

Report by the Director for Economy

ENFORCEMENT REPORT

Planning Application reference AWDM/0501/12

Complaint in connection with lack of appropriate flood defences and landscaping at Mariners Point, 79-81 Brighton Road, Shoreham

1. BACKGROUND

- 1.1 Mariners 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 1265sqm foodstore (Use Class A1) and 121sqm 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 nearing completion and many of the flats are occupied. The foodstore is not likely to be provided now and alternative occupiers are being sought, including a dental surgery across half of the ground floor (current application AWDM/0801/21 refers).
- 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. This report sets out the various breaches identified and recommends enforcement action is taken to ensure that the required works are undertaken within an appropriate timescale to ensure a robust flood defence is in place to protect existing and future residents.

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 are a number of breaches that need 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 has subsequently been evident that river water is 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 appears 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 are 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.



Flood gate to basement car park

- 3.4 There is evidence that water has 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).

- 3.5 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 advised that he will provide evidence that the gate is safe as well as information relating to gradients which prevented any alternative location for the flood gate. A steeper gradient may be required which would not be acceptable from a highway point of view, for example. This information is awaited and, on receipt, it will be essential that discussion takes place with the EA to find an acceptable solution. The EA has helpfully suggested an alternative approach of the flood gate dropping into a gully with a rubber seal and this design approach is being shared with the developer.
- 3.6 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 and alternative measures are being considered, such as a possible raised bump at the entrance to the car park.

Water ingress within the basement car park

- 3.7 There is evidence that water has been seeping through the flood wall into the basement car park. There are 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 and has agreed to plug or re-plug any holes.



Gaps in flood wall

- 3.8 A hole has 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 is a serious breach as it allows water into the development and an electricity substation. The developer has advised that it will be blocked up.
- 3.9 There is another gap at the entrance to the commercial loading area on the east side of the building. The developer has advised that this will be filled 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. The entrance to the surface car park at the front of the site has not been fitted with demountable flood barriers as required. The developer has advised that this will be carried out by the end of June.
- 3.10 The flood gate to the pedestrian access adjacent to the basement car park has also been fitted the wrong way round and there is a gap underneath. The developer has agreed to correct this fault.
- 3.11 The cumulative effect of these breaches is a development which is currently not safe from flooding and which does not therefore provide a safe and effective refuge for residents if a flood event occurred. The overall flood defence strategy is for residents to stay put in the event of a flood but at present time with the risks of flooding identified to the basement this could cause risk of life for anyone in the basement area if the main flood gate to this area fails.
- 3.12 Whilst, the developer has accepted that alterations have to be made to remedy defects to the flood defences, it is considered that the breaches are serious enough as indicated above for urgent action to be taken and formal enforcement action to be authorised to ensure the necessary modifications are undertaken in a timely fashion. It is recommended that a Breach of Condition Notice (BCN) be served on the developer to rectify these breaches. A compliance period of one month is considered appropriate given the serious nature of the breaches.

Landscaping

- 3.13 Another matter which is currently under consideration is the landscaping for the development. 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 of the site is not as extensive as initially proposed, although it is not substantially different from the preliminary landscaping plan. Bench seating, box planters against the

flood wall and tree planters have been provided as well as shingle and paving. Discussions have taken place with the developer and further tree planting is to be provided at the rear of the development with the tree planters upgraded to be more robust (currently they are timber raised beds/planters). Additional benches are also to be provided at the rear.

3.14 At the front, 19 trees were originally shown to be planted along the frontage but none have been planted to date. The reason for this is due to 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 at the eastern end and the developer has agreed to provide more trees once the large temporary marketing sign has been removed from the NE corner of the site. While less than the 19 trees originally proposed, in the circumstances it is considered that this will be an acceptable compromise. The planting would be carried out during the next planting season. As these trees should have been planted during the last planting season a BCN is also recommended to ensure that this planting takes place.

4. Recommendation

4.1 Members are therefore requested to endorse the recommendation that a Breach of Condition be served to require the developer to rectify the breaches of conditions 21, 33 and 34 listed above in order to ensure that the development is safe from flooding and the outstanding planting is undertaken as set out above.

Local Government Act 1972

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

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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