

**Report by the Director for Place**

**ENFORCEMENT REPORT**

**Planning Application reference AWDM/0501/12**

**Update in respect of flood defences and landscaping at Mariner Point, 79-81 Brighton Road, Shoreham**

**1. BACKGROUND**

- 1.1 This report is an update to Members following a report to the Planning Committee on July 5th 2021 (see attached).
- 1.2 Mariner Point is a mixed residential/commercial development on Brighton Road, adjacent to the Sussex Yacht Club and the River Adur. Permission was granted in 2012 for the demolition of the former Parcelforce warehouse on the site and the construction of a 5-7 storey building with 132 dwellings (Use Class C3) (comprising 32 x 1-bed flats, 87 x 2-bed flats and 13 x 3-bed flats of which 27% are affordable units), a 1,265 sqm foodstore (Use Class A1) and 121 sqm of ancillary commercial floorspace (Use Classes A1, A2, A3, A5 and B1) with 150 parking spaces plus cycle spaces at basement level and at the front of the site, new vehicular access to serve the foodstore from Brighton Road, access to residential units via Surry Hard, improvements to the existing river wall, public hard and boathouse and new landscaping (AWDM/0501/12).
- 1.2 The development is now completed and occupied. The foodstore is not likely to be provided now and a dental surgery occupies half of the ground floor with a gym currently seeking to occupy the other half. There is an outstanding planning application for that use which is still under consideration (AWDM/1391/23).

1.3 Following occupation of the development a number of residents contacted the Council to complain about a number of issues and concerns, predominantly relating to the adequacy of the flood defence works, quality of build and poor quality of landscaping. Following those complaints, the Environment Agency visited the site and noted a number of issues with the design of flood defence measures installed at the site which required urgent attention. A subsequent meeting was arranged on site on the 10th June 2021 between the EA, Planning Officers and the developer to seek to address the various defects identified. The report in July 2021 set out the various breaches identified and recommended enforcement action was taken to ensure that the required works were undertaken within an appropriate timescale to ensure a robust flood defence is in place to protect existing and future residents.

1.4 This report seeks to update Members on the current situation.

## **2. FLOOD DEFENCES**

2.1 The permission was granted subject to a number of conditions, of which the following are relevant in this case (numbers 21, 33 and 34 set out below):

*Prior to the commencement of development, details of the replacement river wall, the floor level of the proposed building and alterations to the ground levels of the site shall be submitted to and approved in writing by the Local Planning Authority and the development shall be carried out in strict accordance with such details as approved and no occupation of the buildings shall take place until the approved works have been completed.*

*Reason: In the interests of amenity, the environment and flood risk avoidance, having regard to saved policy AG1 of the Adur District Local Plan and the policies of the National Planning Policy Framework*

*The development hereby approved shall be carried out in accordance with the approved Flood Risk Assessment (FRA) ref:42285 Issue 3, dated December 2012, and the following mitigation measures detailed within the FRA:-*

*1) Finished floor levels of residential units are set no lower than 5.57m above Ordnance datum (AOD).*

*2) A scheme for managing surface water, including arrangements for the storage of surface water during periods when the system may be tide locked.*

*Reason: To reduce the risk of flooding to the proposed development and future occupants in accordance with the principles of the National Planning Policy Framework.*

*The development hereby permitted shall not be commenced until such time as the following have been submitted to, and approved in writing by, the local planning authority:*

*1) Design details of the proposed on site flood defences, including the flood gates. This should include confirmation that the proposed gates are as few in number as possible.*

*2) A scheme for the maintenance and operation of the on-site flood defence measures over the lifetime of the development, with assurances in place that the relevant parties have formal responsibility for these structures.*

*The approved flood defences shall be installed and be operational prior to first occupation of the building and they shall be maintained in accordance with the approved details in (2) above thereafter.*

*Reason: To demonstrate that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere in accordance with the principles of the National Planning Policy Framework.”*

### **3. BREACHES**

3.1 There were a number of breaches that needed to be rectified. These are listed below:

#### *Surry Hard flood wall*

3.2 The development included the infilling of Surry Hard to the east of the site and forming a new stepped quay. After that work had been carried out it was discovered that during the highest spring tides the river overtopped the new wall and flooded the adjoining land. To afford better flood protection the developer agreed to raise the outer wall of the Hard, adjacent to the river by a further 300mm (AWDM/0601/15 refers).

3.3 The additional 300mm of wall was constructed on top of the new wall but it was evident that river water was still seeping through a gap between the original construction and the additional raised wall flooding the adjoining area despite the river still being seemingly behind the raised flood wall as illustrated in the photo below. Further water ingress appeared to be occurring through outfall pipes in the end of the new wall as tidal flaps to prevent back

flow of water as the tide comes in. The wall is also cracked in places and is generally in poor condition. Works were needed to prevent water penetration and make repairs to the wall and install tidal flaps. The photo below shows a tide flap (blue flap) on only one of the outfall pipes.

- 3.4 The developer has confirmed that a flap valve has now been fitted (see photo below).



*Flood gate to basement car park*

- 3.5 There was evidence that water had been running down the ramp to the basement car park and seeping underneath the flood gate. Furthermore, it has been found that the flood gate has been installed incorrectly, opening inwards rather than outwards, resulting in water putting pressure on the flood gate during a flood event and causing concern that it may eventually buckle and fail. It was explained at the site meeting by the developer that the gradient of the ramp and the necessary head height to access the underground car park meant that the flood gate had to be installed partly on the ramp (resulting in the door having to open down the slope).
- 3.6 Unfortunately no amendment was sought by the developer at the time and there was no discussion with the EA before the gate was installed incorrectly. The developer has since provided evidence that the gate is safe and a full height leakage test was carried out in November 2022 by a qualified engineer which was successful.
- 3.7 The approved FRA states that *“The entrance to the basement car park will be raised 300mm above the existing ground level to tie into road levels and as a secondary measure a flood gate (bulkhead doors) capable of resisting water pressure of an extreme flood event will be installed at the entrance.”*

This has not been done due to land ownership constraints but an alternative measure has been carried out which is to construct a raised bump at the entrance to the car park to prevent surface water ingress. The developer has informed us that the works have been completed on site. However, as the photograph below indicates the ramp is hardly noticeable and further details have been requested to illustrate the change in levels and that this will address the issue of surface water run-off from the road to the ramp and basement car park. The developer has initially stated that there is now a fall from the ramp to the drain in the road which should address previous issues and any further information received will be reported verbally at the meeting.



#### *Water ingress within the basement car park*

- 3.7 There is evidence that water had been seeping through the flood wall into the basement car park. There were a number of small holes in the wall on the south side of the car park which are part of the piling/concrete works and whilst a number of these have been plugged a couple had not been done. The developer is insistent that no water is coming through the concrete wall itself due to its robust construction but has agreed to plug or re-plug any holes.





### *Gaps in flood wall*

- 3.8 A hole had been cut into the flood wall on the east side to enable pedestrian access from the front car park to the rear of the building. This was a serious breach as it would have allowed water into the development and an electricity substation. It has since been blocked up (as shown below)..



- 3.9 There was another gap at the entrance to the commercial loading area on the east side of the building. The developer has now filled this in with a new low wall and glazing as the retail store is not going ahead and the lorry delivery area is not therefore needed.



- 3.10 The entrance to the surface car park at the front of the site has now been fitted with demountable flood barriers as required. The flood gate to the

pedestrian access adjacent to the basement car park has also now been fitted correctly.

- 3.11 The repairs and corrective works that have been carried out are considered to be sufficient to overcome previous concerns about flood risk to the building and your Officers are now satisfied that the flood defence works have been completed in accordance with the requirements of the FRA and planning permission. As such, no further action is required on this issue.

### 3.12 *Landscaping*

- 3.13 Another matter which is currently under consideration is the landscaping for the development. The relevant condition 11 is set out below:

*'No development (except enabling works) shall take place unless and until there has been submitted to and approved in writing by the Local Planning Authority a scheme of landscaping. This shall include the planting of replacement trees along the A259 frontage, such trees being 5m-6m high and 18cm-20cm trunk girth at the time of planting. 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 buildings 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 gives written consent to any variation. For the purposes of this condition, "Enabling Works" shall mean operations comprising site assessment and remediation, archaeological investigation, demolition, site clearance and preparation, diversion and laying of services, the erection of fences and hoardings and the construction of temporary accesses or service roads.'*

**Reason** *In the interests of visual amenity and the environment and to comply with saved policies AB25-27 of the Adur District Local Plan and the policies of the National Planning Policy Framework"*

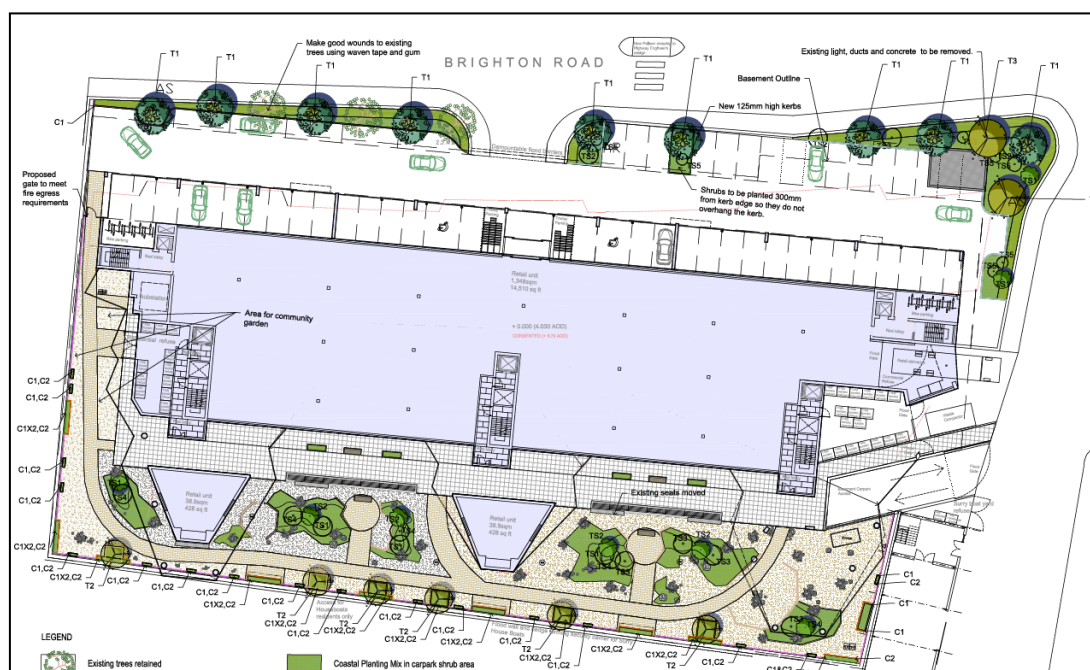
- 3.14 An application (AWDM/0455/21) has been submitted for the approval of details pursuant to the landscaping condition. It is clear that planting which has been carried out to date at the rear (and front) of the site is not as extensive as initially proposed, although it is not substantially different from the preliminary landscaping plan submitted (albeit not approved). Bench seating, box planters against the flood wall and tree planters have been provided as well as shingle and paving. However, the dominant feature at

the rear of the site is shingle and a number of the planting boxes were of a poor quality and would quickly deteriorate. The implemented landscaping scheme was not approved.

3.15 At the front, 19 trees were originally shown to be planted along the frontage to replace preserved trees felled as part of the development but none have been planted. The reason for this is due to a WSCC requirement for the widening of the pavement in front of the site, which has been carried out as part of the approved highway works and which is needed to accommodate a future cycle path along the A259. Consequently, the amount of land available for new planting within the site has been significantly reduced. A few trees have been retained at the western end of the frontage but further planting is needed.

3.16 At its meeting on the 5th July 2021 Members resolved to serve a BCN requiring the submission of a revised landscaping plan. A plan was submitted on the 1st December 2021 to comply with the BCN. However, although an improvement on what has been planted, residents did not consider that the improvements went far enough and the plan still did not show the level of tree planting originally approved along the frontage of the site. A further plan was submitted on the 27th June 2022 but was still not considered to be acceptable.

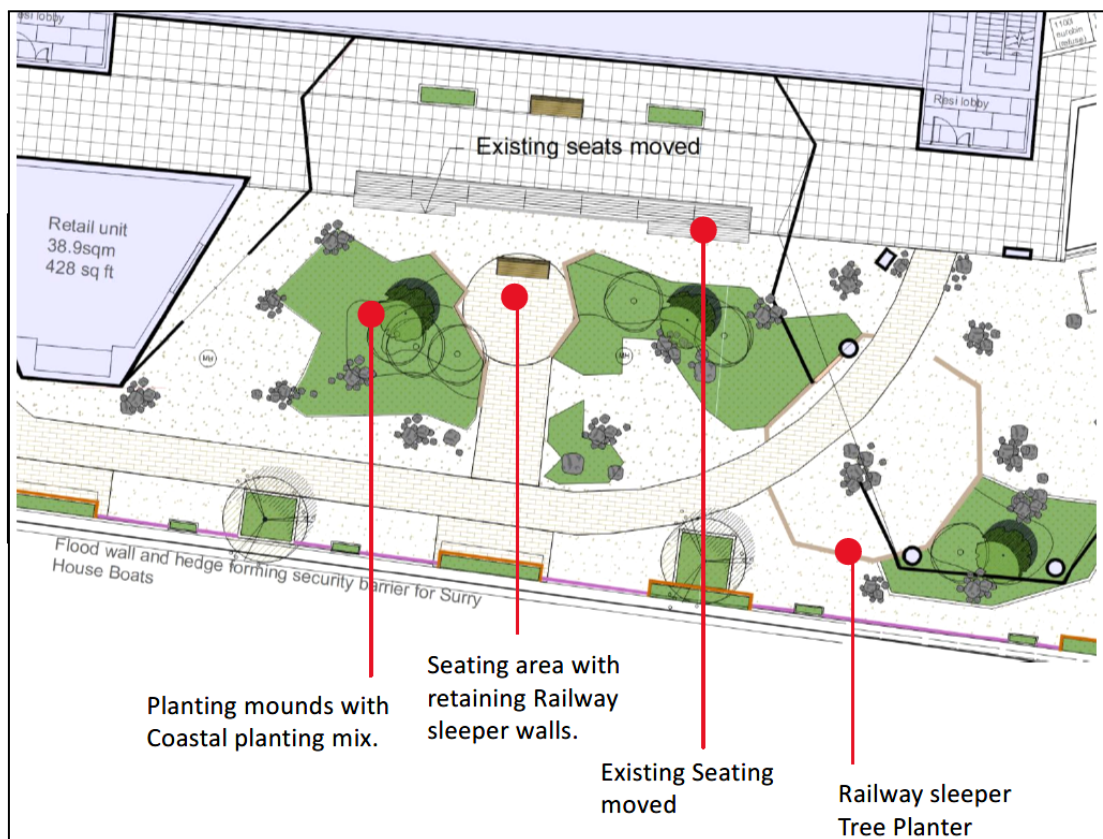
3.17 A site meeting then took place in March 2023 involving Council Officers, the developer and his landscape consultant, Members and residents. The meeting was positive and the newly appointed Landscape Consultant agreed to a number of changes on site and a revised landscaping scheme was submitted in May 2023 (see extract below).





3.18 The revised plan shows the retention of the 3no. remaining sycamore trees and new tree planting with narrower, more suitable trees for the location, a sycamore variety of small form (*Acer pseudoplatanus* 'Worley'). Such a tree significantly reduces the need for tree pruning in the future. The plans show the introduction of tree planting in tree pits among the parking spaces at the front of the site, which is necessary due to the lack of space for planting along the frontage. While this will result in the loss of three parking spaces, this is considered to be an acceptable compromise in order to achieve improved landscaping.

3.19 At the rear, it is proposed to remove much of the pea shingle that currently exists and to install a series of mounds of soil to enable planting of evergreen, seasonal and biodiversity friendly species suitable for a coastal location and drought tolerant. Railway sleeper walls will form seating areas around the edge of the mounds with large standalone planters provided for new tree planting, plus low level planting to help soften the site. Informal boulders will also be dotted around the space.



- 3.18 Residents were consulted on the plans but a formal response has not yet been received despite several reminders being sent. Your Officers are aware that there are ongoing concerns amongst residents primarily related to drainage matters on the site and that they have previously advised that landscaping proposals should not be designed, approved or implemented until site drainage has been professionally assessed and any issues dealt with.
- 3.20 Whilst sympathetic to residents' drainage concerns, as set out earlier in this report, your Officers are satisfied that the outstanding flood risk issues have been dealt with. There is no clearly identified planning breach in relation to the implemented drainage scheme on the site. The drainage was signed off by an Approved Inspector (not the Local Authority Building Control) and on some of the general maintenance issues (water penetrating into the basement) the Developer has made some incremental improvements.
- 3.21 It is regrettable that we have not received the residents' response to the latest landscaping proposals despite being submitted in May 2023. It is understood that the residents are going to discuss the landscaping at their AGM in January 2024. Any comments received will be reported verbally at the meeting.
- 3.22 Nevertheless, your Officers consider that the current landscaping scheme is a significant improvement on earlier submissions and it has now got to the stage where the planting needs to take place before another planting season is missed. If it is not implemented by the end of March it will have to wait until November 2024. In view of the length of time it has taken since the development was substantially completed and occupied, this is now considered to be an urgent matter. Further delay to seek additional amendments is therefore not desirable. There has been extensive consultation with residents, including a positive on site meeting, and it is considered that the latest scheme is one that can be supported.
- 3.22 It is therefore suggested that Officers should advise the developer to implement the submitted landscaping scheme as soon as possible. To ensure compliance a further Breach of Condition Notice (BCN) can be served to ensure compliance if the landscaped is not undertaken during the current planting season. .

#### **4. Recommendation**

- 4.1 Members are requested to note the contents of the report, approve the latest landscaping plan and to delegate authority to the Head of**

**Planning and Development to serve a further BCN if the approved landscaping is not implemented during the current planting season.**

**Local Government Act 1972**

**Background Papers:** Planning Applications references AWDM/0501/12 and AWDM/0801/12.

**Contact Officer:**

Peter Barnett  
Principal Planning Officer  
Portland House  
01903 221310  
[peter.barnett@adur-worthing.gov.uk](mailto:peter.barnett@adur-worthing.gov.uk)

## **Schedule of Other Matters**

### **1.0 Council Priority**

- 1.1 Compliance with planning policies as set out in the adopted Local Plan Strategy

### **2.0 Specific Action Plans**

- 2.1 Planning Enforcement and Policy Guidance

### **3.0 Sustainability Issues**

- 3.1 Matter considered and no issues identified

### **4.0 Equality Issues**

- 4.1 Matter considered and no issues identified

### **5.0 Community Safety Issues (Section 17)**

- 5.1 Matter considered and no issues identified

### **6.0 Human Rights Issues**

- 6.1 Article 8 of the European Convention safeguards respect for family life and home, whilst Article 1 of the First Protocol concerns noninterference with peaceful enjoyment of private property. Both rights are not absolute and interference may be permitted if the need to do so is proportionate, having regard to public interests. The interests of those who have carried out unauthorised developments as well as those affected by them and the relevant considerations which may justify interference with human rights has formed part of the assessment process in deciding whether enforcement action is expedient.

### **7.0 Reputation**

- 7.1 Residents and members would expect that planning conditions are complied with and that the Council will take action when clear breaches occur.

## **8.0 Consultations**

8.1 Consultation with Legal Services as set out in the report.

## **9.0 Risk Assessment**

9.1 Enforcement action is a discretionary activity which should only be taken here there is clear evidence to do so. The felling of trees provides clear evidence that action should be taken in this case.

## **10.0 Health & Safety Issues**

10.1 Matter considered and no issues identified

## **11.0 Procurement Strategy**

11.1 Matter considered and no issues identified

## **12.0 Partnership Working**

12.1 Matter considered and no issues identified