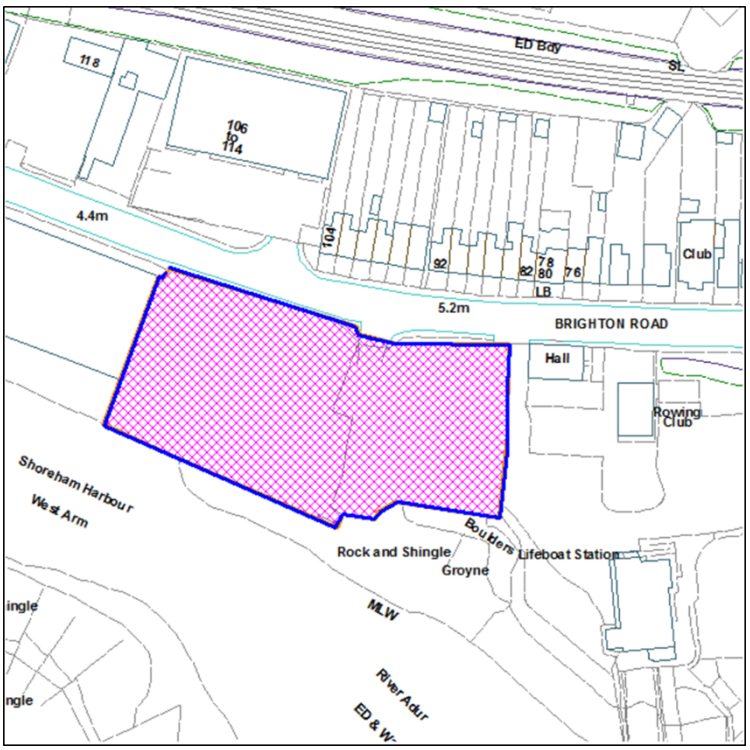
APPENDIX 1

Application Number:	**AWDM/1193/25**	**Recommendations:** **1) S.73A Minor Amendments with variation of planning conditions - Approve** **2) S106 Obligation Amendments - Partial Approval**
Site:	**Land At Former 5 Brighton Road, Shoreham-By-Sea**	
Proposal:	**Application to vary condition 2 (approved plans) Condition 21 (District Heat Network) of previously approved AWDM/1962/22 and Variation of S106 Agreement.: Amendment: Basement removal, reallocation of Floor Area between V4 and V1 Town Houses. Different sustainable and energy efficient solution has been produced.** **ORIGINAL DESCRIPTION: Proposed mixed-use re-development between 3 and 8 storeys comprising of 21 townhouses, mixed-use apartment block of 24 flats, commercial unit, riverside walk, play area, landscaping, and parking (with revised design and provision of on-site affordable housing).**	
Applicant:	Cayuga 011 LLP	Ward: Southwick Green
Agent:	ECE Planning Limited	
Case Officer:	Stephen Cantwell	



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Introduction

This application covers two proposals concerning the approved development of 45no.dwellings, comprising 24no.townhouses and a block of 21no. apartments with a small riverside commercial unit, at the former Howard Kent site, 5 Brighton Road.

In summary, the two proposals are:

- Firstly, to vary the approved planning conditions under s.73A of the Town and Country Planning Act 1990 as amended ("the Act"). These are: changes to the approved drawings under condition 2 and to the energy strategy under condition 21.

- Second is a request to amend three obligations of the s.106 Undertaking concerning affordable housing, highways & open space.

Therefore the Planning Assessment section is divided into two parts. Part one covers the variations to the plans listed under condition 2 and then the energy strategy under condition 21, (with a related amendment to the s.106 Undertaking).

The second part concerns changes to the s.106 obligations, for affordable housing, highways and open space contributions, based on current viability information.

The resort concludes with separate recommendations on each proposal

Background

The approved development was allowed at appeal in December 2023. Simultaneously an appeal was dismissed for a near-identical scheme, which had offered a lesser amount of affordable housing provision. Engineering and ground works commenced in late 2024, including rebuilding the riverwall.

The current application has been called to the Planning Committee at the request of Cllr Thompson, due to the complexity of the case and previous appeals.

Proposal, Site and Surroundings

This riverside site is at the easternmost end of the Shoreham Western Harbour Arm, facing the harbour entrance to the south and fronting the A259 Brighton Road immediately to the north. To the east is Kingston Green and the listed Kingston Bucci Lighthouse with houses on the opposite side of Brighton Road.

The physical changes sought pursuant to S.73A of the Act would give rise to some changes to the internal/external layout and external appearance of the approved development. These changes include the removal of an initially approved basement layer, changes to pedestrian/disabled access arrangements, the omission of an external east-facing walkway within the principle 8x storey block and various changes to fenestration throughout the development. These changes will be described and considered in detail within the Planning Assessment section below.



Fig 1: Approved Development Aerial Views

Relevant Planning History

AWDM/1962/22 Proposed mixed-use re-development between 3 and 8 storeys comprising 21 townhouses, mixed-use apartment block of 24 flats, commercial unit, riverside walk, play area, landscaping, and parking (with revised design and provision of on-site affordable housing). **Refused 09.03 2023**

Reasons for the Authority's refusal were identical to those for the previous application AWDM/1481/21, below

Appeal Allowed 08.12.2023 with grant of costs against the Council (Decision letter

appended)

AWDM/1481/21 Proposed mixed-use re-development between 3 and 8 storeys comprising 21 townhouses, mixed-use apartment block of 24 flats, riverside walk, landscaping, and parking. **Refused 05.09 2022** - See Council's reasons below

Appeal Dismissed 08.12.2025

Council's Reasons:

1. The proposal, by reason of its scale, height and design, is considered to cause harm to the setting and the significance of the designated heritage asset, Kingston Bucci lighthouse. Whilst this is considered to be less than substantial harm, the Local Planning Authority does not consider that there are public benefits of the proposal sufficient to outweigh this harm, the under provision of affordable housing provision contributes to this lack of outweighing public benefit. The proposal is therefore contrary to the following Policies of the Adur Local Plan, 2017:-
15 (Quality of the Built Environment and Public Realm),
16 (A Strategic Approach to the Historic Environment),
17 (The Historic Environment)
21 (Affordable Housing) and,
Policy CA7 of the Shoreham Harbour Joint Area Action Plan 2019 (including the associated paragraph 4.7.70) and paragraphs 199-200 & 202 of the NPPF, 2021.

2. In the absence of a planning obligation, the application does not secure the provision of the infrastructure and services necessary to accommodate and mitigate the impact of the development in relation to matters including: affordable housing, highways & transport, health, education, libraries, fire & rescue, open space & recreation, provision for future connection to the Shoreham District Heating Network; site management, public art and provisions for employment and opportunities connected with the development, in accordance with Policies 29 & 32 of the Adur Local Plan, 2017; CH7 & SH10 the Shoreham Harbour Joint Area Action Plan 2019 and the NPPF, 2021.

AWDM/1979/17 Demolition of existing building and erection of 3 buildings to provide 136 dwellings (including 30% affordable) comprising 21no. three bed, 61no. two bed, 46no. one bed and 8no. studio flats, community and residents' space as flexible D1/D2 space to ground floor, flexible A1/A3 to ground floor, 136no. parking spaces, provision of England coastal path, access, enhanced sea defences, enhanced flood defences, connection to the Shoreham Harbour Heat Network, creation of a new public realm to the A259 with hard and soft landscaping and other associated infrastructure. **Withdrawn 24.08.2018**

Consultations

West Sussex County Council:

- ***WSCC Highways Authority LHA)****:* Advice

The LHA has assessed the latest drawings submitted by the applicant and would advise the small revisions would not have any adverse impact on the highway or change the comments made by the LHA previously.

Further comments regarding the proposal to reduce in-full the highway contribution:

I think the answer is no, both the inspector and WSCC have considered the contributions justified. [Quoting from the appeal decision]: ”*Having considered the evidence to support these provisions, I am satisfied that all of them in both [s.106 obligations] meet the statutory requirements of Regulation 122 of the Community Infrastructure Levy Regulations and the policy tests set out in the paragraph 57 of the Framework*”

The adjoining site [Kingston Wharf] did make the argument that the value of the land would be offset from the costs when discussing the S278 Highway Agreement and if they were to implement the segregated route. This was accepted in part and was reduced from the value of the future need to upgrade the route along the frontage. From what I can see the applicant doesn't provide any funding for the future upgrade of the route along the frontage within the S106 (provision of segregation/ signage/ pedestrian and cycle priority crossing of the access) so therefore this has already been taken into account.

- ***WSCC Lead Local Flood Authority*****:** No Objection

There are no alterations proposed which could increase surface water flood risk, we have no concerns.

Environment Agency: No Objection

Environmental Health Officer: Comments

In response to the proposed Energy Statement: Noise, ventilation and overheating need to be considered together. We do not know what assumptions the simplified overheating assessment has included. Any condition needs to refer to this acoustic report and the applicant needs to provide details of what is being proposed. I would suggest they do the whole facade acoustic calculations so that they can be sure that the overheating and ventilation strategies are appropriate.

Finally, we will need to see details of the proposed air source heat pumps and where these will be located to ensure these do not have a noise impact on the development.

Shoreham Port Authority: No response received

South Downs National Park: No Objection

Southern Water: No Objection

Happy to discharge condition 1 [**Officer Note**, the condition would not be *discharged* but amended drawings would be substituted into the list of drawings under this condition, if this application were approved]

Sussex Police: No Comment

I have reviewed the amendments as submitted and have no comments to make from a crime prevention perspective.
***Representations*:** None received.

Additional information was received from the applicant on 27th February and publicised. The period for responses ends on 16th March. The Committee will be advised of any comments received.

Relevant Planning Policies and Guidance

Adur Local Plan (2017). Policies:

2 – Spatial Strategy
3 – Housing Provision
4 – Planning For Economic Growth
8 – Shoreham Harbour Regeneration Area
11 – Shoreham-By-Sea
15 – Quality of the Built Environment
16 & 17 – The Historic Environment
18 – Sustainable Design
20 – Housing Mix & Quality
21 – Affordable Housing
22 – Density
28 – Transport & Connectivity
29 – Delivering Infrastructure
30 – Green Infrastructure
31 – Biodiversity
32 – Open Space, Recreation & Leisure
34 – Pollution & Contamination
36 – Flood Risk & Sustainable Drainage

Shoreham Harbour Joint Area Action Plan, 2019 (JAPP). Policies:

CA7 – Western Harbour Arm (Land Parcel WH7)
SH1 – Climate Change, Energy & Sustainable Building
SH3 – Economy & Employment
SH4 – Housing & Community
SH5 – Sustainable Travel
SH6 – Flood Risk & Sustainable Drainage
SH7 – Natural Environment, Biodiversity, Green Infrastructure
SH8 – Recreation & Leisure
SH9 – Place Making & Design Quality
SH10 – Infrastructure Requirements

South Inshore and South Offshore Marine Plan, 2018. Policies:

S-PS-1 – Objectives & Policies

National Planning Policy Framework, 2024 (NPPF)

Other Supplementary Planning Documents, Guidance & Study Documents

- *Sustainable Energy – Supplementary Planning Guidance, (August 2019)*
- *Adur & Worthing Joint Open Space Study (including calculator) (2019)*
- *Guidance Note on Intertidal Habitats (2018)*
- *The Shoreham Harbour Transport Strategy (October 2016)*
- *The Western Harbour Tall Buildings Capacity Study (2017)*
- *Planning Contributions for Infrastructure Provision SPD (2013)*
- *Development Control Standards: Space around New Dwellings & Flats (ADC)*
- *The Provision of Service Infrastructure Related to New Development in West Sussex Part 1 (WSCC)*
- *Guidance on Parking at New Developments, (WSCC, 2020)*
-
- *National Planning Practice Guidance 2014-present (NPPG)*
- *Technical Housing Standards – Nationally Described Space Standard (CLG 2015)*

Approach to Decision Making

The Committee should consider the applications in accordance with:

Section 73A of the Act states:

(1) that on an application made, the planning permission which may be granted includes planning permission for development carried out before the date of the application.

(2) Subsection (1) applies to development carried out -
  (a) Without planning permission
  (b) In accordance with planning permission granted for a limited period; or
  (c) Without complying with some condition subject to which planning permission was granted

(3) Planning permission for such development may be granted so as to have effect from -
  (a) The date on which the development was carried out; or
  (b) If it was carried out in accordance with planning permission granted for a limited period, the end of that period

Section 38(6) Planning and Compulsory Purchase Act 2004, which requires the decision to be made in accordance with the development plan unless material considerations indicate otherwise.

Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 indicates that in considering whether to grant planning permission or permission in principle for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State the desirability of preserving the building or its setting or any features of special architectural or historic interest

which it possesses.

Section 72 subsection (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 is a comparable requirement relating to Conservation areas and provides “In the exercise, with respect to any buildings or other land in a conservation area…..special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.” (The National Planning Policy Framework - NPPF para 212-215, attaches a similar test to development affecting their setting)

Section 106A of the Act states that where a planning obligation is less than five years old, it may not be modified or discharged except by agreement between the parties.

Publicity

The application has been publicised in accordance with the legal requirements of the Town and Country Planning (Development Management Procedure) Order 2015, and the Council’s Statement of Community Involvement. This has involved the display of a notice at the site and in the local newspaper. Notification letters were sent to 293 addresses. Additional information relating to plan changes and a covering letter from the agent was received and publicised on 2nd March, with any responses due by 16th March. These will be reported at Committee.

Planning Assessment - Introduction

Part one of the planning assessment covers the variations to the plans listed under condition 2. At the end of this section is consideration of changes to the energy strategy under condition 21, which also amends a related obligation in the s.106 Undertaking.

Part two of the assessment then considers at length more substantial changes to the s.106 Undertaking, involving affordable housing, highways and open space contributions, based on current viability information.

Planning Assessment Part One: S.73A - Variation of Conditions

Condition 2: Amended Plans & Documents

The proposed amendments seek the approval of the following plans and documents.

Plan Type	Plan Name	Plan Reference	Date Received
Location / Site Plan	Location Plan and Proposed Site Plan	1545 PA 010 Rev D	19.09.2025
Floor Plan	Block V1 Floor Plan Variations from Approved Planning Drawings	7485 ECE V1 XX GA A PL101	19.09.2025
Floor Plan	Block V2 Floor Plan Variations from	7485 ECE V2 XX GA A PL201	19.09.2025

	Approved Planning Drawings		
Floor Plan	Block V3 Floor Plan Variations from Approved Planning Drawings	7485 ECE V3 XX GA A PL301	19.09.2025
Floor Plan	Block V3 Floor Plan Variations from Approved Planning Drawings	7485 ECE V3 XX GA A PL302	19.09.2025
Floor Plan	Block V4 Floor Plan Variations from Approved Planning Drawings	7485 ECE V4 XX GA A PL402	19.09.2025
Roof Plan	Block V1 Roof Plan	7485 ECE V1 03 GA A 01101 P5	25.02.2026
Roof Plan	Block V2 Roof Plan	7485 ECE V2 04 GA A 01202 P5	25.02.2026
Roof Plan	Block V3 Roof Plan	7485 ECE V3 04 GA A 01302 P5	25.02.2026
Roof Plan	Block V4 Roof Plan	7485 ECE V4 08 GA A 01402 P7	25.02.2026
Elevation Plan	Block V1 Elevation Variations from Approved Planning Drawings	7485 ECE V1 XX GA A PL100	19.09.2025
Elevation Plan	Block V2 Elevation Variations from Approved Planning Drawings	7485 ECE V2 XX GA A PL200	19.09.2025
Elevation Plan	Block V3 Elevation Variations from Approved Planning Drawings	7485 ECE V3 XX GA A PL300	19.09.2025
Elevation Plan	Block V4 Elevation Variations from Approved Planning Drawings	7485 ECE V4 XX GA A PL400	19.09.2025
Elevation Plan	Block V4 Elevation Variations from	7485 ECE V4 XX GA A PL401	19.09.2025

	Approved Planning Drawings		
Section Plan	Block V1 Sections A-A, B-B and C-C	7485 ECE V1 XX GA A 05100 P5	25.02.2026
Section Plan	Block V2 Sections A-A, B-B and C-C	7485 ECE V2 XX GA A 05200 P5	25.02.2026
Section Plan	Block V3 Sections A-A, B-B and C-C	7485 ECE V3 XX GA A 05300 P5	25.02.2026
Section Plan	Block V4 Sections A-A and B-B	7485 ECE V4 XX GA A 05400 P8	25.02.2026
Section Plan	Block V4 Sections D-D and E-E	7485 ECE V4 XX GA A 05401 P8	25.02.2026
Landscaping Plan	Site Plan - Hard and Soft Landscaping	7485 ECE 00 00 GAA 001 00 P14	11.03.2026

The above plans would substitute/supersede the following plans as approved pursuant to ref: AWDM/1962/22.

Plan Type	Plan Name	Plan Reference
Location / Site Plan	Proposed Location Plan and Site Plan	2088 PA 009
Floor Plan	Basement and Part Ground Floor Plan	2088 PA 010
Floor Plan	Ground Floor Plan	2088 PA 011
Floor Plan	First Floor Plan	2088 PA 012
Floor Plan	Second Floor Plan	2088 PA 013
Floor Plan	Third Floor Plan	2088 PA 014
Floor Plan	Fourth Floor Plan	2088 PA 015
Floor Plan	Fifth Floor Plan	2088 PA 016
Floor Plan	Sixth Floor Plan	2088 PA 017
Floor Plan	Seventh Floor Plan	2088 PA 018
Roof Plan	Roof Plan	2088 PA 019
Elevation / Section Plan	South Elevation Riverside & Section A-A	2088 PA 020
Elevation / Section Plan	North Elevation Roadside &	2088 PA 021

	Sections B-B and F-F	
Elevation / Section Plan	East and West Elevation to East Terrace, East Elevations to North and South Terraces and Section E-E	2088 PA 022
Elevation / Section Plan	West Elevation to Plats & Sections C-C, D-D and G-G	2088 PA 023
General Site Layout Plan	Ground Floor Plan with Flood Gate Positions, River Walk Width & Section Lines for Perimeter Sections	2088 PA 041

The following plans/documents are unchanged by the proposed amendments and would be referenced within a consent were planning permission to be granted.

Plan Type	Plan Name	Plan Reference
Detail Plan	Typical Bay Brickwork details	2088 PA 024
Detail Plan	Flood Defence Wall Alignment and Access	2088 PA 040
Detail Plan	Perimeter Sections and River Levels Information	2088 PA 042
Detail Plan	Indicative Flood Wall Details	2088 PA 043
Detail Plan	Strategic Landscape Plan	2088 PA 044
Detail Plan	Parking and Keep Clear Plan	2088 PA 046
Drainage Plan	Drainage Layout	DR C 0500 Rev C
Drainage Plan	Drainage Details (1 of 2)	DR C 0520 Rev P1
Drainage Plan	Drainage Details (2 of 2)	DR C 0521 Rev P2

***Physical Changes*:**

The information provided by the applicant describes 36x total changes to approved plans as itemised on each of the amended plans submitted in support of the proposals. The plans submitted by the applicant, further, highlight the proposed amendments and contrast these with the approved scheme to ease comparison.

The submitted plans/documents provided by the applicant categorise the four approved buildings as Blocks V1 to V4 (Figure 2 below). Blocks V1 to V3 are the

townhouse blocks (of 3-4 storeys) arranged around an internal courtyard. Block V4 is the eight storey tower featured towards the western extent of the site, most changes relate to this and to the connected townhouse Blocks V1 & V3.

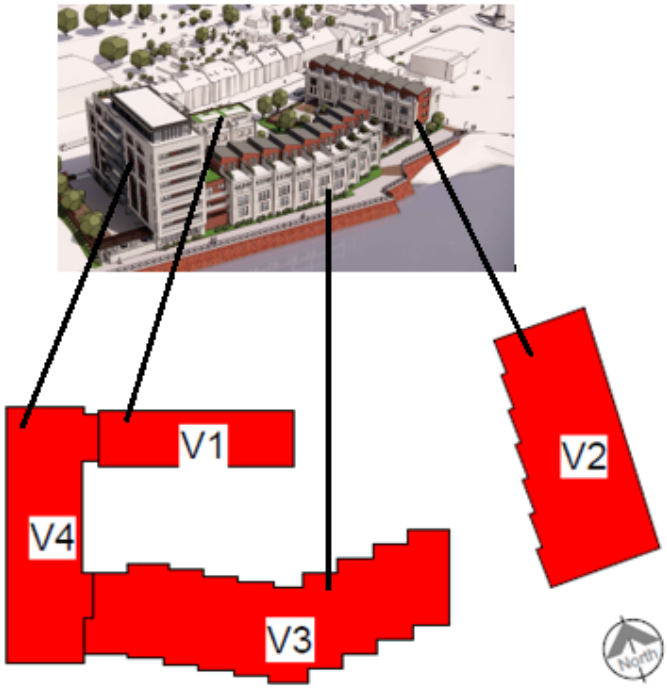


Fig 2: Buildings V1-V4. (Brighton Road to North, River Adur to south).

Given the overall number of amendments sought, this assessment will not seek to address each respective change in isolation. Instead, the amendments sought will be considered collectively, with key changes to the scheme addressed where necessary.

Relevant Policies and Guidance

In considering the acceptability of proposed physical changes members should consider the requirements of national and local planning policy, with relevant documents identified earlier within this report. Given the nature of proposed changes it is the view of officers that key considerations relate to the quality of design and associated visual impacts and effects upon the living conditions of future occupiers. Key related local plan provisions are summarised below.

Policy SH9 to the Joint Area Action Plan (JAAP) (2019) concerns place-making and design. This Policy provides that development should be designed to reflect the character of the marine environment and should be sensitive to views of the waterfront, surrounding landscape and historic features. Amongst other things, waterfront schemes should improve the quality, accessibility, security and legibility of public streets and spaces and, in addition, seek to increase the physical and visual permeability between Brighton Road and the waterfront.

Policy SH9, further, provides that all developments must demonstrate a high standard of design that enhances the visual quality of its environment and results in places which are safe, inclusive and accessible. Proposals will be expected to be of a suitable scale and massing, employ high-quality architectural design, building materials, distinguish between private, public and semi-public open spaces and provide sufficient

and suitable private outdoor space.

Policy CA7 pertains to the Western Harbour Arm (WHA) specifically and, *inter alia,* effectively repeats requirements for high quality design, materials and public spaces. Policy CA7, though, further directs that development should assess likely impacts upon views towards key local features, including the South Downs, waterfront, heritage assets and key local landmarks. Policy CA7, further, prescribes that building heights of up to five storeys would generally be considered acceptable.

Policy 15 to the Adur Local Plan (ALP) (2017) provides that development should be of a high architectural quality which respects and enhances the character of the site in terms of proportion, form, context, massing, height, siting, layout, density, materials and detailed design features. ALP Policy 15, further, provides that development should make a positive contribution to a sense of place, local character and distinctiveness and avoid unacceptable impacts upon neighbouring properties by way of privacy, daylight/sunlight, outlook or open space.

Policy 20 to the ALP, *inter alia,* provides that all new dwellings will be expected to meet minimum nationally described space standards unless it can be demonstrated that there are exceptional reasons why some or all of these requirements cannot be met.

The provisions of Paragraph 140 to the NPPF stipulates *inter alia,* that Local Planning Authorities should seek to ensure that the quality of approved development is not materially diminished between permission and completion as a result of changes being made to the permitted scheme.

Blocks V1, V3 and V4 - Internal Changes

In Block V4, the eight-storey tower, the approved development featured a basement, which was to be provided as a service/plant space accessed by staircases located within ‘link’ structures conjoining Block V4 with the townhouse Blocks V1 and V3 to the east at its respective northern and southern extents. Figure 3 (below) shows the ground floor, with these linking sections circled in red. Between these are the paired staircases in the V4 tower block, leading to the basement.

At first and second floor, the link component between Blocks V4 & V1 shown in Figure 4 (further below) comprised bedroom spaces for the apartments in the V4 tower block. For reasons of fire safety, stemming from the Building Safety Act 2022, a continuous ground-to-roof (largely internal) fire-wall wall must now be constructed to the eastern edge of Block V4, in order to limit the potential spread of fire between linked structures. This change prevents the possibility of overlapping residential accommodation as originally approved. The space is therefore moved into the town houses in Block V1.

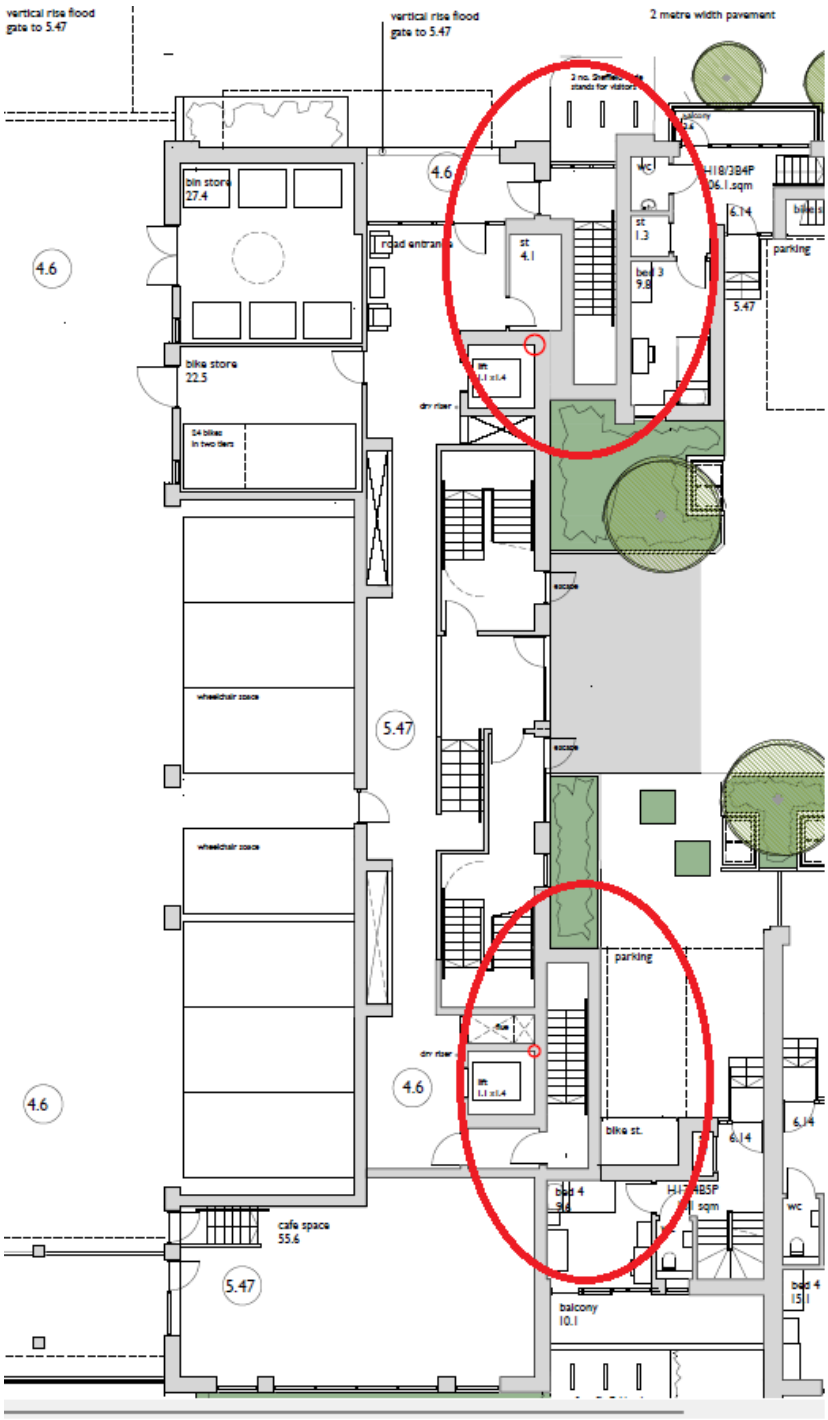


Fig 3: Linking sections (circled) and staircases to basement

At basement level, the proposed change in the energy / heating strategy (described later in this report under Condition 21), renders plant/service space as provided within the original basement layer and its associated access staircases redundant, and is therefore removed.



Fig 4: Block V1 - Proposed configuration (left). Approved configuration (right).

Internal changes to the layout of the link to Block V3 are less pronounced (shown at Figure 5 below). These mainly concern the removal of basement stairs at ground floor with realignment of the external wall, plus minor internal adjustment of the first floor layout.

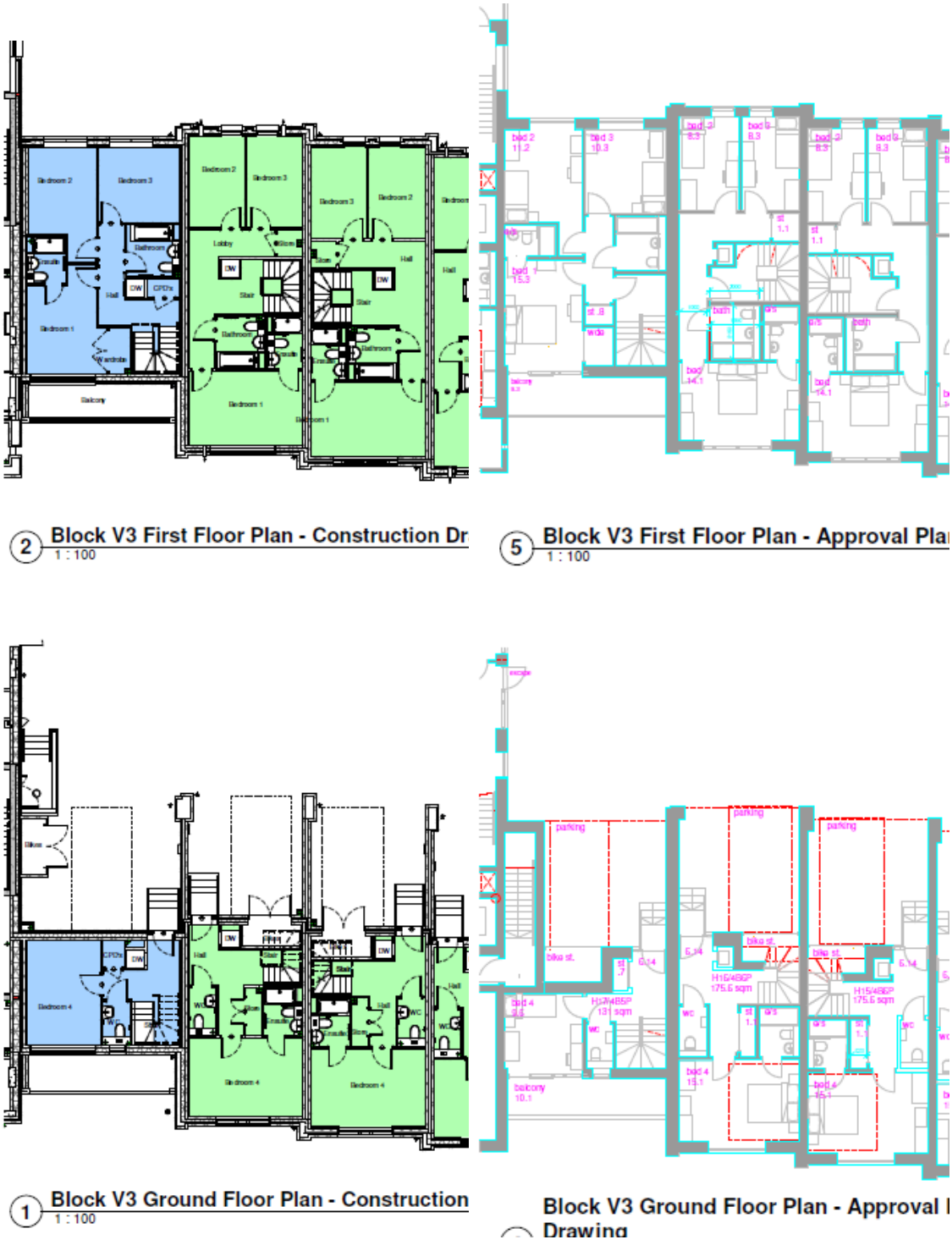


Fig 5: Block V3 - Proposed configuration (left). Approved configuration (right).

The changes in the internal layout of Blocks V1, V3 and V4, as described above, are considered of a minor nature. The loss of service/plant space contained within the

basement layer is uncontentious and does not adversely influence the number or size of residential or commercial units, or any associated valuable communal spaces.

Two townhouses (the easternmost units within Blocks V1 and V3) are enlarged to a minor degree as a consequence of these changes, though, the unit within Block V1 is enlarged mostly by making use of previously approved residential floorspace dedicated to units within Block V4. All affected units, inclusive of those reduced units within Block V4, would continue to satisfy minimum nationally described space standards and would maintain the same number of bedrooms as originally approved. The proposals, therefore, are considered to accord with the provisions of Policy 20 to the ALP in these regards.

Blocks V1, V3 and V4 - External Changes

External changes to townhouse Blocks V1 and V3, as a consequence of changes in internal layout and construction, are considered to be minor (Figure 6 below)

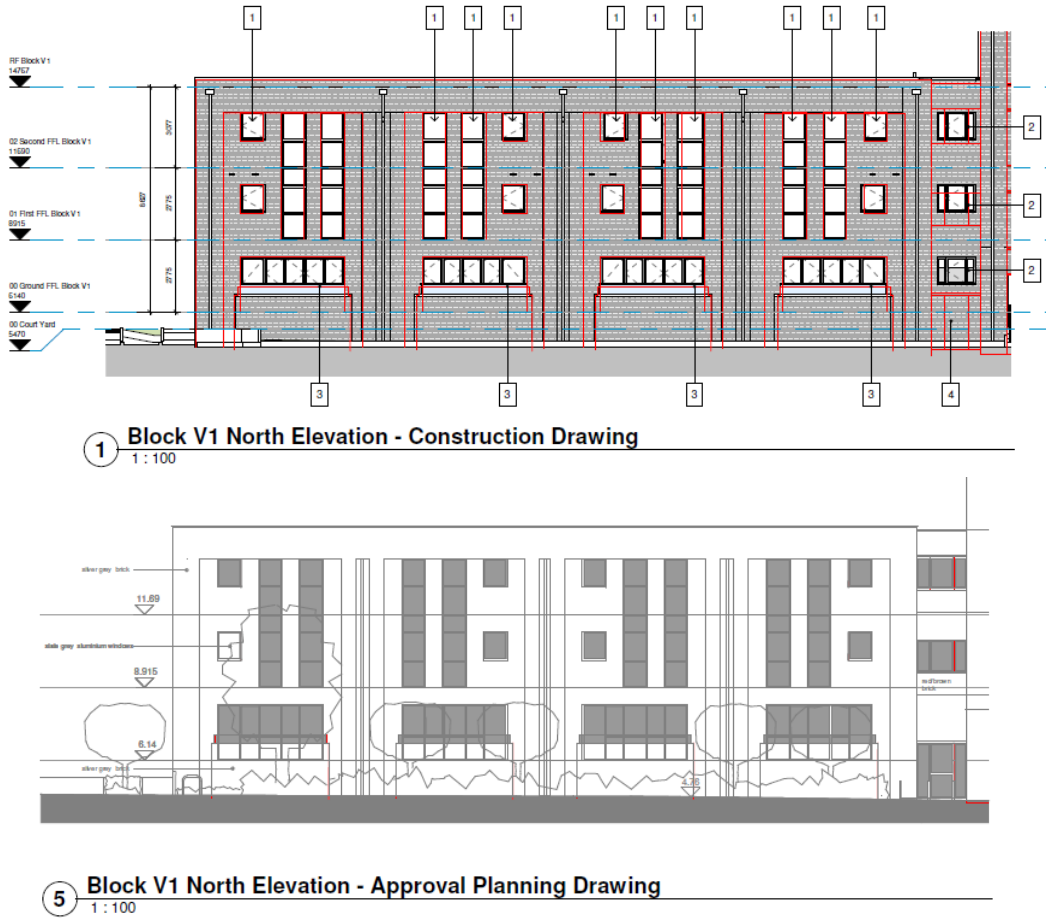


Fig 6: Block V1 - Proposed elevation (top). Approved elevation (bottom).

In the northern elevation of Block V1 facing Brighton Road, the link component of Block V1 (the right hand side of figure 6 above) is amended by the replacement of the single ground floor service entrance by a typical window to serve the reconfigured ground floor residential accommodation. Window widths within the link component would also be reduced, albeit to a negligible degree. These changes are not considered to adversely affect the design quality of the development nor its relationship with the

wider character and appearance of Brighton Road.

In the southern elevation of Block V1 facing the internal courtyard, a further window is introduced at the ground floor of the link component (the left hand side of figure 7 below). This serves newly created residential floorspace. At second and third floor levels are enlarged south-facing windows leading onto a balcony space. These changes result in a minor increase in the overall amount of glazing and are considered to preserve the design quality of the development. No adverse effects upon residential amenity are considered to result from the introduction of additional and increased size windows.

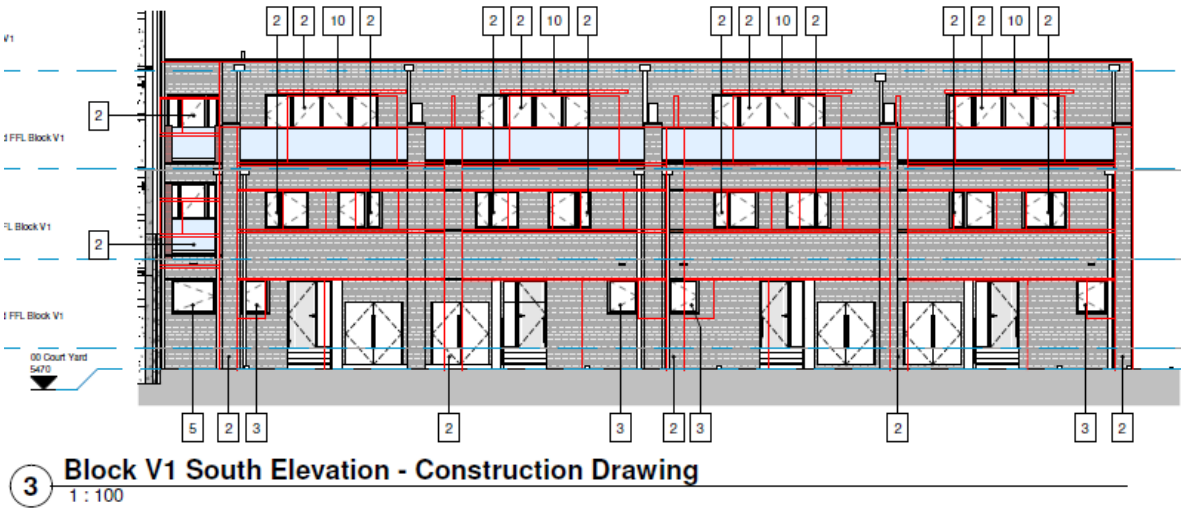


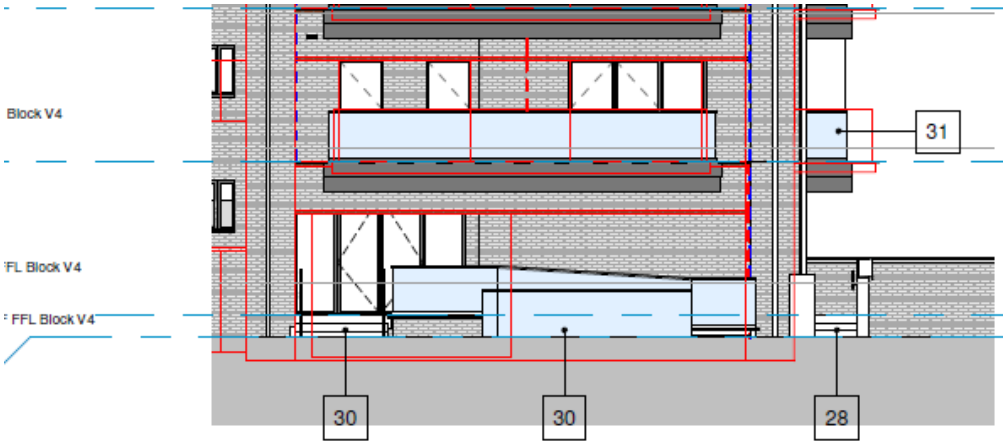
Fig 7: Block V1 - Proposed elevation (top). Approved elevation (bottom).

Block V4 - Changes to Pedestrian/Disabled Access Arrangements

Frontage

The main appreciable alterations to the approved scheme are in respect of pedestrian/disabled access to the front of the tower Block V4. As shown in Figure 8 (below) this was originally consented to feature a pedestrian entrance door, flush level with the pavement in Brighton Road. This ground floor layer was due to be flood defended by installation of a vertical-rising flood-barrier to 5.47m Above Ordnance Datum (AOD) - a height equivalent to the greatest modelled flood-risk within the site.

The proposal seeks to raise the internal floor-level of Block V4 to 5.47m AOD, negating the requirement for rising flood-barriers. This change would raise the ground floor level above the pavement on Brighton Road and would therefore necessitate the introduction of external steps and an access ramp on the Brighton Road frontage.



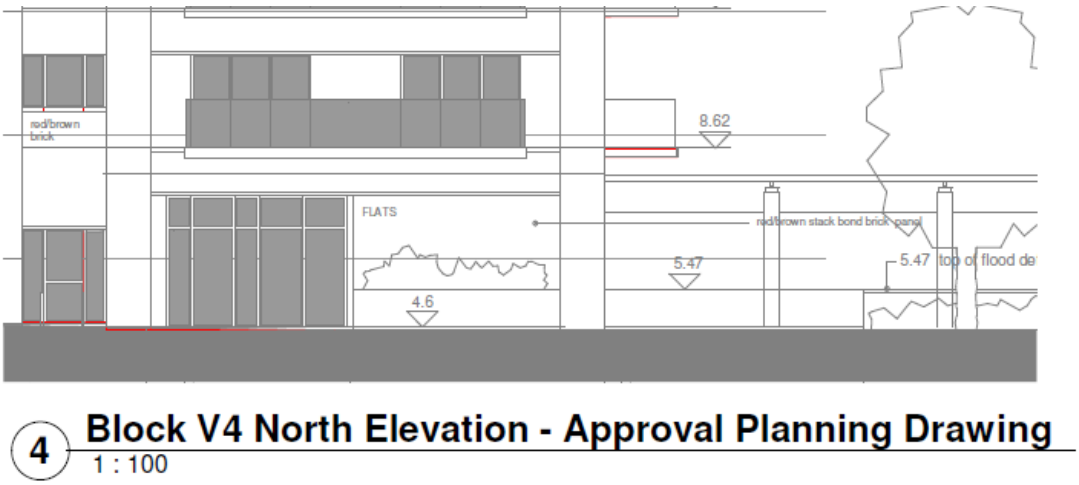


Fig 8: Block V4 Proposed elevation (top). Approved elevation (bottom).

This proposed change, in terms of design, character and appearance, would reduce the simplicity of the approved Brighton Road frontage to Block V4 and introduce additional visual complexity within the streetscape. The additional footprint required for the introduction of an external ramp would also come at the expense of approved planters forward of the northern elevation of Block V4. The resulting effect is considered to be a minor degradation in the attractiveness of the Brighton Road frontage relative to the approved scheme, and which would be clearly appreciable within public views on Brighton Road.

However, it is relevant that this proposed amendment more closely reflects access arrangements and the treatment of floor-levels within the adjacent Kingston Wharf development as shown in the photo at Figure 9 (below). These neighbouring external accesses are also more numerous and of greater scale compared to the proposed.

The introduction of street-facing and external stepped/ramped accesses, therefore, would not be considered out of character with the immediate character of the site. This arrangement would have likely been considered acceptable to officers if presented as a component part of the original proposals.



Fig 9: Brighton Road frontage to neighbouring Kingston Wharf

The proposals would retain relatively extensive planters forward of Block V1 and V2 on the Brighton Road frontage. These would also be permanently retained when the dedicated cycleway south of the existing pavement is implemented in the future. The submitted plans, further, indicate the formation of temporary landscaping within the route of the prospective cycleway (including forward of Block V4) which is indicated to be of significant depth.

Therefore, notwithstanding a slight degradation in the attractiveness of the site frontage relative to the original proposal, no significant harm is considered to result from this change to the character of Brighton Road. The proposals are considered to be overall compliant with the provisions of SH9 or CA7 of the JAAP and Policy 15 of the ALP.

The use of added planning conditions governing the treatment of balustrading and plinth-brickwork to the external access, further, are considered appropriate and could operate to ensure that any projection forward of Block V4 was sympathetically treated within its immediate streetscape.

Rear / Cafe Space

To the rear of Block V4 and the cafe space, the proposals seek to introduce an external platform lift, leading from the approved riverfront walkway, to the entrance of the cafe space. It would also introduce an external stepped entrance in lieu of an approved

internal stepped entrance. Associated changes in layout/footprint are detailed within Figure 10 (below), with changes in elevational treatment detailed within Figure 11 below.

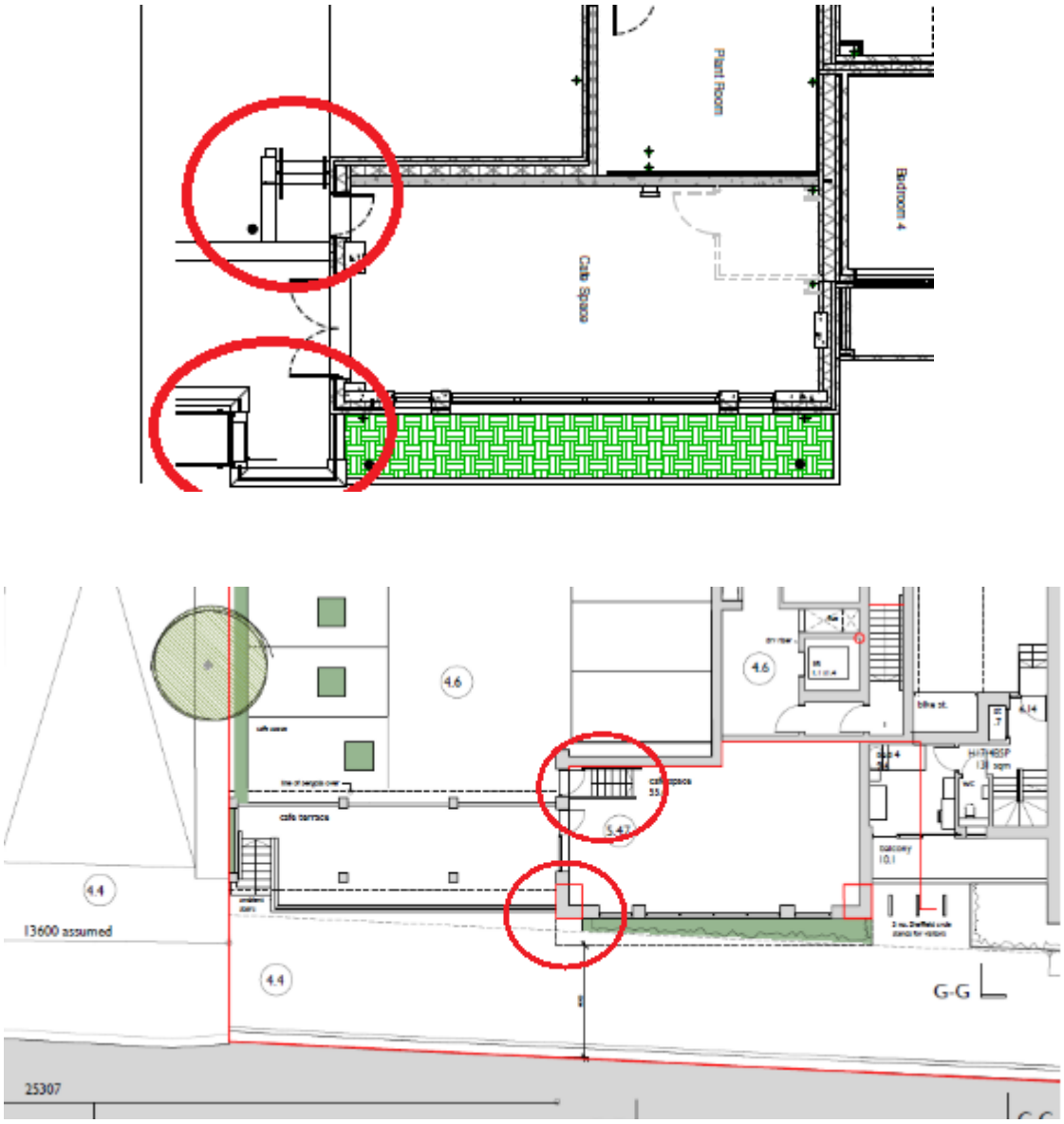


Fig.10: Cafe Space Layout. Proposed (top) Approved (bottom).

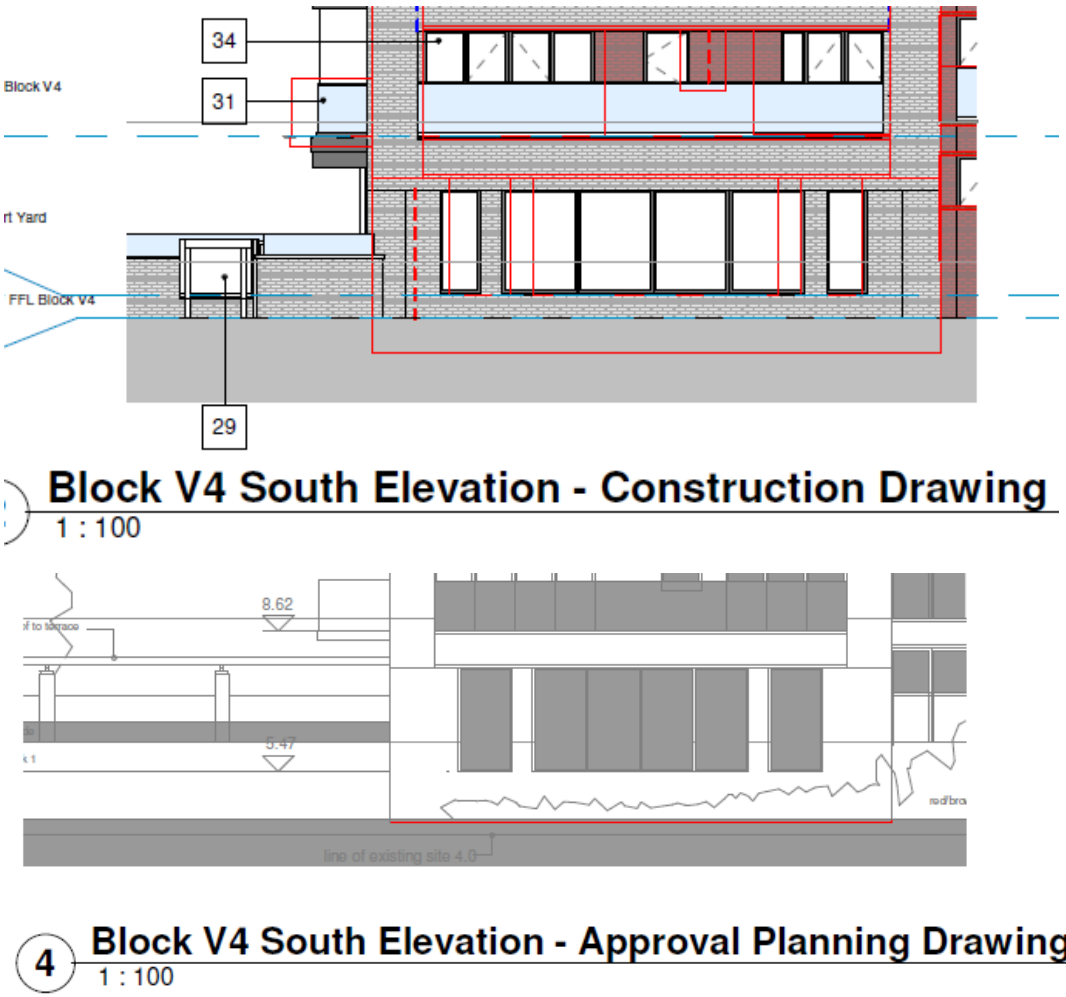


Fig.11: Cafe Space Southern Elevation. Proposed (top). Approved (bottom).

It is considered that this proposed amendment would provide an improvement to the quality of the approved scheme. Importantly, the amendment would better-enable mobility-impaired persons to access the cafe. It also allows for a marginal increase in the floorspace of the approved cafe.

The proposed north-facing external stepped access would lead to an internal car-park deemed of low sensitivity to the introduction of a small external staircase of the type/size described above. The introduction of a platform lift servicing the riverfront pedestrian walkway would create a minor projection beyond the footprint of an approved external terrace, though, would not reduce/impact upon approved planters immediately south of the cafe. This change, therefore, would not come at the expense of approved soft-landscaping and would not be considered detrimental to the visual quality of the development or its surroundings within its respective context.

Block V4 - Other Changes to internal layout & external appearance

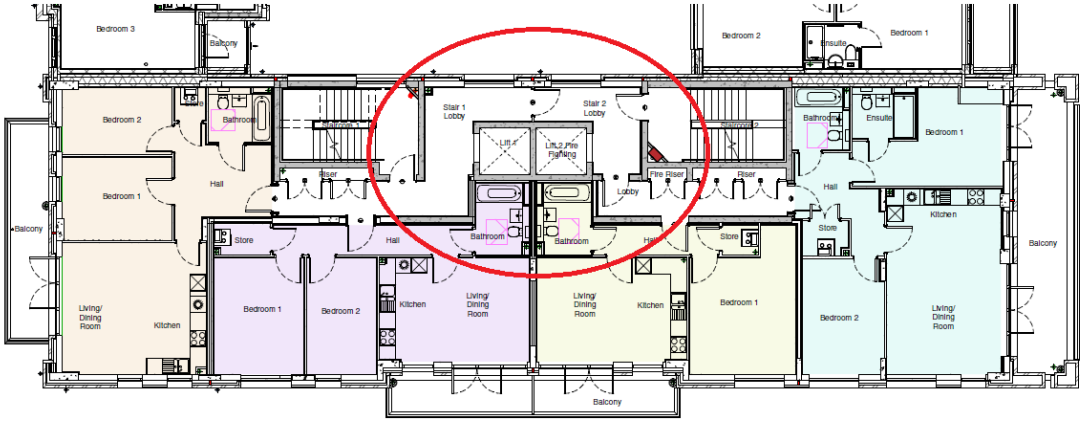
The proposed amendments include several other revisions to the tower Block V4 which are unrelated to its linkage with townhouse Blocks V1 and V3 as addressed earlier in this report. These changes include the repositioning and rearrangement of stair-cores, services, lifts and communal circulation spaces necessitating changes to the extent, layout and size of residential accommodation. These proposed changes concern the centralised positioning of both stair and lift cores within Block V4 to all

storeys and the enclosure of a previously recessed, external walkway featured within the eastern elevation of the building at each of the second to seventh storeys. These changes have reduced the interior space of some apartments resulting in a change of 6x apartments from two-bed to one-bed units.

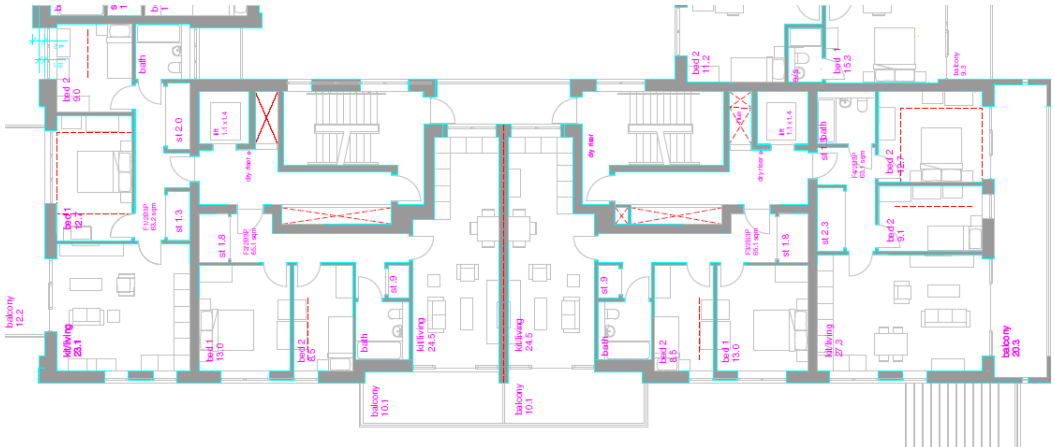
These layout changes to Block V4 are shown at Figure 12 (below), with the elevational changes shown at Figure 13 (further below).

Layout Changes:

At the request of officers, the applicant has provided a detailed explanation of changes to Block V4 as a consequence of fire-safety legislation/regulation in the form of the Building Safety Act 2022 and BS 9991:2024 affecting 'high rise' buildings of this type. As explained by the applicant, Block V4 has had to be redesigned to incorporate a standard fire-escape stair-core and a separate dedicated firefighting stair-core.



Block V4 First to Fifth Floor Plans - Construction Drawing
2 1 : 100



Block V4 First to Fifth Floor Plan - Approval Planning Drawing
1 : 100

Fig.12: Block V4 Layout (2nd - 7th storeys). Proposed (top) Approved (bottom).

As required by the regulations, as provided for within the originally approved layout, apartment entrances cannot open directly onto its associated lift-lobby. Lift-cores, therefore, have been repositioned centrally within the approved tower Block V4, allowing for a separation between the firefighting lobby and units featured within the southern extent of the building.

The applicant further explains that new fire-safety regulations demand additional ventilation for the lift-core in the form of Automated Opening Vents requiring a minimum clear opening area of 1.5sqm.

Recessed External Walkway - removal:

These ventilation requirements would have proven impractical to incorporate alongside the recessed external walkway at the second to seventh storeys of the approved Block V4, given its limited size and the constraint provided by the positioning of the original opening above floor-level.

This change would result in 12x west-facing units at second to seventh storeys losing an east facing window, which previously served a combined living/kitchen/dining space. The proposed reconfiguration of the west facing units would result in a single-aspect living/dining/kitchen space, with an internally positioned bathroom and private corridor.

It is noted that these units would continue to benefit from large openings within the west elevation of Block V4, with the amount of glazing slightly increased relative to the original proposals achieved through the internal repositioning of bathroom spaces. While these west facing units could no longer be described as ‘dual aspect’, the recessed nature of the original east-facing window together with the narrowness of respective internal kitchen spaces would unlikely have conveyed significant benefit to daylight levels within the main living spaces of approved units.

Therefore, it is considered that the loss of east facing windows would not unacceptable diminish standards of living to future occupiers such that no objection in relation to the requirements of ALP Policy 20 is warranted in this instance

Elevational Changes:

The loss of the recessed walkway feature is regarded as more significant in design terms. As both approved and proposed Block V4 omits east-facing residential units. This elevation, therefore, is comparatively featureless due to the secondary and comparatively small nature of glazing present including those serving communal stairwells and corridors.

As can be seen in the approved eastern elevation in Figure 13, except for any minor relief which may arise between brickwork and cladding materials, the recessed walkway in the centre of the elevation, was the only meaningful relief to the eastern face of the Block between second and seventh storeys, adding a note of horizontal interest by contrast with the vertically arranged columns of windows.

The recessed nature of the walkway, further, is also presented as a residential balcony providing a sense of activity within the eastern elevation of the Building, notwithstanding its status as a communal walkway.

By contrast, the amendment would enclose the recessed walkway and provide more extensive brickwork between both stairwells. The proposed amendment, therefore, would eliminate the architectural benefit which this approved component conveys. The proposals do not seek to reinstate any similar feature elsewhere within the eastern elevation of Block V4 or introduce an alternative feature of architectural interest. It is

considered, therefore, that the loss of the recessed walkway would represent a degradation in the quality of design of Block V4 and result in a poorly treated elevation lacking visual interest.



Fig. 13: Block 4 Eastern Elevation. Proposed (top) Approved (bottom).

Given the height of Block V4, and its relationship with Blocks V1 and V2, it is anticipated that the eastern elevation of Block V4, would be discernible within public views to the east and on approach to the site on Brighton Road. Visualisations provided in accompaniment to this application, in addition to those provided with ref AWDM/1962/22, inclusive of Figures 14 & 15 (below), show the eastern elevation of

the building to be visible above Block V1 and Block V4.



Fig. 14: - Visualisation of proposed configuration of Block V4 from Brighton Road to east. (Proposed scheme.)

NB the proposed substation building at the frontage has now been repositioned deeper into the site



Fig.15: Visualisation of originally approved development on Brighton Road to East. (Block V4 to rear) (Approved scheme)

The view of officers is that this proposed change fails to result in a high quality elevation which takes sufficient account of its expected prominence within the public realm. This change, therefore, is considered in conflict with the expectation for high quality design which respects and enhances the visual condition of its respective setting as required by Policies CA7 and SH9 of the JAAP and Policy 15 to the ALP.

Block V4 - Other Changes to Fenestration:

In response to changes in internal layouts and the development of construction drawings a number of other changes to the amounts, precise positions and sizes of windows are also sought to the tower Block V4. Comparisons of the approved and proposed elevations are shown by Figures 16 & 17 (below)

A good number of these would represent negligible changes to the approved scheme and involve the repositioning of approved windows accounting for corrections made in relation to the preparation of construction drawings and the provision of repositioned stairwells to Block V4. These substantially preserve the same amount, type and size of glazing featured to Block V4 and are not considered to materially diminish the quality of the approved design, its relationship with the character and appearance of the site surroundings or the living conditions of future/neighbouring occupiers.

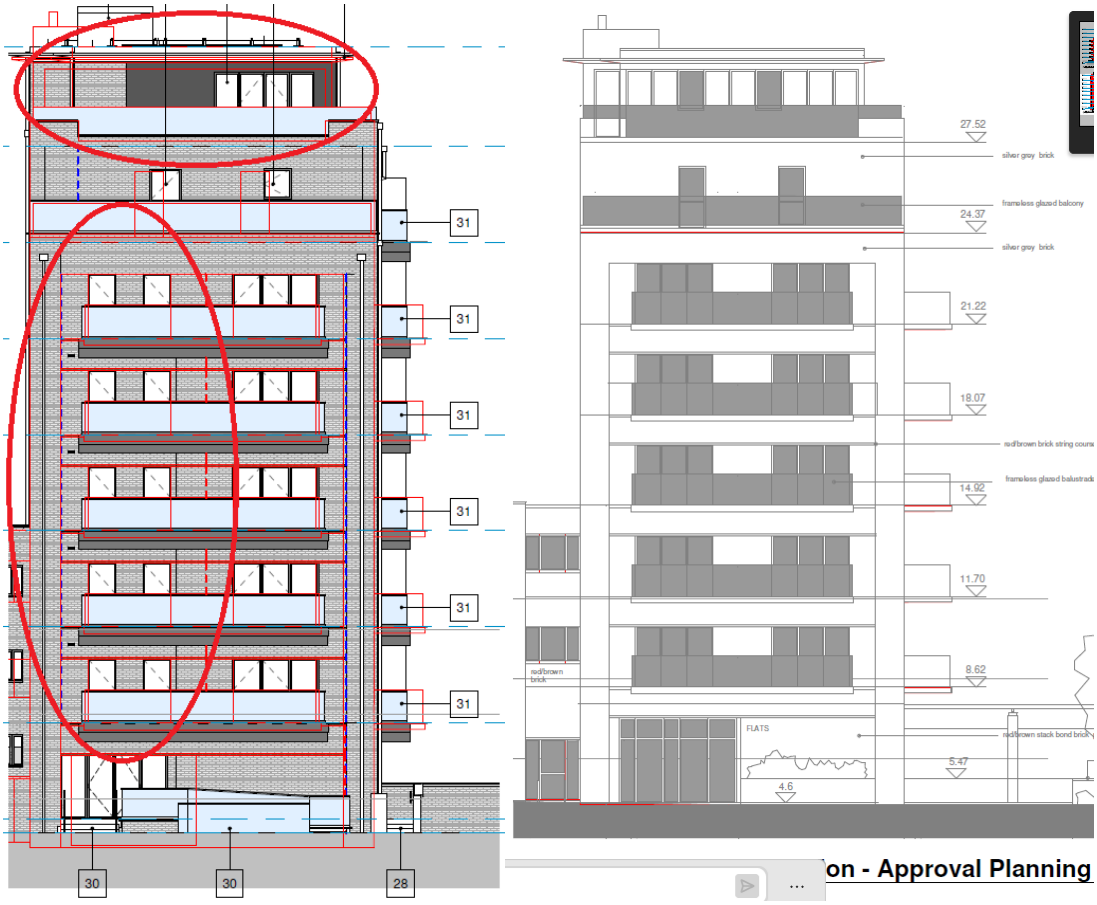


Fig.16 - Northern elevation of Block V4. Proposed elevation to left, approved elevation to right.

The more consequential changes to fenestration as a result of changes in internal layout are evident within the north-facing elevation of approved Block V4 at second to seventh stories, and to the treatment of the eighth storey penthouse. Changes proposed to the northern elevation of Block V4 are shown at Figure 16, inclusive of changes to the penthouse. Changes to the eastern elevation of the penthouse are shown at Figure 17



Fig.17 - Eastern elevation of Block V4. Proposed elevation top, approved elevation bottom. Annotation by officers.

In both respects these proposed amendments would reduce the amount of glazing featured within the eastern and northern elevations of Block V4. Changes to the principal elevation at second-seventh storeys are considered acceptable to officers, noting that the proposed changes would result in a minor reduction in the amount of glazing while still providing for consistent vertically arranged windows across relevant storeys.

For the penthouse specifically, however, the proposed reduction in glazing to the northern and eastern sides would dilute the lightweight lantern-type maritime design of the approved structure. As would be perceived in views to the north and the east, the penthouse would appear less subservient to the main-bulk of the tower block compared to the approved scheme.

This is considered to reduce the design interest of the penthouse as a backdrop to the lighthouse. These changes do not appear to be solely a result of changes in fire-safety legislation given the general consistency in the size of communal stairwells, lift and circulation spaces at 8th storey level between the approved/proposed scheme.

Housing Mix

The change in housing mix resulting from the proposals sees six approved two-bed units become one-bed units. This change is depicted within Table 1 below relative to the scheme as a whole and against the latest assessed need for private dwellings modelled within the 2025 Strategic Housing Market Assessment (SHMA).

Table 1: Housing Mix in relation to assessed need

Size	Amended Proposal	Previous Approval	Assessed Need (2025 SHMA)
1 bed	11 (11%)	5 (6.7%)	10%
2 bed	10 (35%)	16 (40%)	45%
3 bed	24 (53.3%)	24 (53.3%)	35%
4+bed	0	0	5%

Consistent with the previously approved scheme, the proposals deviate from the recommended mix of market housing assessed within the SHMA. Both the current proposals and the preceding proposals overprovide within the 3-bed category, omit delivery within the 4+ bed category and deviate from recommended mix within the 1 and 2-bed categories.

The sole change resulting from the amended housing mix is that the balance of underprovision shifts from the 1-bed category (which is now marginally exceeded) to a greater underprovision within the 2-bed category. As the degree by which scheme was and remains divergent from the recommendations of the SHMA is broadly similar, it is not considered that this is a negative change.

The applicant has provided an updated accommodation schedule, which demonstrates that occupancy rates between the approved and consented scheme would remain overall consistent as a consequence of increased bedroom sizes (double bedrooms) featured within the southernmost unit featured to Block V4, notwithstanding the loss of a (single) bedroom featured within the southernmost of the central units. Where occupancy levels remain overall unchanged it is considered that no adverse implications would arise from the proposals in respect of parking provision, the provision of open-space and/or public infrastructure requirements. The overall effect of this change in housing mix, therefore, is considered to be neutral.

Other Changes:

Aside from the detailed consideration given to the above changes the proposals should be noted to seek a minor reduction in the scale of projecting balconies, to instate a lift overrun to Block V4 (most notable on the northern elevation at Figure 16), and eliminate projecting canopies to approved townhouses featured to Blocks V1, V2 and V3. The omission of balconies is explained, by the applicant, as the removal of a superfluous feature - while windows are changed in response to the preparation of structural drawings for construction purposes. As the applicant identifies the lift-overrun was mistakenly omitted at the initial planning stage.

The lift-overrun structure on the roof of Block V4 would introduce a minor amount of rooftop clutter projecting 1.3m above main roof level. The proposed overrun, however, should be noted to replace a similar rooftop projection of lesser height, but greater depth, previously featured to the eastern side of the penthouse layer. The proposed positioning, as inset from the main perimeter elevation, is regarded as less sensitive in visual terms. Subject to the use of planning conditions seeking detail of the external

appearance of the overrun structure it is considered that the overall effect of the proposed change would prove neutral in terms of design, character and appearance.

The proposed omission of projecting canopies to townhouse terraces is not considered contentious. These balconies are not shown consistently within the preceding approval, featuring within some approved plans (sections and elevations), but not other layout plans (floor and roof plans). Where featured previously these are shown as very minor projections (75cm) beyond openings leading onto the private terraces of townhouses at fourth or third storey respectively. The removal of these projecting canopies would not diminish the quality of design or prove detrimental to the living conditions of future occupiers.

The minor reduction in balcony spaces (principally to Block V4) is considered acceptable as still providing for minimum balcony spaces in excess of 5sqm, above the minimum 3sqm recommended at Paragraph 3.7 to the Council's adopted Space Around Dwellings and Flats Development Control Document (DCD).

Substation:

Updated layout plans provided with the proposals show the addition of a substation building positioned to the northern edge of the internal courtyard and to the east of the ramped access from Brighton Road. This is shown at Figure 18 (below).

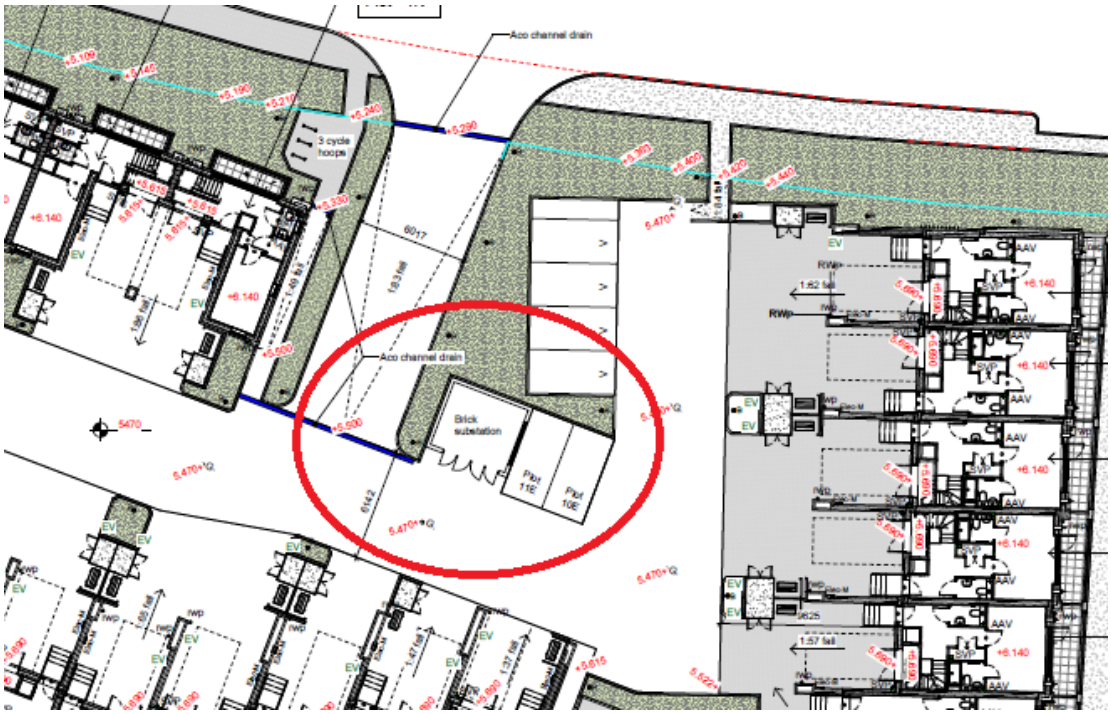


Fig.18 - Substation building. Annotation by officers.

Elevation plans have not been provided by the applicant detailing the height or design of this structure, nor are details yet available of its material composition.

The proposed positioning of the substation building, however, is considered comparatively sympathetic (it has been removed from the frontage position shown in Figure 14). It is proposed to the rear of the prevailing building line to be established by the proposed development and set-back in excess of 15m from Brighton Road. While

the building would prove visible within the public realm, the screening effect provided by Blocks V1 and V2 to the respective west and east would prevent longer views along the course of Brighton Road.

The submitted plans demonstrate that the substation would be encompassed by planters to its northern and western edges such that future landscaping would likely soften the visual appearance of this structure and any utility qualities it is likely to possess. Subject to the receipt of details confirming the height, design and use of materials, by way of appropriately worded condition (no.45) it is considered that the substation building would not detrimentally impact upon the visual amenities of Brighton Road or the overall design quality of the scheme. No parking (visitor or dedicated) would be lost as a result of the addition of the substation building.

Landscaping

Lastly, updated site layout plans provided in conjunction with the proposals confirm the intended provision of larger refuse store structures servicing approved townhouses within the internal courtyard. This arrangement sees a minor reduction in the scale of raised planters, especially to the southern and eastern sides of the courtyard, which were indicatively shown to feature tree planting at the stage of original approval. The presence of courtyard tree planting is an important component of the courtyard design as relief to an otherwise expansive area of hardstand in the form of parking and access. The Design Panel in 2021/22 attached great importance to the landscape quality of this space.

The applicant, however, has confirmed that landscaping details are not finalised at this stage and has requested the re-imposition of Condition 18 as attached to the preceding appeal determination. This requires submission and approval of hard/soft-landscaping details by the Council in advance of commencement above ground floor-slab level. In order to ensure that the reduced size of planters do not inhibit the successful establishment of courtyard trees, however, officers consider that any relevant landscaping condition should additionally seek the approval of details pertaining to the refuse store structures now described to ensure that all relevant aspects of the courtyard design are coordinated. Amended wording for condition 18 is included at the end of this report

This approach would allow relevant stores to be repositioned in order to allow courtyard tree planting where a conflict might otherwise arise. Sufficient space appears to the rear of a number of stores (particularly to the southern and eastern sides of the courtyard) to allow such stores to be positioned closer to their respective townhouses to allow planters to be reinstated to their original extent and without comprising parking provision.

Conclusions in Respect of Physical Changes

Overall, the proposed physical changes are considered, both individually and collectively, to be of a reasonably minor nature. No adverse effects upon flood-risk, highway safety, parking provision, ecology, open-space provision, environmental sustainability, air quality, drainage or the living conditions of neighbouring occupiers would result from the proposed physical amendments. The proposed amendments,

further, would maintain compliance with nationally described space standards, retain external balcony spaces consistent with local guidance and do not suggest any intended deviation from the materials schedule indicatively provided in support of the previous proposals.

Officers have assessed proposed physical changes and consider that the majority of changes would have a neutral effect upon the quality of the approved development and maintain compliance with relevant local and national policy, subject to the approval of relevant details reserved by appropriately worded conditions (nos. 42-45).

A small number of changes, including the introduction of an external stepped/ramped access forward of Block V4, the loss of a recessed external walkway featured to the eastern elevation of Block V4 and the pronounced loss of glazing to the penthouse are considered detrimental to the design quality of the approved scheme.

In respect of these changes, however, it is considered that the introduction of an external stepped/ramped access to Block V4 is consistent with similar treatments within neighbouring developments and would prove compatible with the established character of Brighton Road such as to comply with the requirements of relevant development plan policy. Any harm associated with this change specifically, therefore, should be recognised to arise solely in relation to Paragraph 140 of the NPPF in the sense that this provision seeks to protect the quality of an approved development. As this change is otherwise assessed by officers as compliant with the provisions of the development plan, however, it is suggested that very limited weight could be assigned to any harm.

The loss of the recessed external walkway is considered detrimental to the quality of design of Block V4 and to result in conflict with the requirements of Policies CA7 and SH9 of the JAAP and Policy 15 to the ALP for development to achieve high quality design. The applicant, however, is considered by officers to have provided a credible justification for this change as a consequence of changed fire safety requirements and which demonstrates that the proposals cannot be delivered as originally approved. Other than, perhaps material or textual changes, it appears that no comparable feature could be introduced in-lieu of the previous external walkway without the same conflict with fire safety requirements, or without a comprehensive redesign of the Block potentially impacting upon the size of individual units and treatment of remaining elevations.

In considering the proposed physical changes as part of an overarching planning balance, it is important to consider the degree of harm which would result from the changes considered above set against the respective merits of the proposals.

Where changes have resulted in a change in housing mix officers note that the proposals would maintain the same levels of occupancy as the previous approval. The proposals, further, would provide for a housing mix which effectively deviates from the recommendations of the SHMA but to the same degree as the original approval.

Heritage Balance:

In relation to matters of heritage it is considered that the proposed amendments are not of a nature which would materially influence the degree of harm considered to result from the approved development. In her appraisal of the preceding appeal, the

appeal Inspector (at paragraphs 55 and 58) considered the proposals to result in less than substantial harm to the setting of the Grade II Listed Kingston Buci Lighthouse east of the application site. This harm was considered to primarily derive within easterly views (paragraph 20) as a consequence of the altered backdrop to the Lighthouse and reduced opportunity to appreciate the visual relationship which the Lighthouse shares with the harbour (paragraph 21).

The proposed amendments would not fundamentally alter the main dimensions of approved built-form or its layout relative to the Grade II Listed Lighthouse. Block V2 would continue to soften the profile of Block V4 when perceived from the Lighthouse and mitigate the harmful effects of the development upon the setting of the Lighthouse to a modest degree, as previously assessed within the Inspectors decision at Paragraph 23. The amendments to the penthouse and removal of the recessed walkway of the tower block, however, would represent observable changes in this relationship.

The proposals, therefore, would give rise to broadly the same degree of harm as previously assessed i.e. 'less than substantial harm' at the lower end of the spectrum. In exercising a planning balance, therefore, regard must be given to the provisions of the NPPF at Paragraph 215 in weighing the degree of less than substantial harm to the significance of the heritage asset against the public benefits of the proposals.

S.73 - Variation of Condition 21: Energy Strategy

Condition 21 requires adherence to a series of energy efficiency design attributes of the approved development, contained in the Energy Statement including efficient building fabric, the provision of solar panels and Air Source Heat Pumps (ASHP), a mechanical ventilation with heat recovery system (MVHR), with summer bypass and building energy management systems. These accord with the requirements of Local Plan Policy 19 to provide at least 10% of energy requirements by renewable methods.

At the time of the original design in 2021/22, and also in accordance with policy 19 and the the energy hierarchy of the Council's Sustainable Energy Supplementary Planning Document, a potential connection to a future Shoreham Harbour District Heating Network was designed-into the development by the inclusion of a basement plant room and pipework for communal heating in the apartment block. The s.106 obliges the applicant to engage in reasonable endeavours to connect to the District Heating system up to three years from the completion of the development.

Since this original design, the likelihood of a District Heating Network has been greatly reduced due to lack of Government funding when sought for the network, due to its uncompetitive performance in cost effective CO2 reduction. Accordingly development at Free Wharf was released from its obligation to connect in 2023 (AWDM/1315/22), followed by Kingston Wharf (AWDM/1973/22). The applicant therefore also seeks for this obligation to be removed.

In support of this part of the application, the applicant has submitted an updated Energy Statement to replace the document referred to in condition 21. This retains the use of air source heat pumps (ASHP) for air and water heating in the houses but replaces them with exhaust air source heat pumps (EASHP) for the apartment blocks rather than the previously communal ASHP. Here costs of circa £1.5m-£1.7m are estimated for basement plant space, ceiling voids and pipework, which would further

affect the overall viability of the development. The Environmental Health officer has recommended that details of the ASHPs are provided, to ensure that these do not have a noise impact on the development. A planning condition (no.46) can be added.

The use of solar PVs would continue, using an array at the 7th floor of the apartment blocks, where their visual impact is limited. For ventilation it is stated that the dwellings will maximise the use of natural ventilation which will be backed up by low energy extract fans, or ventilation that is incorporated into the exhaust air source heat pump systems.

Mindful of the need for acoustic glazing on noise sensitive facades, (as required by condition 30), with limited natural ventilation, mechanical cooling will be used where insufficient heat is capable of being removed otherwise. The Energy Statement states that an overheating assessment will be provided to demonstrate where this will be needed. The Environmental Health officer advises that overheating, ventilation and noise need to be considered together.

This relationship can be managed by the amended wording of condition 21 at the end of this report, and introduction of a cross-reference to this in the (noise mitigation) condition 30. The applicant has indicated that further work has already been undertaken on designs for ventilation and heat risk and it may be that these can be amended if this information can be assessed before the issuing of a formal decision on this current application.

The predicted outcome of the revised Energy Statement measures are 70% CO2 reductions against the Building Regulations baseline, 11% of this attributable to efficient building fabric and 59% due to air and water heating. The document also confirms the previous water usage design target of 110 litres/person/day. Condition 21 will continue to require that independent professional verification of these energy and water efficiencies will be submitted to and approved in writing by the Local Planning Authority, within 3 months of the first occupation of the development.

Given these predicted outcomes, and subject to amendments to both conditions 21 & 30 it is considered that the new Energy Statement can be accepted and can be added into a revised condition 21 and that the heat network requirement can be removed from the s.106 obligations.

Planning Assessment - Part Two: s.106 Obligations and Viability

Introduction

The second part of this Planning Assessment concerns the applicant's certain requirements to be removed from the s.106 Undertaking which forms part of the planning permission.

National policy advises on this as follows:

> *Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up*

to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force…(NPPF, para 59).

It also states:that planning decisions '*should give substantial weight to the value of using suitable brownfield land*' (NPPF, para 125)

The following sections of this report consider the applicant's proposal. This includes consideration of the findings of the appeal Inspector in her granting of planning permission in December 2023 and a comparison between the financial circumstances of the scheme, then and now.

Proposal

The applicant's request is to remove three obligations of the approved development, as follows:

i) £427,500 affordable housing provisions or five on-site shared-ownership units
ii) £145,074 highway contribution for local sustainable & A27 improvements
iii) £130,939 open space contribution

Table 2 (below) lists the s.106 financial obligations totalling £566,540. The obligation to provide five shared ownership homes on-site, or a financial contribution of £427,500, is in addition to (outside of) this total.

There are a few other requirements in the s.106 undertaking. These would be unaffected and are as follows:

- travel plan measures to public transport and cycling, possibly with vouchers for incoming residents to spend on these.
- car club membership for each household for two years and £50 credit per household totalling £2,250,
- air quality measures of up to £8,980 in value or equivalent payment in lieu.

Table 2: S106 financial contributions attached to the planning permission

S.106 Obligation	Value (£)
Education - Secondary	160,934
Education - Sixth form	37,000
Fire Service	1,580
Libraries	21,848

Open space	130,939
Public art	5,294
Health	60,271
Highway - sustainable transport improvements	109,394
Highway - A27 junction improvements	35,680
106 and Travel Plan monitoring fees	3,600
Total	**566,540**

The applicant refers to an estimated total cost of these other obligations to be circa £100,000. Officers consider this to be somewhat high but if it were accepted it would raise the total contributions (not including the £427,500 housing contribution), to approximately £650,000.

A non-cash benefit is the resurfacing of the public right of way adjoining the eastern boundary at Kingston Beach, and its connection to the new riverside walk with resurfacing with tactile paving and signage.

Appeal Decisions

The following section examines the Inspector's decisions of 2023. (see appendix)

The Inspector considered all of the above obligations in two ways. Firstly, whether they met the statutory tests of being: *necessary* to make the development acceptable in planning terms; *directly related* to the development; and *fairly and reasonably related* to the development in scale and kind (*aka* 'the Regulation 122 tests').

Her conclusion (paras 29-32 and para 50) was that the range of obligations met these tests and that they were necessary components of the development and its s.106 undertakings.

Secondly, the Inspector considered whether these obligations and the development overall, also brought a degree of public benefit such as to outweigh the harm caused by the scheme to the setting of the Kingston Bucci Lighthouse, which is a Grade ii listed building. By applying national policy relating to heritage (NPPF para 202 - now para 215), the Council had categorised this harm as '*less than substantial'* in degree in its refusal of the two near-identical planning applications in September 2022 and March 2023.

In considering the benefits of the development, the Inspector's decision (para 46) afforded significant public benefit to the provision of 45 new homes. She acknowledged that the national policy (NPPF, para 11d) adds a presumption in favour of applications for new homes where the Council is unable to demonstrate a five year supply of deliverable housing sites. This presumption applies unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. The housing land supply figure in 2025 is no better than in 2023 and so the provision of housing remains a significant benefit.

The Inspector also stated that (paras 47-49), the following elements of the development, whilst necessary, would also provide significant public benefits:

- The new riverside walk and improvement of the public footpath along the eastern boundary, which provided important connections for the public, with associated landscaping for biodiversity benefit.
- The new river-wall and flood defences would enhance resilience to climate change
- The use of land at the road frontage for a future segregated cycleway, which would benefit all road users.

She also noted (para 47) a benefit in the form of the local economic activity of its future residents.

In addition (para 50), the Inspector found that whilst the following were necessary to mitigate the impacts of the development there was also '*an element of public benefit from each of* [the following provisions] *to take into account in the balance*'

- Education,
- Health,
- Off-site highway works,
- Provisions for public open space, whilst necessary to mitigate the impacts of the development also provided

On the matter of affordable housing the Inspector noted the requirement for the provision of 30% (14no) homes, and that only exceptionally might this be provided off-site by means of a financial payment. In the first appeal the Inspector considered (paras 31-32), a proposed contribution of £181,598 and no on-site provision. She stated: *whilst this would be a valuable means of addressing the shortfall of rented or shared ownership properties, it would provide less certainty about when and where such units would become available.*' She afforded it (para 52) only moderate weight in the balance.

By contrast, in the second appeal she considered a proposal by the applicant to provide either five shared ownership homes on-site or £427,500 towards affordable homes off-site. She stated (para 32): *'by delivering affordable homes on-site, these benefits would be integral to the implementation of Appeal B. In the event that there was a failure to deliver these units on-site, the* [s.106 Undertaking] *provides an alternative by means of a financial contribution of* £427,500*.* Whilst neither provision equated to the 30%/14no. Dwellings required under policy, she concluded (para 53) that, by contrast with the first appeal, this would give greater certainty and therefore '*carries significant weight in the balance'*

In her overall conclusions (paras 54-57), the Inspector considered that the degree of public benefits arising from the two appeals schemes was significant. However, in the first appeal scheme the affordable housing provision of only £181,598 was considered to be only modest and was not the preferred means of securing affordable homes under local and national policy. She concluded that the overall benefit of the first appeal did not outweigh the harm to the setting of the listed lighthouse and therefore dismissed that appeal.

In allowing the second appeal, the Inspector concluded (paras 58-61), that the

provision of five affordable homes on site or the provision of the greater contribution of £427,500 alongside the other public benefits of the development, carried significant weight in the balance and outweighed the heritage harm.

It is noted that there was a relatively minor design change between the two appeal schemes. The second scheme used a saw-tooth roof profile for the eastern terrace of proposed houses (seen in Figure 1 above), instead of a flatter roofline. The Inspector noted that this had softened the profile and mass of the building and reduced the harm effects on the setting of the lighthouse to a modest degree (para 23). In her overall conclusion she views this difference as 'notable' which and was afforded some weight but it not specifically weighted as a public benefit

The relevance of the Inspector's decision to the consideration of the current application, is that it deems each of the s106 obligations to be necessary and reasonable parts of the 2023 planning permission. This includes the highways and open spaces contributions. It is also significant that the provision of five affordable homes on site, and the greater off-site payment of £427,500 in lieu, by comparison with the more modest £181,598 of the dismissed appeal, appears to have been a significant factor in reaching a positive balance in favour of approval.

Development Cost and Proposed Reductions

Following on from the Inspector's decision, it is therefore important to consider the applicant's case and how the current circumstances of the development now, compare with those considered by the Inspector. As NPPF states, the weight to be given to a viability assessment is a matter for the decision maker.

Further relevant advice is in the letter of the Minister of State for Housing and Planning to the National Planning Inspectorate on 18th December 2025. He addressed the matter of revisiting the requirements of planning obligations through the use of s.73 applications. He stated:

The Planning Inspectorate will want to note that, as a general rule, attempts to revisit fundamental issues of viability or planning obligations through Section 73 applications should be scrutinised carefully, and the applicant should provide a robust justification for any changes proposed for planning obligations associated with the original permission beyond those linked to the specific variation of condition being sought.

Where developers submit a Section 73 application that seeks to reduce affordable housing provision based on a new viability assessment, the decision maker should have regard to the harm that such a reduction may cause and give this appropriate weight in the overall planning balance, alongside the wider merits of the scheme.

Whilst this statement was made to the Planning Inspectorate rather than directly to Local Planning Authorities, it underlines the importance of scrutinising viability matters when changes are sought to obligations. Also that the harm of reducing affordable housing provision should be weighed alongside the wider merits of the scheme.

Therefore, the following paragraphs set out the applicant's costings in support of their request. It uses comparisons between the financial position in 2023 and now.

Scheme Costs

In 2023 the applicant's viability assessment of the scheme gave an estimated development cost of £20,975m* and development sales value of £24,720m; a difference of £3,745. This equated to 17.8% in profit. The Council's independent assessment concluded a slightly lower profit of 17.04%, applying inflation since the costs were previously reviewed in 2022. It also noted an increased degree of market uncertainty.

[**Development cost includes the value of the existing site, which is expressed as a 'Benchmark Land Value' (BLV). In accordance with viability assessment procedures, this is based upon the value of its existing use rather than the purchase price, which may be greater. However, the fees associated purchase have been increased from £8,574 in 2023, to £117,672 now*]

The applicant's 2023 assessment assumed a total of £482,926 for the s106 planning contributions. This was smaller than the actual figure of £566,540 in the s.106, a difference of £83,614. Furthermore, this did not account for the £427,500 affordable housing contribution, which increased the total divergence to £511,114.

The current application provides costings updated in September 2025. By comparison with the 2023 assessment this new assessment uses tendered costs rather than estimates. They show that, assuming the removal of the affordable housing provision and the highway and open spaces contributions totalling £703,513, the development costs would be £28,016m. Within these cost increases are approximately £4,677m (28%) in construction costs, £2,071 (174%) in finance costs and £287,999 (45%) in design fees. This is a rise of £7.041m by comparison with the £20,975m cost estimate of 2023.

Simultaneously, although estimated sales values have increased to £28,852m, this growth of £4,132m is far less than the increase in costs. This erodes the profit level to £836,000, or 2.9%. A substantial reduction from the 17.04% of 2023.

Viability Peer Review

As part of the scrutiny process, the applicant's assessment has been reviewed by the Council's independent consultant.

In consideration of development value, the Council's consultant agrees that average local sale prices have decreased since 2023 but that the applicant's market information, which suggests slightly better sales values, is reasonable for new build, good quality homes, as proposed. They comment that the predicted sale value of £28.852m, is within reasonable expectations and is a 16% increase since 2023.

In consideration of construction costs, the review notes that, allowing for inflation, the applicant's current costs are 25% greater than the estimated costs of 2023. They note significant increased, tendered costs in 2025, and in some cases unforeseen costs, evidenced as follows:

- External Works including drainage and Highways Works
- Hydraulic Flood Barriers
- Piling (three quotations were provided for review)
- River Wall/Flood defences – originally estimated with costs now being nearly £1m higher than estimated. (Details provided showing amounts spent to date)

Whilst the review observes that some other construction costs remain as estimates, there are unlikely to be savings among other construction elements (which was subject of a detailed independent build costs review in 2022/23), to offset the overall increase and therefore further scrutiny would not be productive.

In consideration of finance costs, the review applies a 7.5% interest rate, which is the mid-point of typical current rates, rather than the applicant's use of 8.5%. It also excludes finance costs accrued during the period since purchase, (which includes the duration of the first two planning applications and subsequent appeal). However, the review applies this percentage to all financial debts associated with construction rather than three-quarters, and over a construction period of 36 months rather than the shorter 24 months used in the applicant's estimate; site clearance, river-wall construction and complex ground works have already taken almost 18 months.

On the basis of their research and findings the consultant observes that development costs, including build costs, have increased locally and that they far outweigh the increase in sales values and have moved the viability position into a significant deficit. This is due to the worsening economic situation and unforeseen costs. They also comment that it is not the agreed affordable housing contribution which is making the scheme unviable but that this is worsening a position which on paper is already significantly in deficit.

The consultant's conclusion, using a reduced interest rate and excluding finance costs accrued since site purchase, produces an improved financial outcome with a profit of £2,440,075, equating to 8.5% by contrast with the applicant's £836,000, or 2.9%. The consultant observes that if the original profit margin of 17.48% were assumed, the overall development would be in deficit by £2,453m and that inflation alone would produce a deficit of £-1,202m.

Evaluation

The outcome of this assessment and review indicates that the development is well below a level which might be considered viable. Both the applicant's predicted profit of £836,000 / 2.9% and the consultant's £2,440,075 / 8.5% are substantially lower than the more normal profit of 17.5%. Although some deterioration in the financial profile is due to the inherent divergence of £511,114 between the assumed and actual costs of the s.106 undertaking in 2023, the effects of increased and unforeseen costs since then are considerable. These include groundworks, piling and riverwall works, as itemised by the consultant. The applicant also cites the design and process cost associated with fire safety requirements introduced since the scheme was designed and costed.

In order to address this scenario, the applicant has engaged with Homes England and has made a successful bid for Brownfield, Infrastructure and Land funding (BIL). The applicant comments:

> *…the project is therefore only able to proceed on the basis of the Homes England funding in the order of £3 million. Even with this funding in place, the scheme would only generate a profit margin of 15.5% on the basis that affordable housing, highways contribution and open space contributions are still removed. This revised level of profit (15.5%) is still below the industry-standard of 17.5% despite removing the previously agreed contributions. In reality the appraisal does not take account of*

substantial real world costs, such as site purchase price, which reduces the actual margin below 10%.

The Applicant is however still willing to proceed on the basis of limited profits. It must be noted that if the scheme does generate a profit in excess of 17.5% of Gross Development Value (GDV). Homes England funding is only agreed on the basis that an excess profits exceeding 17.5% would be paid back to Homes England. As context to achieving such a profit, we estimate that the scheme would need to see an approximate £4 million increase in GDV (approx. 15% increase) . to hit a profit of circa 17.5% even to engage the first 'clawback' toward Homes England Funding. Based on market conditions, such a huge increase in value would be untenable.

In summary, the current circumstances of development suggest that it is only likely to proceed on the basis of Homes England funding and a level of profit below the original 17.48% and at the low end of the profit range. This assumes the removal of the affordable housing, highway and open space contributions, totalling £703,513.

Given this outcome it is important to consider the effects of the proposal including any harm that a reduction in affordable housing might cause and to give this appropriate weight in the overall planning balance, alongside the wider merits of the scheme.

Effects of Proposal

Affordable Housing

In common with the other s106 obligations, the appeal decision confirms that the provision either of five shared-ownership homes on site, or off-site via the financial contribution, was a necessary and reasonable element of the development. Alongside this is the public benefit which the Inspector assigned to the delivery of the 45-home development against the backdrop of an overall underprovision of homes against the Local Plan target, a position which has not improved since then.

Current figures suggest that the supply of new affordable homes in the past year has met 58% of the annual need in the District. As such it is disappointing that alongside the financial circumstances which support the applicant's request to remove the financial contribution, there appears to be no prospect that the alternative five on-site homes can be secured but it is understood that these would achieve a lower sales value and further-affect the financial position..

However, it is notable that the adjoining site, Kingston Wharf, has produced a much greater supply of affordable homes than the 30% required under ALP Policy 21. The first homes of this 255 apartment development were ready for occupation in autumn 2025 and the remainder are close to completion. These comprise 92x Social Rented units and 163x Shared Ownership, giving a total of 100% affordable homes; the addition made possible by Homes England funding to the developer Hyde Housing as a registered provider. Also within the Western Harbour Arm, at Free Wharf the development of 587 homes by Southern Housing, also a Registered Provider, was increased to 54.6%, giving 321 affordable homes (AWDM/1315/22).

From this it is evident that the supply and prospect for affordable homes in the Western Harbour Arm is significantly greater than originally anticipated. This may be considered to moderate the harm arising from the proposed removal of five units from the

approved development at 5 Brighton Road

These comparisons are of further interest in considering the circumstances of the application site. The involvement of registered providers of affordable housing in this much smaller scheme and related Homes England funding has been sought. However, there has been no interest from registered providers and Homes England funding is limited to infrastructure costs only.

As a riverside site opposite the harbour mouth, development depends upon engineering works to renew the riverwall and to undertake piling and re-levelling and decontamination works to create a stable, safe and flood-defended development. These works benefit less from the economy of scale which is available to the larger riverside sites. Simultaneously, for design reasons, the approved buildings at the application site are of a lower density and smaller scale / heights than its Western Harbour neighbours. This lesser scale was necessary in order to make a transition between the size and height of the new Kingston Wharf development to the west and the lower scale houses in Brighton Road to the east and open space which characterises the Kingston Beach environs.

Whilst these differences and distinctions are not new, they are relevant in the consideration of the challenges in delivering the approved development and its particular susceptibility to changes in financial circumstances and regulations (fire safety).

On the matter of affordable housing, it is concluded that the degree of harm arising from the current proposal is small by contrast to the amount of local supply. The financial justification for removal of the in-lieu contribution is also considered reasonable, noting that even with the injection of Homes England BIL Infrastructure funding the profit margin of 15.5% is below the 17.5% viability level.

Highway Contributions.

The Highway contribution of £145,074 was secured in response to the Highway Authority comments at the time of the planning application, which were as follows:

> *Contribution of £145,074 split between £35,680 Local Plan Measures (A27 Steyning and Hangleton junctions) and £109,394 Sustainable transport improvements within the JAAP. It is acknowledged the works to the Public Right of Way provide a wider public benefit and could reduce the level of JAAP contribution* (Reference AWDM/1481/21 dated 23/8/2022).
>
> Subsequently the Highway officer added: *'Bus Shelter with Real Time Information* [to be] *secured via the JAAP contribution*. It also confirmed that kerb realignment to form the cyclepath in the future would be undertaken by the Highway Authority (Reference AWDM/1962/22 dated 28/02/2023).

The policy basis for these contributions is ALP Policy 28 which refers to the impact of development on A27 congestion and related air quality and noise. Development should contribute to improvements of the road network, including junction capacity. The £35,680 contribution is towards this.

The JAAP and the related Shoreham Harbour Transport Strategy, focuses on more

locally-based sustainable transport improvements. The £109,394 contribution is towards this. Its policy SH5 identifies a non-exhaustive list of measures towards which it can be spent including

- New waterfront route for pedestrians and cyclists between Shoreham Town Centre and Kingston Beach.
- Improvements to the cycling facilities along the A259. (Developments should be set back from the A259 corridor providing space for a segregated cycle route).
- Improved pedestrian and cycle crossing points.
- Bus stop improvements.
- Junction improvements at:
  - Brighton Road/Norfolk Bridge (A259) – Old Shoreham Road (A283)
  - Brighton Road (A259)/Surry Street
  - Brighton Road (A259)/South Street (A2025)

Therefore the £109,394 part of the highway contribution allows for provision of a Bus Shelter with Real Time Information, and the remaining funds may be used towards other measures. It is noted that the s.106 obligation requires the applicant to create the widened public footpath at the Brighton Road frontage and to dedicate this land for highway use. In the future it will be the Highway Authority which undertakes the future physical works to create the cycleway.

Accordingly both parts of the highway contribution accord with policies and are reasonable requirements of the development.

In consideration of the applicant's request to be released from this requirement, this is based on two reasons. Firstly the deterioration in the viability position since 2023, as already described. Secondly that the contribution does not take into account the value of the 3m strip of applicant-owned land at the A259 Brighton Road frontage which is to be dedicated as part of the highway, including the undertaking of works by the applicant to create a wider footpath pending the creation of the cyclepath by the Highway Authority in the future. It is noted that deduction of the land value would be consistent with the approach taken at Kingston Wharf.

The Highway Authority acknowledges that the land value could be deducted but questions the basis for its entire removal as it is not apparent that this retains provision, (whether physical or financial), for the construction of the cycle path in the future. Accordingly further discussion is in progress as to the extent of reasonable reduction and an update will be given.

It is noted that improvement and resurfacing works to the adjoining Public Right of Way, amount to £24,000. This was hitherto uncosted, nor was it taken into account in the original sustainable transport request of the County Highway Authority. This improves a key link between the A259 and the new Riverside Path and is a factor within the discussion with the Highway Authority.

Open Space Contribution

Policy 29 of the ALP states: *Major development for residential use will be required to provide open space on site in accordance with the Council's adopted standards. The*

type of open space to be provided will be determined by the scale and type of development and the needs of the area. Where it is not possible or necessary to provide open space on site, contributions will be required to provide or improve open space off-site.

The open space contribution of £130,939 was calculated by use of the Council's Open Space calculator attached to Supplementary Planning Guidance of 2020. This identifies the range of open space needs (such as park Open space, play space, allotments and general amenity green space), which are generated according to the number of anticipated new residents. The amount reduces according to the amount of open space provided within the development.

In this case the largest portion of the £130k is required for parks and recreation ground needs; £73,608, followed by £20,038 for natural green space, £16,800 for play space and £12,023 for amenity green space, the remainder for allotments.

The applicant's proposal for relaxation of this requirement is based firstly on the aforementioned overall viability position. Secondly they assert that there is amenity value in the 500sqm area of public riverside boardwalk and associated landscaping, they suggest that this be regarded as an in-lieu provision.They also highlight that the riverside walk takes a greater proportion of the site by comparison with other larger Western Harbour Arm (WHA) sites

There is some sympathy with both assertions. Whilst the riverside path does not easily equate to any of the open space types defined in the Council's SP Dit will be an adjunct to the existing space at Kingston Green and Kingston Beach. As such it will add to the value of those spaces, uniquely completing an important link to them for other Western Harbour Arm developments. Furthermore, the obligation to improve the adjoining public right of way from Brighton Road as a gateway to the riverside walk, (a benefit in kind) also assists significantly in provision of access to these spaces and, given that this has been secured by the s.106, a degree greater weight might be attached to this than previously.

The Council's SPD does not readily indicate how qualitative / accessibility improvements might be translated into financial values and reductions. Therefore any decision to do so would be a matter of judgement, including consideration of the degree of harm which might arise from a reduced contribution, alongside the current viability position.

For future residents of the site, access to the adjoining space and beach would be close to hand and direct, as such they are able to enjoy its outdoor benefits more readily than residents of other Western Harbour developments. As such the degree of harm by omitting this is less significant than might be the case if it were requested in less accessible locations.

Given this relationship, and in light of the current viability position, in the context of the viability position, it is considered that a reduction could be justified. It is noted that in 2020, the Open Space figure settled for Kingston Wharf was £65,000 based on 255 dwellings, albeit this preceded adoption of the Council's Open Space SPD methodology. The applicant has confirmed that even this amount would be unaffordable given the current viability position and that a nil contribution is required.

In light of this difficult position it is noted that a pro-rata of the Kingston Wharf figure would equate to £11,470 if applied to the 45 dwellings of the current application site, or £14,233 allowing for inflation since 2020. Given the accepted viability issues here, there is some merit in this approach, which still allows for some enhancement of other parks and open space (the nearest is Middle Road Recreation ground at 1km walking distance). In this particular case it is recommended that this be accepted.

Summary and Planning Balance

Following on from this two-part Planning Assessment, there are two decisions to be made.

Firstly, in respect of the s.73A application, Condition 2: whether the proposed physical changes are acceptable and Condition 21: whether the new Energy Statement is acceptable.

Secondly, in respect of the request to vary the s.106 Undertaking, whether it is agreed that there is reasonable justification to relax requirements for affordable housing, along with the contributions for highways and open space.

In reaching a decision, regard must also be given to the appeal decision, and the Inspector's view that public benefits of the development outweighed the 'less than substantial harm to the setting of the listed lighthouse.

1) Section 73A Application - Variation of Conditions 2 & 21.

The layout and design changes to the external elevations of the buildings are in large measure, regarded as minor, and are unlikely to reduce the quality of the development, including the calibre of materials. Many of these changes follow the need to adjust internal layouts and move windows in order to meet recent changes in fire safety regulations and changes to the cafe entrance provide improved access for mobility impaired users.

This adheres to the advice of NPPF: '*Local planning authorities should also seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme* ' (NPPF para 140).

There are however, some points of reservation concerning the tower Block V4:

- The loss of the recessed external walkway at floors 2-7, whilst necessary for fire safety, increases the number of single-aspect homes and diminishes the design interest of the tall eastern elevation and does not introduce any compensatory architectural detail in the backdrop to the lighthouse

- The reduced glazing and lantern-like appearance of the prominent penthouse, which is also part of this backdrop, and addition of the lift overrun

- The entrance ramp, which adds clutter to the frontage and reduces planting, although it is accepted that this removes the need for a rising flood barrier and is consistent with the neighbouring Kingston Wharf development.

The use of additional conditions can control the materials and detailed design quality of the ramp, lift overrun and sub-station. Subject to this, on balance it is considered that these changes are sufficiently minor and do not significantly affect the backdrop of the lighthouse, and are acceptable.

Changes to the energy strategy meet policy requirements for renewable energy, with substantial CO2 reductions. This is considered to be acceptable and in common with other Western Harbour Arm developments, it no longer depends on a heat network for which there is no reasonable prospect of delivery. This is considered acceptable.

Wording changes would be made to conditions 21 & 30 in order to refer to the new energy statement and the requirement for ventilation details following a heat-risk assessment and any related noise insulation/acoustic glazing measures; also to add a new condition for details of heat pumps, to ensure that these are do not have a noise impact. Additional conditions would be included (42-45 below), to control the design quality of the changes, including the ramp and lift overrun and substation.

2) Request to Vary s.106 Obligations

The request to remove three obligations from the s.106 Undertaking is based upon a viability assessment which shows a significant drop in profitability since the time of the original planning application and appeal approval. The Council's consultant agrees that development costs, including engineering works already undertaken and an extent of loan-finance, produces a profit of 8.5%. This is less than half of the original margin and well below a viable position. The availability of Homes England funding only takes profit to 15.5% at the low end of a viable range.

Unlike other harbourside sites, the smaller scale of the development, which is necessary due to its location, is unable to contemplate larger buildings, which might produce an economy of scale to offset costs. Also unlike other sites, the developer is not a Registered Provider of housing, which might also access other Homes England funding to assist with viability.

The consequence of this precarious viability position is a risk that the approved development might not be completed and that the benefit of additional housing which was explicit in the Inspector's approval, might not be realised. As in 2023, levels of housing delivery in the District remain below the Local Plan target and the added weight in NPPF (paragraph 11) in favour of development, remains in place. Since 2024 the NPPF para 125 also gives substantial weight to the value of using suitable brownfield land within settlements for homes.

The provision for some amount (11%) of affordable housing or funds in lieu is part of the benefits which the Inspector weighed in favour of approval, Therefore its unaffordability now is disappointing but is accepted by the Council's consultant as worsening the financial / viability imbalance. However, the current local supply of affordable homes at Kingston Wharf and Free Wharf is considerably greater than the Local Plan requirement, which lessens the harm of the proposed relaxation. Accordingly, it is not considered that there is a strong basis to decline the request.

The request for relaxation of the open space contribution is also based on scheme

viability. Whilst the contribution was also recognised as a public benefit by the Inspector, there is also benefit in the improvement works to the public right of way, provided by the development. This uniquely provides good access to the wider riverside path, which will eventually connect Kingston Beach to Shoreham town centre, and improves public access to the beach. In light of this and the overall viability position a reduction to £14,233 is considered reasonable..

The Highway Authority accepts that allowance can be made for the value of the and to be dedicated for the future cycle path, but it indicates that some funds should be retained for future physical works to create the path. Further discussion is in progress to identify a reasonable sum and an update will be given.

It is noted that other public benefits are unaffected: contributions for education, health, libraries and art. The Inspector also acknowledged the public benefits of new river-wall and flood defences and the new riverside walk itself. Accordingly, many aspects of the original planning balance remain. In light of the current viability position and the importance of achieving development which archives a gateway and transition into the Western Harbour area, it is considered reasonable to support the proposal subject to the conclusion of discussions with the highway authority.

It is possible to build-in a review mechanism into s.106 Undertakings, such that contributions are proportionately restored in the event of profits rising to a more viable position. Homes England identifies this point as 17.5% and would require repayment of its infrastructure grant funds in that event. Any remainder beyond this repayment could then be paid to the Council. Despite the remoteness of this scenario, the applicant is agreeable to this obligation

In summation the physical changes under condition 2 are considered acceptable subject to the use of additional planning conditions to ensure detailed quality of design. The energy strategy also provides requisite sustainable energy and CO2 savings in the absence of a heat network. Viability of the scheme is agreed to have reduced and current local supply of affordable housing has improved such that the relaxation of the affordable housing requirement, and reduction of the open space requirement, is considered reasonable in the interests of overall delivery of this important and challenging site. The scope of any highway reduction is under discussion and approval would rely upon the conclusion of this.

Overall, it is considered that the benefits of the development remain significant; the provision of 45 homes, using a scale and density which provides a transition between recent high density at Kingston Wharf to the west and older houses and the Green to the east, is an important gateway to Western Harbour Arm. The proposed design changes are largely minor and not considered to lead to a different conclusion to that of the appeal decision.

The benefits to education, health, libraries and art, the riverside path and land for the Brighton Road cycle path remain in place. The significant current delivery in affordable homes in the Harbour Area is such that the removal of the relatively modest provision from this scheme is of lesser weight in the balance. The open space provisions are reasonably proportionate to those of Kingston Wharf, recognising the unique benefit which the scheme delivers in making open spaces and the riverside accessible to public and new residents. Some reduction in highway provisions may be reasonable, subject to the outcome of discussion with the County Highway Authority.

Subject to this last point, it is considered that the balance of benefits and harm remains in favour of the development and the proposals in this application.

Recommendations

[please see revised recommendations in Committee report for 13th July 2026]

1) ~~**Approve the s.73A proposals under condition 2, and to approve the revised energy strategy under condition 21 and amend the associated s.106 obligation relating to the Heat Network, also to amend the wording of conditions 2 & 21 and add conditions 42 - 46 as set out below, to delete condition 1 (Time limit for Implementation) and also amend conditions 18 (Landscaping) and 30 (Noise Insulation)**~~

2) ~~**Approve in part of the requested variations to the s.106 Undertaking, as follows:**~~
    a) ~~**Remove the affordable housing provision and in-lieu contribution**~~
    b) ~~**Reduce the open space contribution to £14,233**~~
    c) ~~**Reduce the Highway contribution, subject to the agreement of the Highway Authority.**~~
    d) ~~**Addition of a review mechanism for recovery of contributions in the event of a profit 17.5% or greater, allowing for repayment of Homes England funds)**~~

Conditions

[Please see conditions in the Committee report for 13th July 2026]