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c/o The Programme Officer
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Dear Inspector

Eastbourne ELLP – EBC Additional Submissions and Proposed Major Modifications

Further to the EIP Sessions 1 and 2 and EBC's recent written submissions (EBC EL11-14, received 14 June 2016 and EBC-EL-15, received 21 June 2016), we respond as follows.

In view of the extent, content and conclusions of the additional information now submitted by EBC and the time permitted to us, we have only been able to undertake a very high level review of the documents and our response here is set out in headline terms only. Accompanying papers by Mr Stapleton of SHW and by Mr Richard Jones of JLL are enclosed and are made on the same basis.

Our reviews demonstrate that whilst the documents do require closer examination, they further highlight that the ELLP is based on a flawed, unsubstantiated strategy that will be undeliverable and, as such, does not meet the NPPF tests of soundness.

In view of the matters set out here and by the papers that are to follow, we consider that EBC will need to respond further and we do ask that the EIP is paused in order to enable the Council to do so and for all parties to be able to further review their response before the EIP Sessions resume.

We are concerned that in the limited time available, there is a danger that irrelevant material may be taken into account or relevant material not taken into account, on the basis that the material submitted has not been sufficiently interrogated because the parties are not being afforded a fair and reasonable opportunity to review the information and make detailed representations. If the evidence submitted is not adequately or properly considered then there must be a risk that conclusions reached on the evidence are capable of challenge.

We appreciate that this will impact on the overall Examination timetable, but we have previously made a request for an extension to proceedings in view of the issues raised following the first EIP sessions and the matters are indeed still such that the Plan cannot be found to be sound. EBC has not provided the necessary evidence to support its underlying strategy and the detailed policies in the ELLP.

Overview

Our detailed comments to each of the additional papers provided by EBC are provided here at **Annex 1**.

As stressed throughout our representations, EBC's overall strategy to provide for 23,000sq.m. NIA of new Class B1a/b floorspace is a substantial over-allocation.

The Eastbourne office market is very small and local in nature and is in no way comparable to larger, better connected towns within the South East.

The BGVA ELR October 2013 (SD24) is based on growth assumptions, scenario testing, an ambition for further growth and a further rounding up of floorspace numbers in order to arrive at the proposed allocation. The ELR 2013 accordingly starts with a baseline forecast of 11,509sq.m. to meet estimated demand to 2027 (ELR para 6.8), only for this to be increased to 23,000sq.m. once all of the assumptions and rounding stages have been gone through. The proposed allocation equates to 27% of the Borough's existing office stock in 2012 (based on data in BGVA's document SD/25, para 2.13), with that stock having been subsequently reduced through redevelopments, which EBC has confirmed to be redundant stock. The allocation thereby equates to a very substantial proposed addition to effective stock.

The additional stages taken to arrive at the proposed allocation result in a very large floorspace figure that (1) conveniently reflects EBC's assessed physical capacity for new floorspace at Sovereign Harbour and (2) a token, unsubstantiated allocation for the town centre, which has never been supported by any evidence. It does not reflect demand, the resulting viability of new office development in the town and the realistic delivery of new space.

In response to our objections however EBC has focussed on further supporting its strategy through the provision of additional market evidence, viability testing and most especially the initial outcomes following the completion of Pacific House on Site 6, Sovereign Harbour (SD25 & SD28 & EBC Matter Statements).

All of this however further supports our position, the position of a raft of consultants who have advised EBC previously, and EBC and SCS's acknowledgement that new office space is not viable and requires cross-subsidy.

EBC contend that the completion of and lettings at Pacific House prove that office space can be delivered at the Harbour and this provides a basis for providing for 18,500sq.m. NIA of space overall in this one location. The Council however ignores the fact that: the development has required significant public subsidy and it is not viable in open market terms; the majority of the companies that have located at Pacific House are local firms; the jobs 'created' are therefore primarily existing jobs that have simply been relocated; and the tenants are benefiting from flexible letting terms with no other choice of new stock currently available within the town, including within the town centre.

The viability evidence for Pacific House has not been updated following its actual completion and lettings. In the absence of any updated information from EBC and taking into account that which has now been made available, albeit largely verbally at the earlier EIP Sessions, SHL has commissioned its own review in order to understand the implications of and actual potential delivery of such a large allocation at the Harbour.

This is set out in the accompanying paper by Mr Jones and demonstrates that, based on an independent review of the published papers and verbal evidence provided on Pacific House, 18,500sq.m. NIA of office space will result in a net financial loss of £19million. The actual figure may be higher and may be lower but the underlying outcome will be a substantial and unsupported loss. No private funding will be available and no public sector funding can possibly be expected to help bridge such a viability gap, especially when actual net new job creation has not been significant and given that Eastbourne is not a regeneration priority area.

Eastbourne requires new jobs and would ideally like to have a wider range of employment opportunities, but the setting aside of substantial amounts of land to seek to attract development that is unviable and that will not be delivered unless supported through some other means, amounts to an undeliverable strategy and an ineffective Plan.

It is appreciated that Site 6 may accommodate Class B1c space in line with the existing outline planning permission for the site, but as stated in the earlier EIP Sessions by Mr Shaw on behalf of SCS, this use is not sought here. SCS's draft layout testing for the site is also clearly based on office only floorspace.

The allocation of Site 6 for office will provide c 11,100sqm. NIA of new office space and this is the equivalent of BGVA's baseline assessment of new office requirements. The allocation of additional sites within the town centre and on the industrial estates will provide for an element of additional replacement space and growth and will provide choice within the market, in a range of more accessible locations. The spreading out of a more realistic quantum of space across locations will enable this to be provided as part of mixed use development, providing the necessary cross-subsidy for new office space.

Turning to the EBC and Cushman & Wakefield's (C&W) review of the town centre sites, the starting premise must be the need for the ELLP to be consistent with national policy in respect of sustainable development and town centre first objectives for new office development (NPPF para 23 and 24).

In seeking to address the clearly flawed space planning assumptions for the town centre sites as set out in EBC's Matter Statement 1b, the C&W report on behalf of the Council carries forward a large number of these and in particular those relating to car parking assumptions, the extent of secondary retail space and a proposed absence of any office space on Site DO3 – which is excellently located for offices, is shown to be viable and capable of cross-subsidising office space and is partly in the Council's ownership and therefore within EBC's control to help deliver a mixed use scheme. The C&W Report raises the need for much closer scrutiny of EBC's overall strategy in relation to office space within the town centre.

In terms of EBC's proposal now to include an allocation of new office space in the industrial estates, we very much welcome this and the Council's acknowledgement that campus developments have and can be successful and that the A22 corridor is accessible and attractive to businesses. The proposal to limit the allocation to 1,500sq.m. NIA however is an arbitrary figure and is not based on any space testing as to why 1,500sq.m. will provide an appropriate critical mass. In development control terms we also cannot see how such a single, tightly defined allocation would work; there would need to be flexibility in order to enable a developer to come forward with a scheme that is viable in site planning as well as in financial terms and we cannot see why in principle EBC would object to a larger, well planned development that would help to meet a core objective to provide new office space.

Conclusion

Our accompanying review of EBC's additional submissions and those of Messrs Stapleton and Jones, highlight significant flaws in the Council's overall strategy and the resulting ELLP document, as it is currently drafted.

There is a consistently held understanding that has been confirmed through the experience of Pacific House, that new office development in Eastbourne is unviable.


EBC is over allocating office floorspace based on a series of data assumptions, growth ambitions and the further convenient rounding up figures, which results in a very substantial allocation of new space within a small market. This will never be delivered on viability grounds.

Where the ELLP does make clear provision for mixed use development to support office development, i.e. within the town centre sites, EBC's approach and assumption setting only work to undermine this and the amount of office space that can be provided. This in turn works against its own core objectives to support new office development and jobs and against core nationally-led objectives that support town centres generally and the sustainability benefits they provide and can contribute further towards meeting.

The Plan and EBC's now proposed modifications are based on an ambition that is unviable and will not deliver the quantum of office space sought. The balance between the allocations within the town centre and other locations is also based on flawed assumptions, goes against national planning objectives and will actively work against the ability to deliver new office space as part of mixed use development.

We do again ask that, in view of the headline conclusions set out above and the detailed matters highlighted in the following and accompanying papers, the Examination is paused and that EBC is asked again to review its strategy or to provide evidence that does support it. Whilst not ideal on any side to have any further delay, it is imperative that the ultimate ELLP is sound, the underlying evidence is well considered and all parties have had fair opportunity to make representations.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Marie Nagy', with a small flourish at the end.

Marie Nagy
Director

Annex 1 - Detailed Review of EBC's Further Submissions

The comments set out here are based on an initial high level review of the documents.

EBC Letter 14th June 2016 – Viability of Town Centre Offices

We comment as follows:

- a.2 Reference is made to BGVA's Spring 2016 Review and to trends in the regional level office market. This however is not representative of Eastbourne, which has a small, local and, in regional terms, peripheral office sector that commands low demand and returns.
- a.3 The reference that is made to construction cost inflation is welcomed but this will further exacerbate viability of new build offices in Eastbourne. Indeed, subsequent to the BGVA's previous assessments including their report of September 2015 (SD/28), changes in stamp duty and construction costs have moved even further against small peripheral markets, which were already defined by low or nil returns for office development.
- b.1 Reference is made to assumptions for a new decked car park on the town centre railway land site (Site DO2). This refers to a need for a 400space facility. EBC's own car parking website and that of Southern railway however both state that this provides just 331 spaces. There may therefore be scope to reduce the costs assumed for a new facility.
- c.2 We welcome EBC's acknowledgement that Sites DO2 & 3 are secondary in retail terms but this is not followed through into C&W's space capacity and viability testing for these sites, the Class A space assumed is still substantial and C&W indeed agree this point (see below).
- d.4-5 Based on a 50:50 office to residential development split and C&W's assumptions, Site DO2 (the railway land) is shown to make a small loss but Site DO3 makes a profit. Some slight adjustments, including in the mix of uses assumed for DO2 show that office space can be supported here. Also, notwithstanding the profit shown for Site DO3, with part of that site also being within EBC's ownership, EBC now proposes that no office space should be provided here. This leap is not based on any sound reasoning or justification (see below).
- f.2-3 EBC alerts us here to their proposal to reduce the town centre allocation back to 3,000sq.m. NIA. Reference is then made to policy text referring to the need for viability assessments to consider the cross-subsidy of office space for Sites DO 2 & 3 – although the proposed modifications go on to drop references to Site DO3, which is inconsistent.
- g. EBC propose that the delivery of cross-subsidised office space will take priority over the provision of affordable housing, even though the Council cannot provide sufficient housing generally within the Borough. This raises the question as to why EBC is prepared to over-allocate unviable offices (and assume a very large amount of secondary Class A space as part of the Site DO2&3 schemes) instead of prioritising the meeting of housing needs.
- i. Reference is made here to programmes to support new development on Network Rail owned land. SHW has had discussions with Network Rail who have confirmed that the site will be available for development. In follow up to EBC's comments at their para i.5 it would be helpful if EBC can confirm if they intend to liaise with the HCA and also if they will investigate SELEP or other funding streams that can be applied to support office development that will in turn have much wider economic benefits for the wider town centre.
- j. EBC propose here that the office allocation is reduced back to 3,000sq.m. NIA in the Town Centre, but again do not

refer to the proposed dropping of any office requirement on Site DO3.

EBC base this on C&W's Viability Report albeit that has used EBC's own flawed or otherwise unexplained assumptions as their starting point for the consideration of the mix and scale of uses assumed on Sites DO2&3. The C&W report cannot therefore be taken to provide an objectively assessed appraisal of development options, with offices as part of appropriately defined mixed use schemes.

C&W Eastbourne Viability Report, June 2016

We comment as follows.

1. C&W acknowledge that this provides a high level review only (para 1.5).
2. They rely on a range of EBC's existing documents including the Council's Basic Site Capacity Testing information (Para 1.4) which means that a number of flawed assumptions are carried forward.
3. This also includes EBC's CIL Infrastructure Levy Viability Assessment (2013) and its land value assumptions which concluded that office development within town centre and 'out of centre' cannot support CIL obligations on viability grounds – this being consistent with all other assessments of the Eastbourne office market and which is again an indication of the scale and nature of that market. This should direct EBC to there being no point in setting a substantial over-allocation for such space. It will not be viable and will not therefore be delivered.
4. Reference is made to the South East office market, which again Eastbourne is peripheral within and underperforms against. This is due to its scale and nature rather than because there is an underlining level of demand that is not being met. The letting at Pacific House to date demonstrates this.
5. C&W go on to highlight that vacancies have increased (para 2.2) but the completion of Pacific House will have contributed to this.
6. C&W's information on Pacific House does not reflect that provided verbally by SCS in open EIP Session (para 2.2 to 2.6).

The build and overall delivery costs of Pacific House and the rental returns with resulting viability testing have to date only formally been presented by and on behalf of EBC based on pre-start assumptions. The building is now completed and letting terms have been provided verbally. Following that verbal evidence EBC and SCS have offered no updated information on the viability of the development only an acknowledgement that it will not provide a surplus to help fund further phases. SCS has also again stated that further development will have to be demand led.

In the absence of an updated viability review of Pacific House from EBC, SHL has commissioned an independent review by Mr Richard Jones of JLL. This reconfirms again that office development is not viable. It however brings together reported information on Pacific House and demonstrates that based on EBC's proposed allocation of 18,500sq.m. NIA of office space on Sites 6 and 7a, this will result in an overall net loss of £19million.

In short, the amount of office space proposed is undeliverable, rendering the ELLP ineffective in its ambitions to support economic development and jobs growth.

7. C&W (para 2.7) refer to investment yields but this is based on one property only, Ivy House. We have highlighted to EBC and BGVA at every point where Ivy House has been referred to in evidence, that SHW were involved in that transaction and are a tenant of the property and so know it intimately. The further evidence which is to follow from

Mr Stapleton shows that C&W's analysis is wrong and if this is correctly analysed it changes the basis of C&W's conclusions.

We note in C&W's later section on the local retail market that they refer to yield information being taken from Promis (a subscription property market information service) (C&W para 2.17). Promis provide reports across all main commercial property sectors but do not cover Eastbourne offices; an indication of the size and / lack of demand or sector interest in this sub-market and a further indication of where it sits in overall market and potential growth terms.

8. Before we review C&W's town centre site appraisals, we note that they make a comparison between the car based accessibility of Eastbourne town centre and Sovereign Harbour and conclude that they are comparable (para 2.4). This however ignores sustainable transport objectives that underpin many threads of national and local planning policy including the focus on the town centres as priority locations for offices because they do not depend on car access. As highlighted by Mr Stapleton, commercial occupiers do differentiate between town centre and out of centre locations. Additionally, Jam for EBC within its Sustainability Appraisal of the Submission ELLP (SD-6 section 9.4.3) highlights the need for transport mitigation to be provided in order to support its conclusion that the Sovereign Harbour sites can be assessed to be sustainable; i.e. they conclude that the Harbour sites must contribute towards new sustainable transport, which we have stressed throughout they cannot and will not on viability grounds, as confirmed through the existing s106 agreement.
9. **Development Assumptions for Site DO2 (railway land)**
 - a. We consider the review of amenity issues for residential use is exaggerated. These can be very readily addressed through boundary treatments and building specifications. The national focus of maximising the potential of such land emphasises how schemes can be successfully delivered and that experience elsewhere can be successfully applied within Site DO2.
 - b. In terms of car parking, the railway station currently has 331 car spaces.
 - c. Residential units are assumed to average 74sq.m. NIA, which based on the national Technical Housing Standards, 2015 is the minimum required for a 3bedroom, 4-person household. This is a generous average size, given that site lends itself to 1 and 2 bedroom apartments. We consider this can be reduced without a significant effect on end value.
 - d. C&W acknowledge that the assumed 4,000sq.m. of retail space over 2-storeys is **'a reasonably significant quantum of retail space which is greater than the policy requirement'** for the site (page 18). EBC also acknowledge elsewhere that the town centre DO sites are secondary in retail terms and yet they still consider a substantial 2-storey scheme in a very secondary location is appropriate, even though as highlighted at the EIP Sessions the town centre has significant stretches of vacant / available to let frontages. EBC's request that C&W retain this requirement we take to be a mechanism only to keep the office element low rather than this being based on any sound commercial view.
 - e. Even based on this mix however the site accommodates 244 units, which is a substantial share of the 300 units minimum requirement across Sites DO2 and 3. A sensible adjustment of the mix and space assumptions would enable the office and residential elements to be increased even further. Reducing the retail element to 1000sqm. could (in crude terms) result in a further 1,000sq.m. of offices and an additional 2,000sq.m. or 27 residential units based on 74sq.m. per unit.

10. Development Assumptions for Site DO3 (*Postal Service and EBC Land*)

C&W completely ignore office space as an option here even though: it is identified as one of only two sites now assessed by EBC as available and deliverable for redevelopment; it is in a highly accessible location for offices; and EBC owns part of the site and so can assist more directly in its delivery. Additional assumptions relating to car parking provision also should be reviewed further.

There is no sound justification for ignoring office provision here, when it can be provided within a mixed use scheme and will provide more choice to the office market in a highly accessible location. We can only conclude that this again is due to EBC wanting to artificially reduce office potential in the town centre as far as possible, even though we would expect the ability to provide offices as part of a viable mixed use development on the Council's own land would be considered a very important opportunity, particularly given the wider business linkage benefits that would result from this for the town centre overall.

11. Viability Testing

We comment as follows, following from the above matters:

- a. For Site DO2 the assumed car park facility may be too large and the mix of uses can be significantly improved on with a reduction in Class A space. This would improve the net viability position of the site.
- b. For Site DO3 this site provides a profit and this shows that there is scope for cross-subsidy for office space. The viability position would be improved further if some assumptions are adjusted further (e.g. car parking provision).
- c. Even based on EBC's proposed mix for these sites they provide 358 residential units, well above the minimum 300 required. This again can be improved on, alongside increased office provision if mix and space assumptions are adjusted.
- d. C&W's sensitivity analysis has not challenged key assumptions set by EBC and so alternative mixes and floorspace outcomes have not been appraised. As outlined in earlier representations, the town centre sites can accommodate more office space, this need not be a full 8,900sq.m. as demonstrated in high level space planning terms by the rCOH schemes, because that assumes the full 23,000sq.m. office allocation is required – it is not.

EBC Letter 14th June 2016 – ELLP Action Points

We comment as follows.

- 1.1 An updated sensitivity table is provided here. As outlined above however EBC have not provided an updated viability review of office space at Sovereign Harbour. JLL's review however shows that an allocation of 18,500sq.m. on Sites 6 and 7a will result in an overall net loss of c.£19million. The actual figure will be within a band around this figure, but the actual sum will be substantial. It is therefore taken to be a theoretical figure as no funding will be available and the resulting financial loss will not occur and, most importantly for EBC's strategy, the office space will not be delivered.
- 1.2 In Policy terms this deems EBC's policies undeliverable. Any strategy that aims to provide such a substantial quantum of space that relies on cross funding on non-repayable loans cannot be justified within such a small, local market and a non-regeneration priority area such as Eastbourne. The Borough's economic growth and job creation

ambitions will be well served through the continuing sizeable allocation of Site 6, which meets GBVA's base forecast of c 11,000sq.m. of new office space, the town centre sites and any office campuses along the A22 spine will provide further options and choice. This would also leave the remaining Harbour land to provide a greater mix of jobs and more jobs more quickly.

- 2.3 Pacific House is now referred to as being 877sq.m. let, with 72 jobs accommodated and a resulting jobs density of 12.18sq.m. within that let space. The building however has been designed and cross-funded based on 300 jobs, with car parking and resulting land take assigned to it for parking based on that assumption. For now, that job target figure must still be assumed. In time if this is not achieved, the car parking allocation can be reassigned and land within Site 6 planned accordingly in the interests of securing its most efficient use. This may enable more floorspace to be accommodated, taking into account options to remodel the TPO area also.
- 4.9 This paragraph indicates that the 'displaced' 1,500sq.m. of office space can go on an industrial estate and this would be better as a single cluster. We very much welcome EBC's acknowledgement of this option and of their references at their para 4.10 to the Highfields campus being a good example of such a development and at their para 4.15 to the location advantages of the A22. We have been highlighting these throughout the Core Strategy Local Plan and ELLP processes, supported by market evidence. However, EBC's suggested limit on this being for 1,500sq.m. NIA only is an arbitrary figure and not based on any spatial considerations or space planning opportunities. It is simply another convenient but unsubstantiated figure.
- 6.5&6.6 At these paragraphs it is suggested that applications for office development on the industrial estates must be limited to 1,500sq.m. only and be subject to a town centre sequential test. It is unclear how Town Centre Site DO3 will be considered in such circumstances. For the reasons above we contend that this site should be required to provide office accommodation and the viability position supports this. It is sequentially a very good site. Notwithstanding this, EBC's acknowledgement that the industrial estates also provide sound opportunities for accessible office campuses is welcomed and should be encouraged in policy. If no appropriately tested floorspace limit can be set, new application schemes can instead be subject to space and design led policy criteria.
10. EBC's insistence that the NIA assessed floorspace requirement is the appropriate figure to be referenced is unhelpful when BGVA, as authors of the HCA Employment Density Guide November 2015, themselves acknowledge that GEA is used for applications and approvals (Guide para 2.7) and that the use of employment densities can be challenging without an identified 'pre-let' occupier (Guide para 3.2), hence the use of GEA for applications and policy. EBC's first ELR for the original CSLP converted jobs based NIA floorspace figures into GEA and others do the same for other authorities.

We suggest a conversion for GEA to NIA based on 80% is appropriate, drawing on the HCA Guide, 2015 (para 2.11 to 2.13).

- 10.9 Reference is made to the new community hall needing to share car parking. The SCS draft layout for Site 7a is inefficient with significant wasted space around the proposed alternative site for the building, which also is not agreed.

EBC Letter, Response to SHL Marketing Information, dated 21 June 2016

As outlined by Mr Stapleton in his response, the Harbour sites have been subject to significant marketing, which has included joint efforts with EBC. These efforts were recognised by the CSLP Inspector alongside her acknowledgement of the widely published constraints of the Eastbourne office market (ref CD/20). These efforts have continued subsequent to that Inspector's report, again in close discussion with EBC.

EBC's response now ignores this background. It also reflects a more recently adopted approach to agreeing, recording and reporting marketing campaigns for employment sites. Such recording was not a standard planning and commercial approach when the Harbour was granted planning permission and EBC has only set out such a formal requirement linked with the new outline planning permission and SHL is committed to meeting those obligations.

EBC will appreciate that an advertising board has been on site over a substantial length of time, this has only recently been refreshed, and a website page has also been available, i.e. the equivalent of SCS's main marketing efforts. Such marketing responses are widely accepted as demonstrated by the appeal decision attached as **Annex 2** (its page 4).

EBC will also appreciate that advertising within journals and publications are always phased and used to refresh awareness and to try to capture new audiences to such publications. Consistent listings only act to highlight difficult to let sites and to undermine interest.

EBC also overlook the fact that the sites have been allocated for a substantial amount of time, have been promoted by EBC throughout and, as stressed, through other agencies such as English Partnerships and SEEDA. EBC also overlook their own earlier appraisals for the sites commissioned to be undertaken by a raft of different surveying firms, all of which acknowledge the locational and other constraints of the sites.

SHL has kept EBC informed of interests that have come forward and these options have all been appraised including those as appropriate options for alternative employment uses through the new outline planning permission.

EBC will appreciate that the site continues to be widely known about locally, within what is essentially Eastbourne's limited local market and still the Council has not provided any response as to background to why certain local firms have only recently rejected the Harbour as an option, in spite of the very close working between EBC and SHL on trying to secure their interest prior to the sale of Site 6.

SHW have requested an update on the letting position at Pacific House but this has not been provided to date. EBC do again refer to a significant number of enquiries being received for a sizeable amount of space at Pacific House and a large number of viewings. They do not however provide evidence of those recorded queries, and evidence that they were genuine queries for actual space. They do not explain why 59 queries did not result in viewings. They also do not explain why 67 viewings have resulted in just 7 lettings or 870sq.m. from an expressed requirement of 12,319sq.m.

This amounts to a conversion rate of 6% based on lettings to enquiries and 7% based on let floorspace to expressed requirements. If demand for new space is so high in an area of such constrained supply with no other new office stock available, and given that flexible short notice terms are being agreed, why does so much space remain available?

Of more substantial concern for EBC should be the financial cost that has gone into providing Pacific House in order to accommodate predominantly already existing jobs and the fact that the building is not viable and cannot be repeated unless a public body is willing to provide funding on a non repayment basis.

We note that SCS's website page for Site 6 has been updated and refers to '*Serviced sites are available to buy, or properties can be developed on a freehold or leasehold design-and-build basis*'. This highlights that no further speculative development is proposed and that SCS is now marketing the development on the same basis as SHL as been doing.

The presence of Pacific House thereby may provide a physical presence, but it does not alter the viability position of the site and it is this that will determine actual delivery.

The allocation of Site 6 provides a very significant amount of new space which may or may not attract development that may or may not create net new jobs for Eastbourne. The over allocation of additional space onto Site 7a will not improve or assist the viability position. Its allocation is not required and will not be delivered and does not provide an effective strategy or Plan.

EBC Proposed Modifications (Table format)

We comment on and question this content as follows.

- M-01 The NIA figures should be expressed as GEA.
- M03-4 We again welcome EBC's acknowledgement of the office potential of the industrial estates, but if a scheme were to come forward for a larger amount of office space in these locations, where significant retail and leisure elements have been permitted, would EBC really reject it? Scope does exist for the estates to become more efficient and a greater mix of uses will secure the diversification EBC wants. The provision of more choice for developers will provide greater scope to achieve this and through cross-subsidised mixed use schemes.
- M08 Please see M03-4 above regarding the quantum of office space referred to. Also it is unclear how Town Centre Site DO3 will be appraised in sequential terms.
- M09&11 Town Centre Site DO3 is removed as a mandatory requirement but, as above, this is not explained and is not justified given the location and viability of this site, that is partly in EBC's ownership which provides the authority with greater control over delivery of subsidised elements.
- M15 The figures quoted should be GEA and the overall allocation must be reduced for office provision based on a viable, deliverable level and therefore an effective Plan. An allocation at Sovereign Harbour limited to Site 6 only will deliver BGVA's 2013 assessed baseline job forecast. The town centre and industrial estate campuses will provide additional growth that will address windfall losses, churn and a growth ambition. This will provide choice and allow a greater range of jobs to be provided more quickly on Site 7a.
- M16 The floorspace references should be recalculated based on a conversion for GEA to NIA of 80% and not be inappropriately led by SCS's very draft layout plan.
- M17 The wording here is also misleading. The office space requirement of 20,000sq.m. has not been reduced in accordance with the outline s106. In accordance with the testing of Site 5 and the requirements of the s106, the community hall is to be provided on Site 7a, which reduces the assessed capacity of the site for other uses. The office requirement should again be reduced to a more viable, deliverable figure to ensure the Plan is deliverable and effective.
- M18 If reference is to be made to supporting the creation of a sustainable centre at the Harbour, the proposed allocation

of B1 space here needs be reconciled with Jam's SA (section 9) – i.e. in order for the proposed allocation to be appraised as sustainable, sustainable transport mitigation responses must be provided. The Harbour sites cannot support this on viability grounds. A reduced allocation will be better placed to meet Jam's conclusions.

**ANNEX 2 – APPEAL DECISION –
MARKETING OF SITE – MARINE RELATED USES**



Appeal Decision

Hearing held on 2 and 3 September 2014

Site visit made on 3 September 2014

by David Hogger BA MSc MRTPI MCIHT

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

Decision date: 18 September 2014

Appeal Ref: APP/L3815/A/13/2209694

**Burnes Shipyard, Westbrook Field, Bosham, Chichester, West Sussex
PO18 8LJ**

- 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 Burhill Estates Company against the decision of Chichester District Council.
 - The application Ref BO/13/01846/FUL, dated 11 June 2013, was refused by notice dated 9 September 2013.
 - The development proposed is the demolition of existing buildings and structures, erection of employment floor space (Use Class B1) and four dwelling houses (Use Class C3) with associated car parking and hard and soft landscaping works, including formation of a new footpath across Mill Meadow and associated works.
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Decision

1. The appeal is dismissed.

Applications for costs

2. At the Hearing applications for costs were made by Chichester District Council against Burhill Estates Company and by Burhill Estates Company against Chichester District Council. These applications are the subject of a separate Decisions document.

Preliminary Matters

3. A Unilateral Undertaking (UU) has been submitted by the appellant (dated 25th April 2014) with regard to a contribution towards recreational disturbance mitigation. The Council is satisfied with the content of the UU and having assessed it against the relevant advice, for example in the National Planning Policy Framework (NPPF) and the Planning Practice Guidance, I agree that it meets all the tests and is properly executed and I have therefore taken it into account in my determination of this appeal.
4. In addition a Supplemental Undertaking (dated 1st September 2014) was submitted at the hearing which in summary relates to the leasing of Mill Meadow and Mill Pond to the Chichester Harbour Trust; the marketing of the Quaymaster's Facility should the use cease; and the provision of the footpath across Mill Meadow. Whilst I agree that these intentions may be desirable and have some local support, I do not consider that they are necessary to make the

proposed development acceptable in planning terms and therefore I only attach little weight to the Supplemental Undertaking.

5. A number of references to withdrawn national planning policy advice and guidance were included in the Statements. For the avoidance of doubt I have attached no weight to these documents but have determined the appeal based on the current policy framework.

Main Issues

6. The main issues are:
 - The effect of the proposed development on the character and appearance of the area and in particular on the Area of Outstanding Natural Beauty;
 - Whether or not the proposed development would enhance or preserve the character or appearance of the Bosham Conservation Area or be detrimental to its setting;
 - The potential, primarily in terms of viability, for marine related uses to be accommodated on the site;
 - Flood risk – including the Sequential Test and the Exceptions Test;
 - The living conditions of residents; and
 - The 5 year housing land supply.

The Character and Appearance of the Area

7. The site (which still includes some of the former shipyard buildings) lies on the eastern shoreline of the Bosham Channel within the Chichester Harbour Area of Outstanding Natural Beauty (AONB) and it sits within a comparatively loose ribbon of residential development along the shore. The site is outside the defined boundary of the village. A public footpath runs along the southern and western boundaries of the site, which can also be clearly seen from the public footpath that runs along the western shoreline of the Channel (accessed from Harbour Road, Chidham). The proposal is primarily for four dwellings and a Quaymaster's Facility (QMF) to what I would describe as the front of the site (i.e. facing the Channel).
8. In terms of the QMF this would be located on land most of which was formerly hardstanding for the shipyard. Although the building would in essence be single storey in height, some of its roof would be used as amenity areas for houses 1 and 2. The building would introduce a substantial built form which would project beyond the extent of the former shipyard buildings and would reduce the level of openness between the built form and the shoreline.
9. Of particular concern would be the height and appearance of the elevations of the QMF to passers-by on the adjacent footpath. There would be a very significant length of largely unrelieved horizontal timber cladding to the south and west of the QMF, which even with the proposed planting, would be a visually prominent element of the proposal. Whilst I agree that it is appropriate for the overall design and appearance of the proposal to reflect the

maritime heritage of the area, I saw no similar expanses of timber cladding on buildings nearby. Although less visually prominent because of existing trees, the northern flank wall of the QMF would nevertheless also appear incongruous because of its size and design.

10. Turning now to the proposed dwellings. Whilst in overall terms their appearance is reflective of the former use of the site, the scale, height and density of the proposal would result in the development appearing incongruous and prominent. Although there would be gaps between the proposed buildings they are comparatively small and the overall appearance would be of relatively intense built form. In particular the houses on plots 2, 3 and 4 with their associated decking, would appear unduly prominent when walking along the public footpath to the south. Although the ridge lines would be lower than those on the existing dwellings in Windward Road, the form and bulk of the proposed dwellings would be harmful to the character of the area. I acknowledge that the appearance of the former boatyard buildings was not particularly attractive, but this does not mean that there is any justification for diluting the objective of achieving high quality design.
11. Although it is not a matter on which my decision has turned I consider that the large areas of glazing, particularly in the western elevations of plots 1 and 2, and in the southern elevations of plots 2, 3 and 4, would have a detrimental visual impact in terms of light emission at night and sun reflection during the day because of their size and prominence. Although the proposed louvres would reduce the detrimental impact, there would nevertheless be light spillage and reflection and in any event there would be no way of ensuring that the louvres were closed at the most sensitive times of the day. This finding adds weight to my overall conclusion on design.
12. The NPPF (paragraph 56) confirms that great importance should be attached to the design of the built environment and in paragraph 115 it states that great weight should be given to conserving landscape and scenic beauty in Areas of Outstanding Natural Beauty. This guidance is reflected in saved policies RE4, BE11 and C1 of the Chichester District Local Plan – First Review (LP), which seek to ensure that new development would be appropriate to its location. On the first issue, for the reasons given above, I conclude that the proposed development would not meet those requirements.

Bosham Conservation Area

13. The Conservation Area (CA) boundary runs to the south of the former boatyard and includes Mill Meadow and the Mill Pond (both shown as being within the red line on the planning application). The Meadow is visible from a number of viewpoints and I share the Council's concern about the visual appearance of the proposed fences alongside the footpath which would cut a diagonal swathe across the field. I acknowledge that there are existing fences nearby but the ones that I saw run around the perimeter of fields or properties. I am satisfied, however, that an appropriate condition could be imposed preventing the erection of fencing along the footpath (to which the appellant did not object) and on that basis my concerns in this regard would be overcome.
14. The proposed development site is a significant element in the setting of the CA. I have considered the visual impact of the proposal in the paragraphs above and concluded that the development would appear incongruous and prominent. This appearance would be apparent from within the CA and particularly from

the proposed footpath across Mill Meadow, even taking into account the existing and proposed screening. The NPPF makes it clear that the setting of a heritage asset should be taken into account and LP saved policy BE6 seeks to protect CAs and their settings and policy BE11 seeks to ensure that development does not detract from its surroundings. I consider that, although the proposal would preserve the character of the Bosham CA itself (if a condition was imposed preventing the fencing of the proposed footpath), the development would detract from the setting of the CA for reasons of scale and appearance and therefore the requirements of the aforementioned policies would not be met.

15. I have taken into account the representations of support for the proposal and agree that the site in its current state detracts from the character of the area. Nevertheless it is still important that any redevelopment of the site is of the highest quality of design that reflects its position within the AONB and adjacent to the CA – an objective which is not achieved in this proposal.

Marine Related Uses

16. Saved policy C7 of the LP seeks to safeguard waterside sites for boating related facilities and stipulates that the redevelopment of boatyard sites will only be permitted for uses associated with boat building, fitting out, maintenance and repair of boats and ancillary uses. The issue is therefore whether or not there is any justification for making an exception to this policy.
17. The boatyard uses ceased in the early 1990's and there was no dispute between the parties that the site has been vacant for about 10 years. Following the appointment of marketing agents, marketing began in May 2008, with specific advertisements being posted in 2008 and 2009. A marketing board was erected (which is still in place) and details of the site were placed on the internet (still available). A number of inquiries have been made over the years but none have led to a firm expression of interest.
18. The Council argued that the premises had not been marketed in 'suitable media' but I consider that the inclusion of details on-line, which I was able to access with ease, is an appropriate means of marketing.
19. The Council has its own Valuation and Estates Management team but I was told that it had not received any inquiries from businesses seeking shoreline premises. Although the Council stated that it would not expect to receive any such inquiries, it indicates to me that the demand for such facilities in a location such as this is not high.
20. In terms of viability I understand the Council's aspirations for the site but the appellant's evidence satisfactorily demonstrates that in broad terms the use of the whole site for marine related uses would not be viable. The location and characteristics of the site and its access (including overhanging trees and telegraph wires which would necessitate the lowering of masts during transport); the tidal restrictions; the costs of demolition and decontamination (or the costs of refurbishment); and the exclusion of costs in the appellant's calculations relating to the restoration/improvement of the foreshore/slipway; all indicate to me that the Council's aspirations would not be viable, even in terms of using the whole site for open boat storage. The Council suggests that a new boatyard could be established incrementally but there is no evidence to clearly demonstrate that such an approach would be financially viable.

Similarly although dredging the channel to the slipway would be of benefit, this would be an additional cost to be borne.

21. On the third issue I conclude that for reasons of viability there is sufficient justification in this case to make an exception to LP saved policy C7.

Flood Risk

22. The proposal includes two elements – the residential and the QMF. There is nothing in the current policy framework that would lead me to conclude that the two distinct uses cannot be disaggregated in terms of the sequential test. Indeed the PPG refers to taking a pragmatic approach and the Flood Risk Vulnerability Classification (Table 2) defines dwelling houses as 'more vulnerable' and ship building, repairing and dismantling as 'water compatible development'. The two uses are therefore disaggregated in the Table. Bearing in mind the legal use of the land is boat-related; that there are relatively few opportunities available to accommodate this type of use; and the uses are differentiated in the PPG; then in terms of the sequential test it is appropriate to concentrate on the residential element of the proposed development. Whilst I understand the economic relationship between the two uses, the issue I am addressing here is one of flood risk and not viability.
23. Both parties agreed that the area of search should be Chichester District and I consider this to be an appropriate approach.
24. There was some debate about the response of the Environment Agency (EA) dated 15 July 2013 in which they confirm that they have no objections to the proposal as submitted. However, that support is conditional 'on the understanding that your Local Planning Authority (LPA) is satisfied that the Sequential Test has been adequately demonstrated to the requirements of the NPPF'. Clearly the LPA is not satisfied with the Test and therefore the condition for support from the EA has not been met.
25. Houses 1 and 2 would be located within Flood Zone 3, house 3 would be primarily within Flood Zone 2 and house 4 would be within Flood Zone 1. In circumstances such as this the starting point (in relation to houses 2, 3 and 4) is the Sequential Test. NPPF paragraph 101 confirms that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding and the Planning Practice Guidance (PPG) states that the aim should be to keep development out of medium and high risk flood areas (zones 2 and 3). The PPG also makes it clear that new development should be steered to flood zone 1 and only if there are no reasonably available sites in Zone 1 should consideration be given to sites in other flood zones. The nub of the issue is therefore whether or not any 'reasonably available' sites could be identified within the District.
26. The appellant submitted a document entitled 'Evidence Base to Support Sequential Test' (August 2013). Potential development sites which are identified in the Council's Strategic Housing Land Availability Assessment (SHLAA) were considered but out of the 112 sites reviewed only three were identified as possible alternative development locations (although a number of those dismissed were identified as having 'potential'). Following a further assessment the three 'possible' alternative sites were also discounted by the appellant.

27. I have two significant concerns. Firstly the assessment was based only on the SHLAA, which does not include sites of less than 0.25ha (i.e. sites that might be capable of accommodating 3 dwellings). Secondly no other sources of evidence were pursued, for example enquiries with estate agents or the identification of unimplemented planning permissions. Similarly no consideration appears to have been given to sites that are broadly identified in the SHLAA for development after 5 years. On the evidence before me it cannot be concluded that none of these sites could be brought forward for development. The Council also refers to the potential for windfall sites (including brownfield sites) to accommodate housing and in this respect a desk-based study could have provided the evidence one way or the other.
28. NPPF Paragraph 101 refers to 'reasonably available sites' and on the evidence submitted I consider that it has not been satisfactorily demonstrated that all such sites within the District have been considered. I am therefore unable to conclude that there are no appropriate alternative sites that could accommodate the proposed dwellings on plots 1, 2 and 3.
29. NPPF paragraph 102 states that if it is not possible for the development to be located within zones with a lower probability of flooding then the Exception Test can be applied. The PPG confirms that the Exception Test should only be applied following the Sequential Test. However, as summarised above, the evidence does not enable me to conclude that the residential development could not be located in zones with a lower probability of flooding and on that basis there is therefore no requirement for an Exception Test to be undertaken. Consequently I have attached only little weight to the appellant's evidence relating to the Exception Test, for example as included within the Flood Risk Assessment.
30. Whilst I acknowledge that the proposal would make use of previously developed land in a reasonably sustainable location, this has to be balanced against the need to steer development away from areas of significant flood risk. Therefore in terms of flood risk I conclude that the Sequential Test that has been carried out is inadequate because it has not sought to identify and consider all reasonably available sites and consequently it does not comply with the NPPF.

Living Conditions

31. The proposed dwelling on plot 2 would have a substantial area of raised decking and a pool, significantly above the level of the access track/public footpath. The location of the decking, with fine views across the Channel, would be likely to result in a high level of use. Immediately to the south of the track at this location is the main garden to Shipyard Cabin, much of which is laid to lawn¹. Although it is likely that the occupiers of Shipyard Cabin would choose to use the decking area to the west of the property because of the waterside views, the opportunity exists for the larger grassed area to be used for recreation and leisure. I consider that the relatively short distance between Shipyard Cabin and the proposed decking/pool area, together with the elevated design of the decking, would mean that the living conditions of the occupiers of Shipyard Cabin would be significantly harmed by noise and overlooking. The appellant suggested a condition requiring the provision of balustrading to be set back from the edge of the proposed decking area, thus increasing the

¹ As shown in photographs on pages 39 and 40 of Mr Rall's Statement

distance between the proposed amenity area and the garden of Shipyard Cabin. However, I consider that the proximity of the proposed decking and pool would still lead to disturbance and potential overlooking, to the detriment of the Cabin's occupiers.

32. Saved LP policy BE11 seeks to ensure that proposed development would not have an unacceptably harmful impact on the living conditions of neighbours. On this issue I conclude that the requirements of that policy would not be met.
33. The Council did raise the issue of compatibility between the use of the QMF and the proposed dwellings. Although I understand the risk that noise might emanate from the QMF this could be appropriately conditioned (as indeed suggested by the Council) and therefore I only attach little weight to the Council's concerns in this regard.

Five Year Housing Land Supply

34. The Council confirmed at the hearing that it currently has about 4.4 years housing land supply and should the Chichester Local Plan: Key Policies be found sound at Examination later this year, then the 5 year supply would be available. Although I have attached some weight to the current lack of a 5 year supply, the proposal is for only 4 houses which would make comparatively little contribution to meeting the wider housing needs of the District. I therefore conclude on this issue that the shortfall in housing land supply is small; the contribution of the site would be minimal and the shortfall is likely to be made up soon. The weight I attach to this matter does not therefore outweigh my conclusions on the issues relating to design, appearance, flood risk and living conditions.

Conclusion

35. I have found that the requirement for marine related uses to occupy the whole site is not justified. However, this finding is outweighed by my conclusions with regard to the visual impact of the proposal on the AONB and the setting of the Bosham Conservation Area; flood risk; and the living conditions of neighbours. Therefore for the reasons given above and having considered all other matters raised (including the sustainability credentials of the site in terms of transportation, services and facilities), the appeal is dismissed.

David Hogger

Inspector

APPEARANCES AT THE HEARING

FOR THE APPELLANT:

Thomas Hill QC
Paul Barnes BSc (Hons) MRICS
David Innes BSc CEng MICE MStructE FConsE
Richard Meeson FRICS
Nick Ralls RIBA
Richard Stapleton FRICS
Nick Taylor DipTP MRTPI ARICS

FOR THE LOCAL PLANNING AUTHORITY:

Stephen Harris BSc (Hons) DipTP MRTPI
Heather Hall (Historic Buildings)
Peter Legood (Valuation and Estates)
Steven Lawrence MRTPI BSc (Hons) DipTP DipUD (Chichester Harbour Conservancy)

INTERESTED PERSONS:

Peter Newman (Bosham Association)
Peter Hankey (local resident)
Peter Henshaw (local resident)
James Davis (Chichester Harbour Trust)
Richard Pratt (local resident)
Kate Dachowski (local resident)
Mr S Callow (representing a local resident)

DOCUMENTS SUBMITTED AT THE HEARING

Chichester Local Plan (and proposed Modifications)
Schedule of Times and Heights of High and Low Water
Supplemental Unilateral Undertaking (1 September 2014)
Draft Plan PL-004 (primarily relating to former shipyard)
Photographs and overlays showing approximate former building mass
Illustration of various flood events (Figure 1)
Elevations showing glazing and louvres
E-mail from Mr Harris to Mr Gregson regarding Flood Events (21 August 2014)
Plans and marketing details relating to a number of nearby marine premises
E-mail from Mr Taylor to Mr Harris (3 September 2014) regarding possible amenity use condition