allotments in the area could be realised, having regard to the relevant development plan policies and all material considerations.
14. That Inspector concluded (paragraph 18) that "*the use of the appeal site to meet an unsatisfied need for allotments in this inner urban area is not going to be realised*". The Inspector further concluded (paragraph 21) that the development plan policies she had been referred to "*do not prevent the use of the appeal site for residential purposes*". Although that permission has lapsed it is, nevertheless, fairly recent in provenance and the underlying considerations in the appeal scheme before me remain broadly the same. I shall, therefore, attach substantial weight to it. The appellant company subsequently made further planning applications for residential development of the site although none has been approved.

⁴ M Pickup Evidence: Appendix 9

Character and appearance

15. The locality of the site is predominantly residential in character and it contains houses of varying styles, ages and form. Dwellings to the west and south-west of the appeal site are mainly substantial semi-detached dwellings, some converted to flats, whilst there are modern blocks of flats to the south (Highfield Lodge) and further along Highcroft Villas to the south-east. This assessment is in line with the description of the Prestonville Character Area contained in the Council's Urban Characterisation Study for Tivoli and Prestonville.⁵ This also indicates that the area as a whole has a medium high density of housing.
16. The proposed development would have a density of 120 dwellings per hectare. This would accord with the government's housing objectives in PPS3 which require the effective use of land that has been previously developed. The appeal scheme would have a contemporary design form and appearance with a staggered footprint on the site and varying roof heights. The appeal site has a slope from south to north and is at a lower elevation than the road. In consequence, the building would be four-storey in height at its front elevation to Highcroft Villas but six-storey at the rear.
17. Viewed from points along Highcroft Villas it would have a similar height to the adjacent dwellings to the west. Existing trees along the frontage and proposed landscaping would soften its appearance. Whilst substantial in form I do not consider that the proposed building would appear unduly prominent in the street scene. Several residents criticise the scale, mass and height of the building and consider it inappropriate to the locality, however, the Council did not raise objection to the proposed appearance of the scheme. I agree with the Council's assessment⁶ that the elevation of the building to Highcroft Villas would provide an attractive frontage to the street without compromising the character of the area.
18. The appeal scheme would be visible in views from the railway and from viewpoints within Preston Park but it would be seen in the context of the higher form of Highcroft Lodge to its rear and other substantial buildings in the locality and, consequently, it would not appear unduly prominent or dominant in longer views. I conclude on this issue that the scheme would not have a harmful effect on the character and appearance of the locality.

Open amenity space

19. Planning Policy Guidance Note 17: *Planning for Open Space, Sport and Recreation* (PPG17) indicates⁷ that existing open space should not be built on unless an assessment has been undertaken which clearly shows that the open space is surplus to requirements and that such an assessment should take into account all the functions that open space can perform. LP policy QD20, whilst not stipulating the need for an assessment, provides a similar restriction on the use of open space and states that planning permission will not be granted for proposals that would result in the loss of areas of public or private open space

⁵ M Pickup Evidence: Appendix 7

⁶ Included in Officer Report to Planning Committee 23 January 2008

⁷ PPG17: paragraph 10

- that are important to people because of their recreational, community, historical conservation, economic, wildlife, social or amenity value.
20. The appeal application overlapped the determination of an application⁸ along similar lines to that previously allowed on appeal for the same site. At a late stage in the determination of that application the Council raised the issue of the effect of the scheme on open space provision indicating that an assessment of open space provision in Brighton would be required as none was available to the Council. A similar consideration was applied to the appeal scheme.
 21. As the land had not been identified as open space by the Council prior to the submission of the application (either in the LP or any other published document) and, taking into account other material factors including the site's planning history and former status as operational railway land, there was no clear need, in my opinion, for the appellant to initiate or undertake such an assessment in respect of the use of this land. Against that background I consider that it was unrealistic for the Council to indicate⁹ that the appellant should have raised in pre-application discussions with the Council the lack of a city-wide assessment of open space as an issue and then to expect the appellant to instigate a city-wide assessment of open space, a major task which the Council had not itself fully undertaken since the publication of PPG17 in 2002.
 22. Although not known to the appellant at the time¹⁰, the Council had commenced an audit of open space and the appeal site was viewed by an officer in July 2007. The Council confirmed¹¹ at the Inquiry that the purpose of the audit was to inform an *Open Space, Sport and Recreation Study* (PMP Study) being undertaken by consultants to the Council which would eventually be part of the Local Development Framework. That study has recently (May 2008) been issued as a draft for internal consideration by Council officers and is at an emerging stage only. In those circumstances I can attach very little weight to it. The study is not site specific (at the request of the Council officers¹²) but one of its functions is to derive an aggregate total of the amount of open space within the city at present and to make recommendations for action based on that assessment.
 23. The Council's audit was not made public and has not been subject to any public consultation. The Council did not produce the audit as part of its own evidence but it was included in that of the appellant. However, the Council confirmed at the Inquiry that it relied upon the audit as its only evidence of the identification and value of the appeal site as open space. The site is identified on a plan accompanying the audit as Natural or Semi-Natural Urban Greenspace (NSN). The PMP study does indicate that Brighton is well provided with NSN compared to other cities of comparable size.
 24. English Nature (now Natural England (NE)) has issued *Providing Accessible Natural Greenspace in Towns and Cities – A Practical Guide to Assessing the Resource and Implementing Local Standards for Provision*. That guidance

⁸ Application BH2007/03333

⁹ P Earp: Cross examination

¹⁰ M Pickup: Evidence

¹¹ E Thomas: Cross examination

¹² Open Space, Sport and Recreation Study - Brighton and Hove City Council – A draft report by PMP – Executive summary (vi)

suggests that for practical reasons a minimum size threshold of 0.25 hectare (ha) should apply to an assessment. The appeal site is below that threshold size. The NE guidance also requires that greenspace be both natural and publicly accessible to meet NE's classification of greenspace, neither of which applies to the appeal site.

25. From my site visit I agree with the appellant that there are significant doubts about the accuracy of the recorded audit information in respect of the appeal site which significantly reduces its worth and, consequently, the weight I can afford it. The audit records the site as being in good landscape condition whereas a significant portion of it is covered in a type of roadstone¹³. It is also described as providing limited access when there is no dispute between the parties that there is no public access to the site. Despite those factors, the audit notes in the comments section that it was hard (for the officer) to see the whole of the area and only part of the site could be viewed. In the light of the inaccuracies identified in the audit notes of the site I am not persuaded that I should attach other than very limited weight to its contents.
26. The Council confirmed¹⁴ that, in practice, its strict application of LP policy QD20 in effect denied the alternative use of any land identified by the Council as being open space. To my mind, such a strict application of the policy is at odds with the justification for the policy set out in the LP¹⁵ which suggests that the Council will seek to balance the competing claims of different land uses and the community's long term requirements for open space. In addition PPG17 notes that not all open space is of equal merit and some may be available for alternative uses. Both the justification for LP policy QD20 and PPG17, to my mind, require a robust assessment of the value of identified open space together with consultation with the local community in order to gauge whether it could be utilised for alternative purposes.
27. With expected population increase in the city to 2017 and assuming there is no increase during that period in the formation of open space, the PMP study shows that open space provision would continue to exceed the NE standard of provision (2 hectares of accessible natural greenspace per 1000 population¹⁶). The Council, however, indicated its intent to set a higher standard based on maintaining the present level of open space provision taking into account population increases. The justification for the Council's position in this regard is not clear to me from the evidence and as it is not an adopted policy I do not attach significant weight to it.
28. The appeal site is clearly appreciated by a significant number of local residents and the Prestonville Community Association for the amenity it provides. The Council did not, however, classify the site as amenity greenspace in its audit, only as NSN. In my opinion the site provides little actual amenity value to the locality. The majority of the site is difficult to see from Highcroft Villas being at a lower elevation than the road and is for the most part an area of overgrown vegetation. I note in this respect that the Council did not dispute the appellant's assessment that the site had extremely limited amenity value.

¹³ Visible on an aerial photograph produced by M Pickup

¹⁴ E Thomas: Cross-examination

¹⁵ Brighton and Hove Local Plan 2005: paragraph 3.90

¹⁶ English Nature: Providing Accessible Natural Greenspace in Towns and Cities: A Practical Guide to Assessing the resource and Implementing local Standards for Provision. (Page 2)

29. The site is appreciated by residents for the space it provides adjacent to the road to allow views over the railway and over areas of the city to the north and north-east. However, the appeal scheme would not remove those views in their entirety with views retained to each side of the proposed building. I noted at my visit the proximity of the appeal site to the extensive recreation area at Dyke Road Park, about 5-10 minutes walk from the appeal site.
30. Whilst there is some limited conflict with LP policy QD20 and PPG17 I conclude on this issue that the proposed development would not have a materially harmful effect upon the provision of open amenity space in the locality.

Housing supply

31. PPS3 indicates¹⁷ that where Local Planning Authorities cannot demonstrate an up-to-date five year supply of deliverable housing sites they should consider favourably planning applications for housing. The Council did not regard the provision of additional housing at the site to be an issue in the appeal and the effect of the scheme on housing supply did not form a reason for its refusal of the scheme. Nevertheless, the Council accepted that it could not identify a five year supply of deliverable housing sites in the city¹⁸. Its most recent assessment was the May 2008 Strategic Housing Land Availability Assessment (SHLAA). The Council accepted that the SHLAA does not reflect recent national and local changes in the housing market, nor does it take account of proposed modifications from the Secretary of State to increase housing provision in the City.
32. In the past the Council relied upon a flow of windfall planning permissions for housing to make up identified shortfalls and it considers that is likely to continue in the future. However, that approach does not accord with advice in PPS3¹⁹ which indicates that allowances for windfalls should not be included in the first 10 years of land supply unless Local planning Authorities can provide robust evidence of genuine local circumstances that prevent specific sites being identified. No such evidence is before me. Nevertheless, the appeal site represents a site that could itself contribute to the windfall provision of housing in Brighton and that to my mind is a factor that should be weighed in the balance of considerations.
33. The scheme would provide 10 affordable housing units. Council members who gave evidence to the Inquiry indicated that the scale of provision would be "a drop in the ocean" in terms of meeting the demand for affordable accommodation in comparison with much larger schemes coming forward in the city²⁰. Whilst I accept that the appeal scheme itself would not significantly reduce the need for such accommodation it would provide some local provision and that benefit should be taken into account in the balance of considerations.
34. I conclude on this issue that the appeal scheme accords with the aims of PPS3 in contributing towards a five year supply of deliverable housing and providing affordable housing.

¹⁷ Planning Policy Statement 3: Housing, paragraph 71

¹⁸ Confirmed in closing statement of Council

¹⁹ Planning Policy Statement 3: Housing, paragraph 59

²⁰ Councillor Kennedy: Statement to the Inquiry

Provisions of the Unilateral Undertaking for Affordable Housing

35. The Council raised objections in respect of two aspects of the submitted UU. Firstly it indicated that the mix of dwelling types did not meet its brief to the appellant as it did not include provision for a 3 bed flat to meet anticipated demand.
36. The appellant explained at the Inquiry that the internal layout and design of the building did not lend itself to such provision. No counter evidence in that regard was presented and the Council did not produce any cogent evidence to support its specific requirement. I consider in this regard that the suggested mix of unit sizes proposed in the scheme would meet a clear need for affordable accommodation in the area.
37. Secondly, the Council did not accept the proposed arrangements for transferring ownership to a Registered Social Landlord (RSL)²¹. Under the appellant's UU the Council's nominated RSLs would have a period of 12 months to take up the provision after which, if not taken up, they would be offered more widely to RSLs up to a period of 36 months after practical completion of the relevant dwelling unit. After the expiry of that period the appellant would be free to dispose of the units on the open market. The Council considers that the period of offer to RSLs should continue indefinitely beyond the specified 36 months.
38. I consider that the appellant's proposed arrangements allow a reasonable time for RSLs, whether nominated by the Council or others, to make suitable arrangements without the dwellings remaining unoccupied beyond 36 months and the proposed arrangement in the UU does not run counter to the aims of PPS3. Moreover the Council did not produce any cogent evidence to indicate why the proposed arrangement would not be acceptable.
39. In respect of both the matters raised by the Council I consider that the provisions of the UU make appropriate arrangements for the provision of affordable housing in the scheme.

Other Matters

40. I acknowledge the strongly felt concern of some residents regarding the stability of the appeal site and the potential consequences for stability from construction work at the site. The Council did not raise specific concerns regarding this matter and it was agreed by the principal parties that, subject to all other matters being acceptable, this could be adequately addressed by a planning condition to require a report from an appropriately qualified person in respect of the stability of the land. Amongst other matters, that would consider the impact of the scheme on the role the land plays in supporting the highway at Highcroft Villas and the impact of the development on the stability of the railway embankment. I consider that this is an appropriate way of dealing with this matter.
41. A number of residents raised concerns regarding highway safety along Highcroft Villas particularly in respect of children attending the nearby schools.

²¹ Unilateral Undertaking – Schedule 1(4)

The proposed access to the scheme from Highcroft Villas would be in reasonably close proximity to the school access on the opposite side of the road. I observed the traffic along Highcroft Villas at both school start and school leaving times noting that whilst the road was busy at both periods with pedestrians and cars there appeared to be reasonable opportunity for on-street parking for parents dropping off or collecting children.

42. The appeal scheme would provide adequate off street parking for occupants of the flats and I do not consider that the scheme would lead to an increase in the need for on-street parking or give rise to increased highway safety issues. I note that the highway authority has not raised concerns regarding these matters.
43. I have had regard to other matters raised including the impact on living conditions of occupants of 55 Highcroft Villas, water supply capacity, the effect on Network Rail operations and on Fire and Rescue Services but none alters my view as to the main issues upon which my decision turns.
44. The Council raised concerns about a precedent being set regarding alternative uses of land which it identifies as open space within Brighton if the appeal is allowed. I have no details of any similar schemes coming forward which raise similar issues but, in any event, I have determined the appeal on its individual merits.

Conditions

45. The parties jointly suggested²² a number of conditions in the event that the appeal is successful. I agree that conditions to require the approval of details and samples of materials to be used in the external surfaces of the building and also in respect of the provision and maintenance of landscaping, including hard surfacing, planting of the development, and details of any trees/shrubs to be retained, together with measures for their protection in the course of development are necessary to protect the visual amenity and character of the area. A condition is also necessary for similar reasons to require details of boundary fencing and other means of enclosure.
46. A condition is suggested to require the submission of a report to the Local Planning Authority in respect of the stability of the land and the effect of the proposed development upon the stability of the land and in supporting the highway, amongst other matters. I agree that such a condition will ensure that the scheme does not have an adverse effect on the stability of the land and minimises potential risks to users of the building and to property.
47. Conditions to require the approval of a scheme for protecting the building and its occupants from noise and vibration from the neighbouring railway line will protect the living conditions of future occupants of the building. In addition conditions to require obscure glazing in the bathroom windows and in balcony screens in the west (side) elevation of the building will prevent overlooking of windows and garden areas to the rear of 55 Highcroft Villas.
48. I also agree that a condition is required in respect of the temporary construction period to a scheme of working, including hours of working, the

²² Contained in the Statement of Common Ground

provision of wheel cleaning apparatus, details of parking for site operatives and visitors, details of the siting of temporary buildings and stacking of materials. This condition will help to safeguard the amenities of nearby residents and be in the interests of highway safety.

49. Conditions to require details of solar roof panels and in respect of the proposed green roof to the building, the provision of cycle storage facilities, a Site Waste Management Plan in respect of demolition and construction waste, the provision of refuse and recycling storage facilities and to require the approval of details of the sustainability level of the dwellings are all reasonable and necessary in respect of meeting sustainability objectives.
50. Finally a condition to require the approval of details of the proposed road, surface water and foul drainage and lighting will help to ensure that the development has adequate infrastructure and provide a satisfactory living environment.

Overall Conclusions

51. Although I have found some limited conflict with LP policy QD20 and PPG17 in respect of the loss of open space I do not consider that the proposed development would have a materially harmful effect upon the provision of open amenity space in the locality. Any harm to open space policy considerations would be outweighed by benefits to the locality in providing housing to contribute towards the five year supply of deliverable housing and in providing affordable housing for which there is an accepted need. These factors amount to considerations which lead to a determination otherwise than in accordance with the development plan to the extent that limited conflict exists.
52. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should succeed.

Kevin Nield

INSPECTOR

ANNEXE A

SCHEDULE OF CONDITIONS FOR APP/Q1445/A/08/2081266

1. The development hereby permitted must be begun before the expiration of three years from the date of this permission.
2. No development shall take place until samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
3. The cycle storage details shown on the approved drawings 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.
4. No development shall commence until a scheme has been submitted to and approved in writing by the Local Planning Authority which details measures to ensure that the development hereby approved will achieve a Code of Sustainable Homes rating of "Level 4" or higher or an equivalent level of performance if an alternative independently assessed means of sustainability assessment is used. The agreed scheme shall be implemented in strict accordance with the approved details prior to the occupation of the development.
5. No development shall take place until a written statement consisting of a Site Waste Management Plan, confirming how demolition and construction waste will be recovered and reused on site or at other sites, has been submitted to and approved in writing by the Local Planning Authority. The measures shall be implemented in accordance with the approved details.
6. The development hereby permitted shall not commence until a working method statement in respect of the demolition and construction period of the proposed development has been submitted to and approved in writing by the Local Planning Authority. The scheme shall specify hours of working, the provision of wheel cleaning apparatus, details of parking for site operatives and visitors, details of the siting of temporary buildings and stacking of materials. The development shall be carried out in accordance with the working method statement so approved.
7. No development shall take place until there has been submitted and approved in writing by the Local Planning Authority a scheme for landscaping, which shall include hard surfacing, planting of the development, and details of any trees/shrubs to be retained, together with measures for their protection in the course of development.
8. Prior to commencement of the development hereby permitted, details of fencing to be provided around the boundaries of the site and any other means of enclosure shall be submitted to and approved in writing by the

Local Planning Authority and the scheme so approved by the Local Planning Authority shall be erected prior to the first occupation of the site and retained thereafter to the approval of the Local Planning Authority.

9. All planting, seeding, or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building or the completion of the development, whichever is the sooner; and 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 give written consent to any variation. All hard landscaping and means of enclosure shall be completed before the development is occupied.
10. The development shall not commence until fences for the protection of trees to be retained have been erected to a specification and in positions to be agreed in writing by the Local Planning Authority. These fences shall be maintained in good repair until the completion of the development and no vehicles, plant or materials shall be driven or placed within the areas enclosed by such fences.
11. 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.
12. Prior to the commencement of the development the applicant shall submit to the Local Planning Authority a written report from an appropriately qualified person, advising upon the stability of the land, most particularly, but not exclusively, in relation to its impact on the role the land plays in supporting the highway at Highcroft Villas and the impact of the development on the stability of the railway embankment and any works (including works of drainage) as may be necessary to ensure the stability of the land, building and services and any neighbouring land or buildings. Details of any stabilisation work to be carried out as a result of the report shall be submitted to and approved in writing by the Local Planning Authority before the development commences. The works shall not be carried out otherwise than in accordance with the approved details.
13. Prior to the commencement of works details of nesting boxes shall be submitted to and approved in writing by the Local Planning Authority. The boxes approved by the Local Planning Authority shall be erected prior to the occupation of the building and thereafter maintained.
14. Prior to the commencement of works details of the green roof to the first floor hereby approved, which should be vegetated with a chalk grassland mix, shall be submitted to and approved in writing by the Local Planning Authority. The details thereby approved shall be carried out and thereafter maintained in accordance with the specification.

15. Construction work shall not begin until a scheme for protecting the proposed development from noise and vibration from the neighbouring railway line has been submitted to and approved in writing by the Local Planning Authority. Such a scheme shall include details regarding any ventilation measures that may be necessary and all works which form part of the approved scheme shall be completed before any part of the development is occupied.
16. The bathroom windows within the west (side) elevation of the building hereby approved shall be glazed with obscure glass and thereafter permanently retained as such.
17. The balcony screens to the west (side) elevation of balconies shall be obscure glazed and 1.5m in height. The screens shall be provided before occupation of the dwellings and thereafter be permanently retained as such.
18. Details of the solar roof panels shall be submitted to and approved in writing by the Local Planning Authority before works commence. The panels thereby approved shall be installed before the units are occupied and thereafter retained as such.
19. Prior to the commencement of development on site, detailed drawings, including levels, sections and constructional details of the proposed road, surface water and foul drainage, and lighting to be provided, shall be submitted to and approved in writing by the Local Planning Authority. The works shall be undertaken in accordance with the approved details prior to the first occupation of the dwellings.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Ginika Ogidi	Solicitor, Brighton and Hove City Council, King's House, Grand Avenue, Hove, BN3 2LS.
She called Paul Earp, BTP, MRTPI	Senior Planning Officer, Brighton and Hove City Council, Hove Town Hall, Norton Road, Hove, BN3 3BQ
Elizabeth Thomas, BA(Hons), MCD, MRTPI	Planning Consultant, c/o Brighton and Hove City Council, Hove Town Hall, Norton Road, Hove, BN3 3BQ

FOR THE APPELLANT COMPANY:

Jonathan Clay, of Counsel	Instructed by Michael D Pickup, Town and Country Planning Solutions, Sandhills Farmhouse, Bodle Street Green, East Sussex, BN27 4QU
He called Michael D Pickup, BA(Hons), MRTPI	Proprietor, Town and Country Planning Solutions, Sandhills Farmhouse, Bodle Street Green, East Sussex, BN27 4QU

INTERESTED PERSONS:

Deborah Marsh	25 Highcroft Villas, Brighton, BN1 5PS
Councillor Kevin Allen	92 Reigate Road, Brighton, BN1 5AG
Stephen Plaice	83 Stanford Road, Brighton, BN1 5PR
Councillor Amy Kennedy	c/o Brighton and Hove City Council, King's House, Grand Avenue, Hove, BN3 2LS
Ian Smith	32 Highcroft Villas, Brighton, BN1 5PS
Mrs J Nolan	Garden Flat, 53 Highcroft Villas, Brighton, BN1 5PT
Katherine Bligh	18D Highcroft Villas, Brighton, BN1 5PS
Sally Griffin	74A Park Crescent Road, Brighton, BN2 3HS

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 The Council's Inquiry Notification letter dated 10 September 2008 and list of consultees
- 2 Statement of Common Ground agreed by the principal parties (including suggested conditions)
- 3 Copy of Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 (as amended)
- 4 Letter from Martin Moore, Trustee of Prestonville Community Association in respect of the authorisation of Deborah Marsh to speak on behalf of the Association
- 5 Written statement of Deborah Marsh
- 6 Table: Quantity Standards set out in draft Open Space Study (May

- 2008)
- 7 Open Space Audit: Record sheet
- 8 Brighton and Hove City Council, Annual Monitoring Report 2006-2007
- 9 Extract from Brighton and Hove Housing Needs Survey Final Report 2005
- 10 Copy of letter from Director of Planning, South-East England Regional Assembly dated 22 October 2008.
- 11 Documents submitted by Stephen Plaice in respect of stability of land
- 12 Photographs submitted by Ian Smith

