

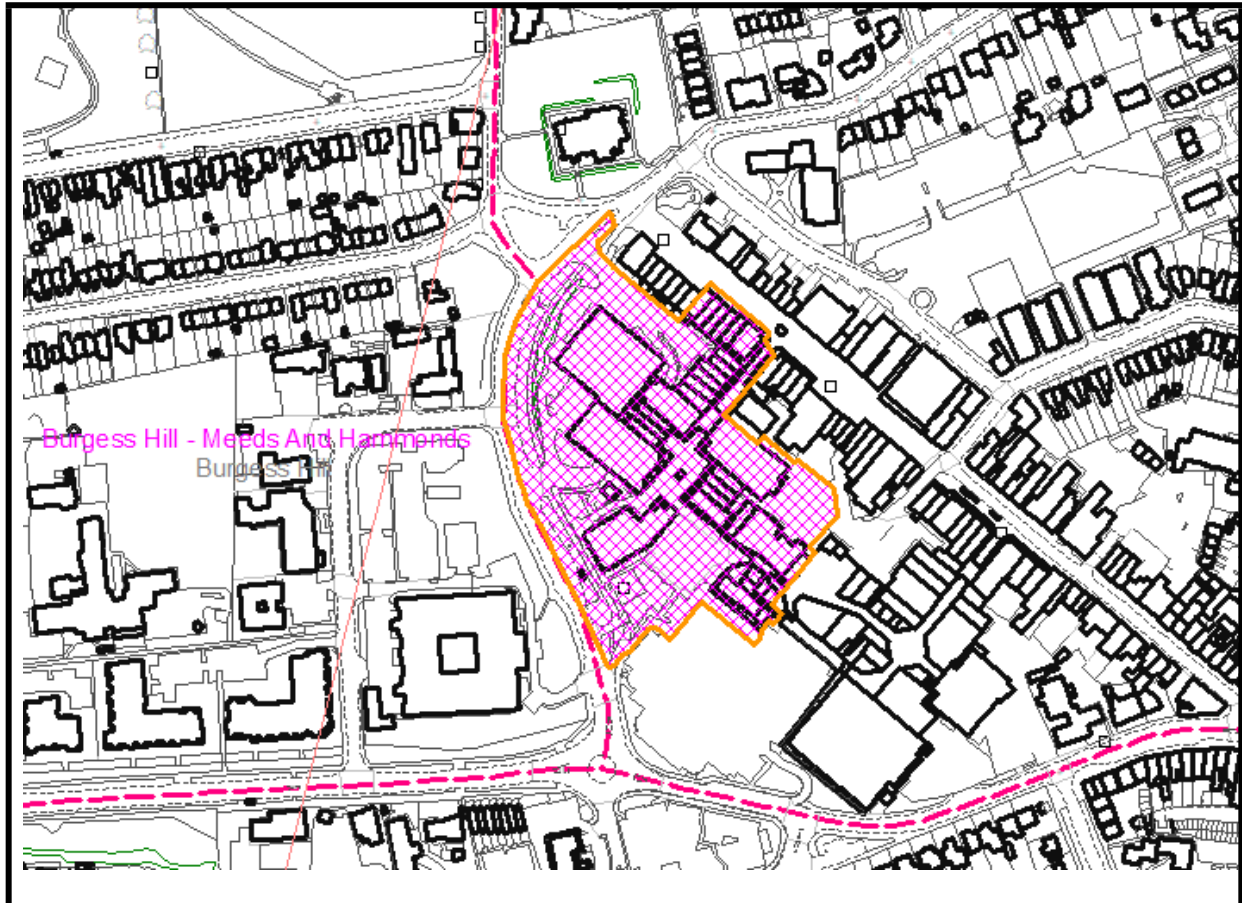
District Planning Committee



Recommended for Permission

21st August 2025

DM/25/1327



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Site:	The Martlets Shopping Centre Burgess Hill West Sussex RH15 9NN
Proposal:	Variation of conditions 6, 21 and 29 relating to planning application DM/19/3331 - amendment of approved drawings to improve the viability and deliverability of the scheme.
Applicant:	C/O Agent
Category:	Largescale Major Other
Target Date:	21st August 2025
Parish:	Burgess Hill
Ward Members:	Cllr Robert Eggleston / Cllr Tofojjul Hussain /

Case Officer:	Steven King
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Link to Planning Documents:

<https://pa.midsussex.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=SWM983KT0D200>

1.0 Purpose of Report

- 1.1 To consider the recommendation of the Assistant Director for Planning and Sustainable Economy on the application for planning permission as detailed above.

2.0 Executive Summary

- 2.1 Planning permission is sought for the redevelopment of the Martlets Shopping Centre in the centre of Burgess Hill to provide additional retail floorspace, a cinema, a bowling alley, a gymnasium, a hotel and 172 residential units, along with the reconfiguration of a public carpark and public realm improvements. The proposals represent an alternative to the scheme approved under application DM/19/3331, which has commenced and is therefore extant.
- 2.2 It should be noted that the while the Council has an interest as a landowner, this report represents your officers' views in relation to the Council's role as the Local Planning Authority (LPA). It is important to highlight that these are two wholly separate functions.
- 2.3 Planning legislation requires the application to be determined in accordance with the development plan unless material considerations indicate otherwise. It is therefore necessary for the planning application to be assessed against the policies in the Development Plan and then to take account of other material planning considerations including the National Planning Policy Framework (NPPF).
- 2.4 The Development Plan in this instance consists of the Mid Sussex District Plan (MSDP), the Site Allocations Development Plan Document (SADPD) and the Burgess Hill Neighbourhood (BHNP). Courts have confirmed that the Development Plan must be considered as a whole, not simply in relation to any one individual policy. It is therefore not the case that a proposal must accord with each and every policy within the Development Plan in order to comply with the Development Plan.
- 2.5 The policies contained within the NPPF are material considerations which should be taken into account in the determination of this application. This is confirmed within paragraph 231 of the NPPF. At the present time, the Council is unable to demonstrate a five-year supply of deliverable housing sites as per the requirements of paragraph 78 of the NPPF. In light of the above, this development needs to be considered in the context of the presumption in favour of sustainable development, having particular regard for the key policies indicated in paragraph 11(d)(ii) of the NPPF. As part of this process, the weight to be given to development plan policies will need to be assessed against the degree of conformity with the NPPF.
- 2.6 This application seeks to amend three conditions attached to a previously approved extant planning permission for the redevelopment of the Martlets Shopping Centre in the centre of Burgess Hill to provide additional retail floorspace, a cinema, a bowling

alley, a gymnasium, a hotel and 172 residential units, along with the reconfiguration of a public carpark and public realm improvements. The purpose of the application is to amend the previously approved scheme to obtain planning permission for a revised scheme that is economically viable and can be delivered.

- 2.7 As this application is submitted under section 73 of the Town and Country Planning Act (TCPA) 1990 and seeks to amend conditions attached to a previous planning permission, it is not necessary to reassess all the issues associated with the planning application afresh. The assessment of this application should focus on the conditions that are proposed to be changed and the issues that arise from the changes that this would make to the previously approved scheme. The legal effect of approving this application would be a new standalone planning permission that sits alongside the previously approved scheme DM/19/3331. It would then be open to the applicant to decide which of the two planning permissions they choose to implement.
- 2.8 The principle of development has been established by virtue of the planning permission that has been granted for a similar type of development under DM/19/3331, which has commenced implementation and is extant. The redevelopment of the town centre is supported by policy DP2 of the MSDP and policies TC2, TC3 and TC4 of the BHNP. The amended scheme would represent a significant investment in the town centre of Burgess Hill and would provide significant economic benefits both during the construction phase and the subsequent operational phase of the development.
- 2.9 The proposal would result in the delivery of 172 residential units within a highly accessible and sustainable location, which would boost the Council's housing supply. This should be given substantial positive weight in the planning balance, particularly as the Council cannot currently demonstrate a 5-year housing land supply as required by the NPPF.
- 2.10 It is considered that the scheme remains of a scale and form that is appropriate to its town centre location. The principle of a significant redevelopment, including the 11-storey residential element, has been accepted in the previously approved scheme and there are no reasons to come to a different conclusion on this matter now. It is your Planning Officers view that the revised scheme, with its reduction in overall building floorspace, has resulted in a scheme with a larger area of public open space in the centre of the town, which is acceptable in terms of its urban design.
- 2.11 Paragraph 125 of the NPPF states in part (at criteria c) that planning decisions should give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, proposals for which should be approved unless substantial harm would be caused. In this case substantial harm has not been demonstrated and as such substantial weight needs to be given in the planning balance to the value of developing this brownfield site.
- 2.12 As the application affects a listed building, the statutory requirement to have special regard to the desirability of preserving the building, its setting and any features of special interest must be taken into account when making any decision. In addition, in enacting section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, the desirability of preserving the settings of listed buildings should be given 'considerable importance and weight' when the decision taker carries out the balancing exercise, thus properly reflecting the statutory presumption that preservation is desirable.

- 2.13 It is your Planning Officers view that there would be some harm to the setting of the Grade II* listed St John's Church, and this would be at the 'less than substantial' level as defined in the NPPF. It is therefore necessary to consider whether according to paragraph 215 of the NPPF sufficient public benefits would offset the harm, which must be given significant importance and weight in accordance with S66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
- 2.14 Having regard to paragraph 215 of the NPPF, the development will deliver a comprehensive scheme to revitalise the town centre socially, economically and visually. The proposed commercial uses that form part of his application will provide a significant boost to both the daytime and nighttime economies of the town and the additional provision of 172 residential units will make a significant boost to the district housing supply. As such it is considered that the adverse impacts to the setting of the listed building would not on their own significantly and demonstrably outweigh the benefits of the scheme (even when given considerable importance and weight in accordance with S66(1) of the 1990 Act). Your Planning Officer considers that the same conclusion is reached in relation to the impact of the development on the setting of the St John's Conservation Area.
- 2.15 With regards to transport, the access arrangements are similar to those previously approved, and the Local Highway Authority (LHA) are satisfied that the development will provide satisfactory access, and the proposed trip generation will not have a severe impact on the local highway network. The proposal contains measures to improve accessibility for both pedestrians and cyclists and no safety concerns have been identified by the LHA.
- 2.16 The previously approved scheme DM/19/3331 was found not to be viable to provide any affordable housing or infrastructure contributions and remain deliverable. This current application has been made to revise the approved scheme DM/19/3331 because that is no longer viable and cannot be delivered in its consented form. It therefore remains the case that this revised scheme is not viable to provide any affordable housing or infrastructure contributions and remain deliverable. There is a review clause in the legal agreement for application DM/19/3331 that would enable a review of the schemes value at a specific point to ascertain if the scheme had generated sufficient funds to go towards affordable housing and infrastructure provision. There is a clause in this legal agreement that ensures that the same provisions would also apply to any subsequent planning permission (such as this) that is granted under section 73 of the TCPA 1990.
- 2.17 While as with the approved scheme DM/19/3331, this application would result in the loss of some existing trees on the site, the supporting landscape masterplan shows significant new planting along Civic Way for the length of the application boundary, in addition to new tree planting within the extended surface car park and public realm. The final details of the planting scheme will be secured via a condition, and such planting would be a positive addition to the town centre.
- 2.18 As with the approved scheme, it considered that through the use of conditions, matters associated with ecology, drainage, accessibility, air quality and noise mitigation can be appropriately controlled and there would be no adverse impacts with respect to these matters.
- 2.19 The Habitats Regulations Assessment for this application concludes that the proposed development would not have an adverse effect on the integrity of the

Ashdown Forest SPA and would not have a likely significant effect, alone or in combination, on the Ashdown Forest SAC.

- 2.20 Weighing against the proposal, as with the approved scheme, while it has been demonstrated that there is sufficient spare capacity within the town centre car parks and on surrounding streets, the proposed level of parking associated with the residential element of the scheme does not comply with the standards set out in the BHNP.
- 2.21 Given the nature of the proposed development, there are only a limited number of potential south facing windows and while nearly all the rooms will achieve acceptable levels of daylight, a significant number of the main habitable rooms will not achieve desirable levels of sunlight, to the detriment of future residential amenities. Furthermore, the proposed development is likely to have a significant impact on the residential amenities of existing residents to the north, particularly 105 and 107 Church Walk, by means of loss of light and enclosure. This view is consistent with those expressed by officers in relation to the extant scheme DM/19/3331.
- 2.22 The less than substantial harm to the setting of the heritage assets identified above also weighs against the proposal, although for the reasons set out in this report, the public benefits of the scheme are considered to outweigh this less than substantial harm.
- 2.23 It is for the decision maker to consider the weight that should be attached to these issues, individually and collectively.
- 2.24 In light of all the above it is considered that the proposal complies with policies DP1, DP2, DP4, DP6, DP17, DP20, DP21, DP28, DP29, DP30, DP31, DP37, DP38, DP39, DP41 and DP42 in the MSDP and policy DP26 in relation to the overall design of the scheme and its impact on the character of the area. However, there is a conflict with policy DP26 (in relation to the impact on the residential amenities of existing residents to the north, particularly 105 and 107 Church Walk and some future residents of the development in respect of achieving desirable levels of sunlight) and policy DP34.
- 2.25 In relation to the BHNP it is considered the application complies with policies TC2, TC3, TC4, TC6 and G6. The application conflicts with policy S4 in respect of the level of car parking provision.
- 2.26 Having regard to all the identified issues, it is considered that the that the proposal complies with the development plan when read as whole, which is the proper basis for decision making.
- 2.27 As the Council is currently unable to demonstrate a five-year supply of deliverable housing sites, it follows that the relevant policies for the supply of housing from the Development Plan are out-of-date (footnote 8 of paragraph 11 NPPF). As such, reduced weight should be given to these policies.
- 2.28 In these circumstances paragraph 11d of the NPPF provides for a presumption in favour of sustainable development which means that planning permission should be granted unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole (having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places

and providing affordable homes, individually or in combination), or specific policies in the NPPF that protect areas or assets of particular importance provide a strong reason for refusing the development.

- 2.29 The proposal would deliver 172 residential units within a highly accessible and sustainable location, which would boost the Council's housing supply. There would be a considerable improvement to the public realm from the development and significant economic benefits from the redevelopment of the town centre. These benefits would accord with the economic, social and environmental objectives as set out in paragraph 8 of the NPPF.
- 2.30 It is your Planning Officer's view that having regard to paragraph 11d of the NPPF, the adverse impacts of granting consent would not significantly and demonstrably outweigh the benefits of this development, as highlighted within this report, many of which will in any event be mitigated for as far as is possible. It is therefore recommended that planning permission be granted for this development subject to the conditions set out in appendix A.

3.0 Recommendation

- 3.1 It is recommended that permission be granted, subject to the conditions listed at Appendix A.

4.0 Summary of Representations

3 letters of objection.

- The proposed changes would result in a significant loss of natural light to 103, 103A, 105, 105A, 105B, 107A and 107B Church Walk, particularly the ground floor units at 105B and 107B.
- the significant loss of daylight would be detrimental to the living conditions of the occupants creating a dark and potentially unhealthy environment that would negatively affect their wellbeing.
- development is of significant height and Swift bricks should be included in the proposal.
- the new design shows a public square where there are established London Plane trees and we object to the felling of these trees. The revised layout can accommodate these trees which provide shading and cooled air, carbon sequestration, absorb pollution and are essential in providing improved community facilities and environment.
- this is a significant change from the previously approved scheme and needs a new full planning application.
- the Courts have placed constraints on the way variations in conditions can be used to amend planning permissions and the Council risks acting unlawfully by exceeding them.
- reduction in the size of the cinema and bowling alley will mean that these facilities are not viable.

- the reduction in the mass of buildings at the site will mean that the tower block will appear even more prominent than it would have been previously.
- the lack of affordable housing is a missed opportunity.
- is the location of the extra stairwell in the tower block next to the original stairwell a fire risk.
- if there is an increase in public realm this it to be welcomed providing existing trees are retained.
- would be good to see solar panels included.

5.0 Summary of Consultees

MSDC Urban Designer

No objection subject to conditions

MSDC Conservation Officer

I have no objection to the proposal on built heritage grounds.

MSDC Housing Officer

To be reported.

MSDC Community Leisure Officer

To be reported.

MSDC Environmental Protection Officer

No comments

MSDC Contaminated Land Officer

No comments

MSDC Ecology Consultant

No objection subject to conditions

WSCC Highways

There are no transport grounds to resist the proposal.

WSCC Lead Local Flood Authority

No objection

WSCC Infrastructure

To be reported.

Historic England

No comments

South Down National Park Authority

No comments

Southern Water

No objection

Gatwick Airport

No objection

Sussex Police

No objection

Active Travel England

Refers to standing advice

Health & Safety Executive

HSE is content with the fire safety design to the extent it affects land use planning considerations.

6.0 TOWN COUNCIL OBSERVATIONS

The Committee of 2nd June would support approval with the hope this comes forward quickly. The Tree Officer and Case Worker are encouraged to reach a consensus regarding retention and integration of T83 and T84 from the arboricultural report contained in DM19/331, to provide greater compliance with DP26 (character and design), DP37 (Trees Woodlands and hedgerows) and DG27 (Trees and soft Landscapes). We would request ecological enhancements to include Swift bricks be considered regarding DP38 (Biodiversity) and that all opportunities for energy regeneration have been fully explored and taken up to ensure compliance with DP39 (sustainable design and construction). The committee also require confirmation that all opportunities for equal access for wheelchair users have been fully explored and taken up to ensure compliance with DP28 (Accessibility).

Further to the Comments submitted from the Planning Committee on 2nd June, we are sending a supplementary comment regarding the public conveniences that were part of the original site. The new plans do not re-provision these. Re-provision is desperately needed of these toilets, they are well used by delivery and bus drivers and are essential for access most of the day. While it is appreciated that there are conveniences in the market place shopping centre this is only while the centre is open, while the market toilets were open longer. Additionally, the new open space is potentially able to be used for community events where again conveniences will be

demanded. The Burgess Hill Town Council would want to see this facility reprovisioned in the new development.

We would suggest that District Plan policies: DP25 (Community facilities) and DP28 (accessibility) would support inclusion of public toilets in this development.

7.0 Introduction

7.1 This application seeks planning permission for a variation of conditions 6, 21 and 29 relating to planning application DM/19/3331 - amendment of approved drawings to improve the viability and deliverability of the scheme.

7.2 Planning permission DM/19/3331, which was approved on 2nd July 2021, granted consent for the following development:

'Demolition of multi-storey car park, public library and offices. The conversion of existing buildings and erection of new buildings to provide, additional retail floor space (Classes A1 and A3), residential units (Class C3) with undercroft car parking, a multi-screen cinema (Class D2), bowling alley (Class D2), gymnasium (Class D2), a hotel (Class C1), the reconfiguration and expansion of existing public car park, amendments to the site access, public realm improvements including landscaping, and other associated works.'

8.0 Relevant Planning History

8.1 DM/15/3858 - Demolition of multi-storey car park, public library, community building and offices. Provision of additional retail floor space (Class A1-A5), residential units (Class C3), a multi-screen cinema (Class D2), public library (Class D1), a hotel (Class C1), the reconfiguration and expansion of existing car park, amendments to the site access, public realm improvements including landscaping and other associated works. Approved 14th March 2016.

8.2 DM/16/3314 - Non-material amendment to planning application DM/15/3858 to request that 'plans referred to in consideration of this application' are included as a condition. Approved 7th September 2016.

8.3 DM/18/1580 - Application to vary Condition 33 of planning ref: DM/15/3858 as amended by application ref: DM/16/3314 to allow amendments to the approved plans. Approved 13th July 2018.

8.4 DM/19/3331 - Demolition of multi-storey car park, public library and offices. The conversion of existing buildings and erection of new buildings to provide, additional retail floor space (Classes A1 and A3), residential units (Class C3) with undercroft car parking, a multi-screen cinema (Class D2), bowling alley (Class D2), gymnasium (Class D2), a hotel (Class C1), the reconfiguration and expansion of existing public car park, amendments to the site access, public realm improvements including landscaping, and other associated works (revision of DM/15/3858 and DM/18/1580). Approved 2nd July 2021.

8.5 DM/22/1892. Non-Material Amendment relating to planning application DM/19/3331 to amend the approved drawings within the permission to make minor non-material changes to the proposed scheme. Approved 11th July 2022. This NMA solely relates to changes to the approved Block A2 basement, ground and first floors.

- 8.6 DM/24/1064 - Non-Material amendment to planning application DM/19/3331 - to amend the wording of Condition 8 (contamination). Approved 07th May 2024. The NMA amended the wording of Condition 8 to allow for facilitating demolition works to occur prior to intrusive investigations to be undertaken on the wider site.
- 8.7 DM/24/3117 - Non-Material Amendment to planning application DM/19/3331: Amendment to proposed description of development to remove the last sentence referencing amended plans. Approved 14th March 2025.
- 8.9 DM/25/0290 - Non-Material Amendment to application DM/19/3331 - Amending wording of conditions 4,5,22 and 23 to allow demolition works to occur prior to providing technical information and to allow the partial discharge of condition 23 - please refer to the cover letter for further details. Non-material amendment relating to planning permission ref. DM/19/3331 to amend the wording of condition 8 (contamination). Amend the approved drawings within the permission to make minor non-material changes to the proposed scheme (condition 29). Approved 18th February 2025.
- 8.9 In addition, the following conditions have been discharged:
- DM/23/0220 - Discharge of planning condition no. 11 relating to planning application DM/19/3331. Approved 28th March 2023. Condition 11 related to the Ecological Impact Assessment and an Ecological Mitigation Plan was submitted.
- DM/24/0608 – Discharge of conditions 2, 3 and 10 in relation to DM/19/3331 approved 20th May 2024. Condition 2 relates to construction management plan, Condition 3 relates to phasing and Condition 10 relates to site levels.
- 8.10 A Certificate of Lawfulness (DM/24/1465) was approved on 16th August 2024 to implement the planning permission DM/19/3331 through the partial demolition of buildings with the removal of canopies. As implementation of the permission has commenced it remains extant.

9.0 Site and Surroundings

- 9.1 The site consists of approximately 2.46 ha of land in the middle of Burgess Hill town centre and consists of a number of buildings and structures, including a multi storey car park. Due to the implementation of the extant permission the majority of the commercial units are now vacant.
- 9.2 The site is bounded by Church Walk to the north and Civic Way to the south and east. Adjoining the site to the east is the Market Place Shopping Centre, a covered shopping centre containing amongst other occupiers, Waitrose. To the south of the application site is largest of the town centre car parks.
- 9.3 The Martlets is an open-air shopping centre comprising relatively small single storey units fronting the open-air pedestrian arcades with a mix of commercial, leisure and residential units above.
- 9.4 The largest building on the application site is Martlets Height, an 8-storey former office building that is now vacant, the remainder of the site is of a much lower scale, although the multi-storey car park is equivalent to 4 storeys (including a lower ground floor). Due to the fall in levels across the site the apparent scale of the existing built

form is masked to a degree, although it is more noticeable when viewed from Civic Way.

- 9.5 There are existing residential units above the retail units in Church Walk immediately to the north of the site, as well as two at ground floor level to the rear of the 105/107 Church Walk.
- 9.6 St John's Church, a Grade II* listed building, is located to the northwest of the application site and it, along with the area to beyond, lies within the St Johns' Conservation Area. The site is within the built-up area as defined in the Mid Sussex District Plan.

10.0 Application Details

- 10.1 This application seeks planning permission for a variation of conditions 6, 21 and 29 relating to planning application DM/19/3331. The purpose of the application is to seek amendment of the approved drawings to improve the viability and deliverability of the scheme. The conditions referred to state:

'6. No development (excluding demolition), in each respective phase of the agreed programme, shall commence unless and until detailed 1:20 scale vignettes including both full elevation and section drawings showing the typical features and detailing for the frontages of block A1 (residential), block A2 (hotel), block B (cinema), unit 1 and a typical unit on the west side of the pedestrian street, have been submitted and approved in writing with the Local Planning Authority.

In addition, the following shall also be provided;

- Details of 'Green Wall' between the block A1 and A2, including maintenance programme
- Details of the treatment of the eastern flank of block B
- Details of the treatment of the northern flank of block A2 (hotel)
- Details and design of the kiosk

The scheme shall only be implemented in accordance with the approved details.

Reason: To enable the Local Planning Authority to control the development in detail in the interests of amenity by endeavouring to achieve a building of visual quality and to accord with Policy DP26 of the Mid Sussex District Plan.'

'21. Prior to first occupation of any part of the development hereby approved the proposed modifications to the public highway, including accesses onto Civic Way, shall be designed/constructed, in general accordance with drawing 14091-012 rev C. A final scheme design shall be submitted to and approved in writing by the Local Planning Authority prior to construction. Thereafter, the scheme shall only be implemented in accordance with the approved details.

Reason: In the interests of road safety and to accord with policy DP21 of the Mid Sussex District Plan.'

'29. The development hereby permitted shall be carried out in accordance with the plans listed below under the heading "Plans Referred to in Consideration of this Application".

Reason: For the avoidance of doubt and in the interest of proper planning.'

10.2 The applicants supporting statement explains the background to this application as follows:

'Since the planning permission DM/19/3331 was approved in 2021, the retail and economic landscape has changed for a number of reasons, including the impact of the Covid-19 pandemic, falling levels of consumer spending, changes in people's approach to retailing and there is currently very little operator appetite for new multiplex cinemas across the UK.

Several changes are required to the approved development drawings to help the deliverability and viability of the scheme. The section 73 route is the most appropriate mechanism to obtain permission for the proposed amendments, as discussed with Council Officers.

The changes sought within this S73 application will significantly improve the deliverability of the scheme and comprise the following:

- Relatively minor amendments to the external elevations of the proposed residential block A1
- Reconfigured internal arrangements to the residential block to allow for additional fire stair-core in response to changes to Building Regulations.
- Amended design of basement parking courtyard to account for detailed structural design inputs resulting in reduction in basement car parking (offset by increases to the surface parking area).
- Removal of green wall feature between blocks A1 and A2.
- Reconfiguration of proposed hotel arrangements to increase number of rooms from 89 to 102.
- Reduction in the size of proposed block B to provide a smaller cinema, bowling and retail offer (total reduction of 3,484 sqm of retail / restaurant floorspace and 8,374 sqm of proposed leisure space).
- Increased amount of parking within the surface car park.
- Introduction of larger area public realm within the centre of the site.
- Details of the proposed cycle hub.
- Revised access configurations on to Civic Way to allow for an access and egress junction.'

10.3 The planning background to the application is set out in the subsequent sections of this report. The previously approved scheme, DM/19/3331, which is now extant, was described in the Planning Officers report to committee as follows:

'The proposed development comprises the main following elements divided between two principle blocks;

- 8,461sqm of retail (A1) floor space (451sqm additional over existing)
- 841sqm of restaurant and cafes (A3) (348sqm additional over existing)
- 1,338sqm of office (B1(a)) (622sqm less than existing)
- A 10-screen cinema
- A 16-lane bowling alley

- A 89 bed Hotel
- 172 residential flats
- Reconfigured and extended surface car park to provide 167 spaces (an additional 2 spaces compared to the multi storey car park to be demolished).
- 75 parking spaces for the residential units.

The residential units will be provided on the western side of block A (referred to by the applicant as block A1) and primarily fronts onto Civic Way where it follows the line of the road and turn the corner at its southern end. The main element fronts Civic Way is five storeys in height, with an additional two storeys set back at the upper level (making seven floors of accommodation in total. The southern corner of the building will take the form a eleven storey block with an entrance lobby at ground floor. The residential element has been designed to facilitate operation as an institutional build-to-rent development. The lower ground floor/part-basement will provide parking for the residential units.

The remainder of block A (referred to by the applicant as block A2) to the east of the residential element will provide new commercial and leisure uses, with southern and eastern part of the building fronting new surface car park. This element of the building will be five storeys high with the ground and first floor made up or retail and restaurant use, with the hotel occupying the upper floors. The northern section of the block will comprise retained and refurbished at ground floor with the upper floor proposed for office use (B1(a)). A gym is proposed in corner unit with Church Walk. The proposed bowling alley will be located in the basement of block A2.

Block B, to the east of the Martlets remains as broadly permitted under the extant consent with the southern half comprising new build, which the northern section will be retained, refurbished and re-purposed. The Southern element will comprising two storey retail units with the cinema located above, with an entrance lobby provided at ground floor level to the western side of the block. In total the new build element of this block will be four storeys high.

The proposal also involves public realm improvements including the planting of semi mature trees along Civic Way and the provision of an enlarged public realm between the proposed two blocks linking the development through to Church Walk.

It is proposed that the development will not provide for any affordable housing, with all the 172 apartments being open market units. To support their case the applicants have submitted a full viability assessment.'

10.4 The Current Application

10.5 The residential Block A1 has needed to be amended to address the updated fire regulations which have been put in place since the original planning permission. This has required an additional stair and lift core being designed into the taller element of the proposed block which has resulted in a need to redesign the internal layout of the block. The reconfigured residential layout retains 172 apartments but the mix of the size of the units has needed to slightly change from the permitted scheme from 100 one-bedroom and 72 two-bedroom apartments to 106 one-bedroom and 66 two-bedroom apartments.

10.6 In relation to car parking, there is a reduction in the amount of car parking that can be serviced in the basement to 48 spaces. To offset this, an additional 23 spaces are proposed within the surface car park to be designated as residential parking spaces.

- 10.7 Following advice from the Fire Engineer Orion Fire, the proposed green wall that was proposed to separate Block A1 and Block A2 has been replaced with a metal fin arrangement.
- 10.8 Block B (leisure block) has been reduced in footprint and height as the previously consented scheme is no longer feasible. The footprint is approximately half of the consented scheme, and the height of the building has been reduced from five to two storeys. This results in a larger area of public realm between Block A2 and Block B. This will now provide a four-lane bowling alley on the ground floor and two retail units, with a gym and boutique four screen cinema on the first floor.
- 10.9 In Block A2, alterations to the layout of the hotel are also proposed, increasing the total number of hotel rooms from 89 to 102 facilitated primarily through the relocation of plant areas and the extension of the hotel into the previously identified adjoining retail demise at first floor level.
- 10.10 This application also proposes an alteration to the main access to the surface car park on to Church Walk. The permitted scheme has designed this as an egress only design, with the access to the car park obtained from the existing access next to Waitrose, off Queen Elizabeth Avenue. This has been redesigned to allow both access and exit to and from the car park.
- 10.11 In summary, the proposed amendments are as follows:
- Amendments to the external elevations of the proposed residential Block A1
 - Reconfigured internal arrangements to the residential block to allow for additional fire stair-core in response to changes to Building Regulations.
 - Amended design of basement parking courtyard to account for detailed structural design inputs resulting in reduction in basement car parking (offset by increases to the surface parking area).
 - Removal of green wall feature between Blocks A1 and A2.
 - Reconfiguration of proposed hotel arrangements to increase number of rooms from 89 to 102
 - Reduction in the size of proposed Block B to provide a smaller cinema, bowling and retail offer (total reduction of 3,484 sqm of retail / restaurant floorspace and 8,374 sqm of proposed leisure space).
 - Increased amount of parking within the surface car park.
 - Introduction of larger area public realm within the centre of the site.
 - Details of the proposed cycle hub.
 - Revised access configurations on to Civic Way to allow for an access and egress junction.

11.0 Legal Framework and List of Policies

- 11.1 Planning legislation holds that the determination of a planning application shall be made in accordance with the Development Plan unless material considerations indicate otherwise.
- 11.2 Specifically Section 70 (2) of the Town and Country Planning Act 1990 states:

'In dealing with such an application the authority shall have regard to:

a) The provisions of the development plan, so far as material to application, and

- b) Any local finance considerations, so far as material to the application, and*
- c) Any other material considerations.'*

11.3 Section 38(6) Planning and Compulsory Purchase Act 2004 provides:

'If regard is to be had to the development plan for the purposes of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.'

11.4 The requirement to determine applications "in accordance with the plan" does not mean applications must comply with each and every policy, but is to be approached on the basis of the plan taken as a whole. This reflects the fact, acknowledged by the Courts, that development plans can have broad statements of policy, many of which may be mutually irreconcilable so that in a particular case one must give way to another.

11.5 Under section 38(5) of the Planning and Compulsory Purchase Act 2004 if a policy contained in a development plan for an area conflicts with another policy in the development plan, the conflict must be resolved in favour of the policy which is contained in the last document to be adopted, approved or published.

11.6 This application is made under section 73 of the Town and Country Planning Act 1990 to vary or remove conditions associated with a planning permission. The Act states that *'On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and-*

(a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and

(b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.'

11.7 Using the above as the starting point the Development Plan for this part of Mid Sussex consists of the Mid Sussex District Plan (MSDP), Site Allocations Development Plan Document (SADPD) and the Burgess Hill Neighbourhood Plan (BHNP).

11.8 National policy (which is contained in the National Planning Policy Framework (NPPF) and National Planning Policy Guidance) does not form part of the development plan but is an important material consideration.

11.9 Mid Sussex District Plan (MSDP)

11.10 The District Plan was adopted at Full Council on 28th March 2018. Relevant policies:

DP1 - Sustainable Economic Development

DP2 - Town Centre Development

DP4 - Housing

DP6 - Settlement Hierarchy
DP17 - Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation (SAC)
DP20 - Securing infrastructure
DP21 - Transport
DP23 - Communication Infrastructure
DP24 - Leisure and Cultural Facilities and Activities
DP26 - Character and Design
DP27 - Dwelling Space Standards
DP28 - Accessibility
DP29 - Noise, Air and Light Pollution
DP30 - Housing Mix
DP31 - Affordable Housing
DP34 - Listed Buildings and Other Heritage Assets
DP35 - Conservation Areas
DP37 - Trees, Woodland and Hedgerows
DP38 - Biodiversity
DP39 - Sustainable Design and Construction
DP41 - Flood Risk and Drainage
DP42 - Water Infrastructure & the Water Environment

11.10 Site Allocations DPD

11.11 The SADPD was adopted on 29th June 2022. It allocates sufficient housing and employment land to meet identified needs to 2031. Relevant policies:

SA38: Air Quality

11.12 Neighbourhood Plan

11.13 The Burgess Hill Neighbourhood Plan (BHNP) was made on the 28th of January 2016. Relevant policies:

TC2 - The Leisure and Entertainment Quarter
TC3 - The Brow Quarter
TC4 - The Retail Quarter
TC6 - Urban Realm and Access in the Town Centre
S4 - Parking Standards for New Development
G6 - Footpath and Cycle Links

11.14 Other Legislation

11.15 *Planning (Listed Buildings and Conservation Areas) Act 1990*

11.16 Other Material Considerations

11.17 *Mid Sussex District Plan 2021 - 2039 - Submission Draft (Regulation 19)*

- 11.18 The District Council is reviewing and updating the District Plan. Upon adoption, the new District Plan 2021 - 2039 will replace the current District Plan 2014-2031 and its policies will have full weight. In accordance with the NPPF, Local Planning Authorities may give weight to relevant policies of the emerging plan according to the stage of preparation; the extent to which there are unresolved objections to the relevant policies; and the degree of consistency of the relevant policies in the emerging plan to the NPPF. The draft District Plan 2021-2039 (Regulation 19) is currently at Examination and the stage 1 hearings were concluded on the 31st October 2024. There are unresolved objections to some of the Policies in the draft District Plan and as such, only minimal weight can be given to the Plan and this planning application has been assessed against the policies of the adopted District Plan.

Relevant policies:

DPS1: Climate Change
DPS2: Sustainable Design and Construction
DPS3: Renewable and Low Carbon Energy Schemes
DPS4: Flood Risk and Drainage
DPN7: Noise Impacts
DPC6: Ashdown Forest SPA and SAC
DPB1: Character and Design
DPB2: Listed Buildings and Other Heritage assets
DPB3: Conservation Areas
DPT1: Placemaking and Connectivity
DPT3: Active and Sustainable Travel
DPE1: Sustainable Economic Development
DPE4: Town and Village Centre Development
DPE6: Development within Primary Shopping Areas
DPH1 Housing
DPH3: Sustainable Development-Inside Built-up Area
DPH7: Housing Mix
DPH8: Affordable Housing
DPH11: Dwelling Space Standards
DPH12: Accessibility
DPI1: Infrastructure provision
DPI8: Viability

11.19 *Mid Sussex Design Guide Supplementary Planning Document (SPD)*

- 11.20 The Council has adopted a 'Mid Sussex Design Guide' SPD that aims to help deliver high quality development across the district that responds appropriately to its context and is inclusive and sustainable. The Design Guide was adopted by Council on 4th November 2020 as an SPD for use in the consideration and determination of planning applications. The SPD is a material consideration in the determination of planning applications.

11.21 *Development Infrastructure and Contributions Supplementary Planning Document (SPD)*

11.22 *Affordable Housing Supplementary Planning Document (SPD)*

11.23 *Development Viability Supplementary Planning Document (SPD)*

11.24 National Planning Policy Framework (NPPF) (December 2024)

11.25 The NPPF sets out the government's policy in order to ensure that the planning system contributes to the achievement of sustainable development. Paragraph 8 sets out the three overarching objectives to sustainable development, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives). The three objectives are economic, social and environmental.

11.26 Paragraph 9 of the NPPF states *'these objectives should be delivered through the preparation and implementation of plans and the application of the policies in this Framework; they are not criteria against which every decision can or should be judged. Planning policies and decisions should play an active role in guiding development towards sustainable solutions, but in doing so should take local circumstances into account, to reflect the character, needs and opportunities of each area.'*

11.27 Paragraph 11 of the NPPF sets out that for both plan-making and decision-taking, the presumption in favour of sustainable development should apply.

11.28 Paragraph 12 of the NPPF states;

'The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.'

11.29 Paragraph 39 of the NPPF states:

'Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.'

11.30 With specific reference to decision-taking paragraph 48 states that planning decisions must be taken in accordance with the development plan unless material considerations indicate otherwise.

11.31 Chapter 11 of the NPPF deals with making effective use of land and paragraph 125 c) sets out that decisions should:

'give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, proposals should be approved unless substantial harm would be caused...'

11.32 National Planning Policy Guidance (PPG)

11.33 *National Design Guide*

- 11.34 Published in 2021, the National Design Guide illustrates how the government consider well-designed places that are beautiful, healthy, greener, enduring and successful can be achieved in practice.
- 11.35 Paragraph 134 of the NPPF sets out that this national document, along with the National Model Design Code, should be used to guide decisions on application in the absence of locally design guides or design codes.

11.36 *Technical Housing Standards*

12.0 Assessment

- 12.1 This application is made under section 73 of the TCPA 1990 to vary or remove conditions associated with a planning permission.
- 12.2 In light of the wording of section 73 as set out in para 11.6 of this report, it is not necessary to reassess all the issues from the original planning application. It is only necessary to assess the issues that are relevant in relation to the condition/s that are proposed to be amended.
- 12.3 The policies contained within the NPPF are material considerations which should be taken into account in the determination of this application. This is confirmed within paragraph 231 of the NPPF.
- 12.4 Paragraph 232 clarifies that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).
- 12.5 Paragraph 11 of the NPPF sets out that plans and decisions should apply a presumption in favour of sustainable development, and states;

'For decision-taking this means;

- c) approving development proposals that accord with an up-to-date development plan without delay; or*
- d) where there are no relevant development policies, or the policies which are most important for the determining the application are out-of-date, granting planning permission unless;*
 - i. The application of policies within this Framework that protect areas of assets of particular importance provides a strong reason for refusing development proposed; or*
 - ii. Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.'*

- 12.6 Footnote 7 of paragraph 11(i) clarifies that the policies referred to are those in this Framework (rather than those in development plans) and relate to habitats sites (and

those and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, a National Landscape, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets and other heritage assets of archaeological interest; and areas at risk of flooding or coastal change.

- 12.7 Footnote 8 of paragraph 11 clarifies that for applications involving the provision of housing, in situations where the local planning authority cannot demonstrate a five year land supply of delivery housing sites (with an appropriate buffer) or where the Housing Delivery Test indicates that delivery of housing has been substantially below (less than 75%) of the housing requirement for the last three years, then relevant policies for the supply of housing should be considered out-of-date.
- 12.8 Having regard to the above, while the Council has performed excellently in respect of the Housing Delivery Test, a new standard method formula was published alongside the NPPF which gives Mid Sussex a significantly higher housing requirement than the current District Plan. As a result and having regard for the need for an appropriate buffer, the Council is unable to demonstrate a five-year supply of deliverable housing sites as per the requirements of paragraph 78 of the NPPF.
- 12.9 In light of the above, this development needs to be considered in the context of the presumption in favour of sustainable development. If a development is found to be sustainable, that would weigh heavily in favour of granting permission in the paragraph 11(d) balance. If, however, the development is not found to be sustainable, that is not the end of the matter; the Local Planning Authority still need to go through the weighing up process between the positive benefits of the scheme against any harm that may be caused, having particular regard for the key policies indicated in paragraph 11(d)(ii).
- 12.10 As part of this process, the weight to be given to Development Plan policies will need to be assessed against the degree of conformity with the NPPF.
- 12.11 Policies DP4 (Housing) and DP6 (Settlement Hierarchy) are relevant to this application. These policies are considered to be policies relating to the supply of housing and as such can be considered to be out-of-date, having regard to the NPPF tests. As such, these policies can be given limited weight in the determination of the application.
- 12.12 In light of the fact that this is an application submitted under section 73 of the TCPA, it is considered that the issues to assess with this application are as set out below.

12.13 Impact on Vitality and Viability of Town Centre and Socio-Economic Considerations

- 12.14 In policy terms, as outlined above, Policy DP2 of the MSDP supports the redevelopment of the town centre and expressly supports mixed use and tourism related development (providing it meets certain requirements) to support the regeneration and renewal and environmental enhancement of town centres. Whilst policy DP2 refers to Use Classes that have been superseded as a result of the changes to Use Classes Order in 2020, the aims of regenerating town centres and policies for town centre uses accord with the aims of the NPPF, and therefore this policy can be afforded significant weight.

12.15 In addition, policies TC2, TC3, TC4 in the BHNP promote development within three of the five 'Quarters' in order to support the BHNP's Core Objective 7 to promote the vitality and vibrancy of Burgess Hill town centre. The BHNP policies support uses such as a hotel, retail, residential and cinema uses. These policies accord with the aims of the NPPF and therefore can be afforded significant weight.

12.16 The NPPF promotes economic growth with paragraph 85 setting out that 'Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.' Furthermore, paragraph 90 states that 'Planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation.'

12.17 The Governments published PPG for town centre development encourages Local Planning Authorities to lead and promote measures to ensure town centres are robust and can adapt to changes in shopping and leisure patterns and formats. The guidance sets out how a wide range of complementary uses can support the vitality and viability of town centres, and states:

'A wide range of complementary uses can, if suitably located, help to support the vitality of town centres, including residential, employment, office, commercial, leisure/entertainment, healthcare and educational development. The same is true of temporary activities such as 'pop ups', which will often benefit from permitted development rights. Residential development in particular can play an important role in ensuring the vitality of town centres, giving communities easier access to a range of services. Given their close proximity to transport networks and local shops and services, local authorities may wish to consider locating specialist housing for different groups including older people within town centres or edge of centre locations. Evening and night time activities have the potential to increase economic activity within town centres and provide additional employment opportunities. They can allow town centres to diversify and help develop their unique brand and offer services beyond retail.' (Paragraph: 001 Reference ID: 2b-001-20190722).

12.18 As when the previous planning application, DM/19/3331 was approved, it remains the case that the current Martlets Shopping Centre and the town centre as whole, needs redevelopment. This is recognised within the Development Plan policies, where both the MSDP and BHNP have policies positively supporting redevelopment of the town centre for uses incorporated within the application.

12.19 Policy DP1 of the MSDP seeks, inter alia, to protect employment land and premises (i.e. offices) unless it can be demonstrated of its continued use or the loss outweigh by the benefits or relative need for the proposed alternative need. The extant permission has established that the loss of Martlets Height, an eight-storey office building, is acceptable and the wider community benefits that derive from the improved retail and leisure offer proposed by the development will help the long term viability and vitality of the town centre, while the provision of 172 residential units that will make a positive contribution to the meeting the housing needs of the town and the district as a whole. It should also be noted that changes to the Use Classes Order in September 2020 brought in a new Class E - Commercial, Business and Service, which includes, amongst other things, retail uses, financial services, professional services and offices, all within the same use class. One of the aims of this was to allow greater flexibility in the use of properties within town centres.

- 12.20 The principle of the redevelopment has been established by virtue of the previous planning permission (DM/19/3331), which is extant. It remains the case that the proposed development will sustain and enhance the vitality and viability of the town centre and in this regard the application complies with relevant Development Plan policies and the aims and objectives of the NPPF.

12.21 Design and Visual Impact

- 12.22 Policy DP26 in the MSDP seeks a high standard of design in new development. It is considered this policy accords with aims of the NPPF and can be afforded full weight. It states:

'All development and surrounding spaces, including alterations and extensions to existing buildings and replacement dwellings, will be well designed and reflect the distinctive character of the towns and villages while being sensitive to the countryside. All applicants will be required to demonstrate that development:

- is of high quality design and layout and includes appropriate landscaping and greenspace;*
- contributes positively to, and clearly defines, public and private realms and should normally be designed with active building frontages facing streets and public open spaces to animate and provide natural surveillance;*
- creates a sense of place while addressing the character and scale of the surrounding buildings and landscape;*
- protects open spaces, trees and gardens that contribute to the character of the area;*
- protects valued townscapes and the separate identity and character of towns and villages;*
- does not cause significant harm to the amenities of existing nearby residents and future occupants of new dwellings, including taking account of the impact on privacy, outlook, daylight and sunlight, and noise, air and light pollution (see Policy DP29);*
- creates a pedestrian-friendly layout that is safe, well connected, legible and accessible;*
- incorporates well integrated parking that does not dominate the street environment, particularly where high density housing is proposed;*
- positively addresses sustainability considerations in the layout and the building design;*
- take the opportunity to encourage community interaction by creating layouts with a strong neighbourhood focus/centre; larger (300+ unit) schemes will also normally be expected to incorporate a mixed use element;*
- optimises the potential of the site to accommodate development.'*

- 12.23 In support of this policy, the Design Guide SPD provides further guidance on what constitutes good design.
- 12.24 Paragraph 124 of the NPPF states, in part, 'Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions.'
- 12.25 Paragraph 129 of the NPPF states 'Planning policies and decisions should support development that makes efficient use of land, taking into account:
- a) the identified need for different types of housing and other forms of development, and the availability of land suitable for accommodating it;
 - b) local market conditions and viability;
 - c) the availability and capacity of infrastructure and services – both existing and proposed – as well as their potential for further improvement and the scope to promote sustainable travel modes that limit future car use;
 - d) the desirability of maintaining an area's prevailing character and setting (including residential gardens), or of promoting regeneration and change; and
 - e) the importance of securing well-designed, attractive and healthy places.'
- 12.26 Paragraph 131 of the NPPF states that: 'The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.'
- 12.27 The scheme has been carefully considered by your Urban Designer and their full comments can be found in appendix B to this report. In assessing the design of this scheme, it needs to be recognised that the extant permission DM/19/3331 has established the principles of the development in terms of the overall development envelope. The extant scheme was approved under the same development plan that is in place now. In this regard, whilst the comments of the Town Council regarding public toilets are noted, this was not part of the previously approved scheme DM/19/3331 and there are no grounds to insist on such provision with this current application.
- 12.28 The main change from the extant scheme in terms of the overall development is the reduction in the scale of the built form in respect of Block B and the consequent enlargement of the public realm area within the centre of the site. It is considered that the proposed layout will still satisfactorily address Civic Way. It is considered that the new larger area of public realm within the centre of the site is a positive addition that will significantly improve the character and appearance of the centre of Burgess Hill. This will provide a focal point for activity within the town within a well designed and landscaped area.
- 12.29 With regards to the massing of the scheme, it was acknowledged on the previously approved scheme DM/19/331 that the scheme, as a whole, was of a significant size, including the 11-storey element at the southern end of Block A1. The main element of the residential block to Civic way remains the same scale as previously approved,

namely 5 residential storeys with a further 2 storeys set in. The overall scale of the proposed development is reduced on the current scheme as a result of the reduction to Block B, from the previously approved 5 storeys to 2 storeys.

- 12.30 The tallest element of the scheme remains the 11-storey element at the southern end of Block A1. In approving the previous scheme, it was acknowledged that the existing Martlets Heights building is 8 storeys high and is of an inferior design to what was approved under DM/19/3331. The design of the 11-storey block has improved on the current scheme with the introduction of windows to the elevations on the upper three floors of the north elevation. Given the extant scheme and the improvement to the upper floor elevations of this part of the scheme, it is considered that this element of the scheme remains acceptable.
- 12.31 Further changes are proposed on Block A1 in respect of an increase in the height of parapet roof on the northern elevation fronting Church Way to screen the plant required on the roof. In terms of its design, whilst this would add some additional bulk in comparison to the previously approved scheme, the overall massing and impact on the character of the area would be little different from the consented scheme. It is not considered that this elevation would appear overly bulky or dominant with this change.
- 12.32 The changes to the access arrangements onto Civic Way do not make significant changes to the extant scheme in urban design terms. It is considered that this remains satisfactory in terms of its design and impact on the character of the area.
- 12.33 With regards to the elevational treatment, the overall scheme follows on from the extant permission with a modern design approach. The main changes in respect of the elevational treatment relate to Block B, which is the building that has changed most in respect of its size. The consented scheme showed Block B using stone effect cladding with a variety of patterns and textures. The current scheme proposes silver corrugated metal panels with coloured aluminium glazing. The final details of the materials would be reserved by condition, as with the extant scheme.
- 12.34 The previously approved scheme was submitted with a Wind Study to assess the likely wind conditions on site as a result of the proposals. A condition was imposed on the extant scheme DM/19/3331 to secure appropriate mitigation measures. This condition would be carried forward on this application and this remains an acceptable way to address this potential issue, acknowledging that the scale of the built form of the development is much reduced from the extant scheme.
- 12.35 It is considered that the overall scale of the proposed development remains appropriate for this town centre site. The NPPF encourages the efficient use of previously developed sites within town centres and this development would fully accord with that aim. There are no objections to the scheme from the Councils Urban Designer, who recommends approval of the scheme subject to conditions to control points of detail. It is your Planning Officers view that the proposed development would make a significant positive contribution to the overall character and appearance of the town and contribute to its regeneration and renewal. It must also be recognised that the consideration of this scheme does not take place in a vacuum; there is an extant consent, granted under the same development plan as is in place now, which has established the principle of the development and its scale and appearance. In light of all the above, it is considered that the design of the proposal complies with policy DP26 of the MSDP.

12.36 Impact on Heritage Assets

12.37 It has been identified that the application site lies adjacent to St Johns Church, a Grade II* listed building. Furthermore, the development has the potential to impact on the setting of the St Johns Conservation Area.

12.38 Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states:

'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 shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.'

12.39 Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states:

'In the exercise, with respect to any buildings or other land in a conservation area, of any powers under any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of conservation preserving or enhancing the character or appearance of that area.'

12.40 Policy DP34 of the MSDP states:

'Listed Buildings

Development will be required to protect listed buildings and their settings. This will be achieved by ensuring that:

- A thorough understanding of the significance of the listed building and its setting has been demonstrated. This will be proportionate to the importance of the building and potential impact of the proposal;*
- Alterations or extensions to a listed building respect its historic form, scale, setting, significance and fabric. Proposals for the conversion or change of use of a listed building retain its significance and character whilst ensuring that the building remains in a viable use;*
- Traditional building materials and construction techniques are normally used. The installation of uPVC windows and doors will not be acceptable;*
- Satellite antennae, solar panels or other renewable energy installations are not sited in a prominent location, and where possible within the curtilage rather than on the building itself;*
- Special regard is given to protecting the setting of a listed building;*
- Where the historic fabric of a building may be affected by alterations or other proposals, the applicant is expected to fund the recording or exploratory opening up of historic fabric.*

Other Heritage Assets

Development that retains buildings which are not listed but are of architectural or historic merit, or which make a significant and positive contribution to the street scene will be permitted in preference to their demolition and redevelopment.

The Council will seek to conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the character and

quality of life of the District. Significance can be defined as the special interest of a heritage asset, which may be archaeological, architectural, artistic or historic.

Proposals affecting such heritage assets will be considered in accordance with the policies in the National Planning Policy Framework (NPPF) and current Government guidance.'

12.41 Policy DP35 of the MSDP states in part:

'Development will also protect the setting of the conservation area and in particular views into and out of the area.'

12.42 Paragraphs 212 to 215 of the NPPF are also relevant and state:

'212. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

213. Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Substantial harm to or loss of:

a) grade II listed buildings, or grade II registered parks or gardens, should be exceptional;

b) assets of the highest significance, notably scheduled monuments, protected wreck sites, registered battlefields, grade I and II listed buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly exceptional..*

214. Where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:

a) the nature of the heritage asset prevents all reasonable uses of the site; and

b) no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and

c) conservation by grant-funding or some form of not for profit, charitable or public ownership is demonstrably not possible; and

d) the harm or loss is outweighed by the benefit of bringing the site back into use.

215. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.'

- 12.43 As the application affects a listed building, the statutory requirement to have special regard to the desirability of preserving the building, its setting and any features of special interest must be taken into account when making any decision. In addition, in enacting section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, the desirability of preserving the settings of listed buildings should be given 'considerable importance and weight' when the decision taker carries out the balancing exercise, thus properly reflecting the statutory presumption that preservation is desirable.
- 12.44 In respect of the impact on the setting of St Johns Church, the previously approved scheme DM/19/3331 was considered by your Planning Officer to cause less than substantial harm to the setting of this heritage asset. The concern related to the current visual prominence of the Church being diminished by the introduction of a building of greater height in close proximity to it. Given the similarity of the current proposal to the extant scheme, it is considered that the revised scheme would also result in the same impact on the setting of this heritage asset.
- 12.45 It is therefore necessary to consider whether according to Para 215 of the NPPF sufficient public benefits would offset the harm which must be given significant importance and weight in accordance with S66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
- 12.46 In accordance with the legislation identified above and paragraph 212 of the NPPF 'great weight' needs to be given to the less than substantial harm identified. Having regard to paragraph 215 of the NPPF, the development will deliver a comprehensive scheme to revitalise the town centre socially, economically and visually. The proposed commercial uses that form part of his application will provide a significant boost to both the daytime and nighttime economies of the town and the additional provision of 172 residential units will make a significant boost to the district housing supply. As such it is considered that the adverse impacts to the setting of the listed building would not on their own significantly and demonstrably outweigh the benefits of the scheme (even when given considerable importance and weight in accordance with S66(1) of the 1990 Act).
- 12.47 With regards to the impact on the setting of the Conservation Area, the previously approved scheme DM/19/3331 was considered by your Planning Officer to cause less than substantial harm to the setting of this heritage asset. This concern arose, on balance, from the scale of the proposed redevelopment, in particular the tower block, which would be prominent both in the approach to the Conservation Area along Civic Way and in views into and out of this southern part of the Conservation Area. Whilst the scale of the overall development has been reduced, the impact of the proposed tower block remains the same as on the extant scheme. Your Planning Officer considers that on balance, given the scale of the proposed tower, there would still be some harm to the setting of the Conservation Area, which would (given the overall reduction in the scale of the whole development), be at the lower end of less than substantial.
- 12.48 For the same reasons identified in paragraph 12.46 above, it is considered that in the planning balance required under paragraph 215 of the NPPF, the public benefits of the scheme outweigh the less than substantial harm to the setting of the Conservation Area.

12.49 Transport

12.50 The officers report for the previously approved scheme DM/19/3331 identified that there were three main strands that need to be considered as part of this aspect of the scheme, and they could be broadly categorised as follows; access arrangements, impact on surrounding highway network and accessibility. As the principle of the development has been accepted, it is not necessary to reassess all of the transport related matters afresh, however it is useful to use the above headings to assess the proposed changes sought in this application.

12.51 Policy DP21 in the MSDP states:

'Development will be required to support the objectives of the West Sussex Transport Plan 2011-2026, which are:

- A high quality transport network that promotes a competitive and prosperous economy;*
- A resilient transport network that complements the built and natural environment whilst reducing carbon emissions over time;*
- Access to services, employment and housing; and*
- A transport network that feels, and is, safer and healthier to use.*

To meet these objectives, decisions on development proposals will take account of whether:

- The scheme is sustainably located to minimise the need for travel noting there might be circumstances where development needs to be located in the countryside, such as rural economic uses (see policy DP14: Sustainable Rural Development and the Rural Economy);*
- Appropriate opportunities to facilitate and promote the increased use of alternative means of transport to the private car, such as the provision of, and access to, safe and convenient routes for walking, cycling and public transport, including suitable facilities for secure and safe cycle parking, have been fully explored and taken up;*
- The scheme is designed to adoptable standards, or other standards as agreed by the Local Planning Authority, including road widths and size of garages;*
- The scheme provides adequate car parking for the proposed development taking into account the accessibility of the development, the type, mix and use of the development and the availability and opportunities for public transport; and with the relevant Neighbourhood Plan where applicable;*
- Development which generates significant amounts of movement is supported by a Transport Assessment/ Statement and a Travel Plan that is effective and demonstrably deliverable including setting out how schemes will be funded;*

- *The scheme provides appropriate mitigation to support new development on the local and strategic road network, including the transport network outside of the district, secured where necessary through appropriate legal agreements;*
- *The scheme avoids severe additional traffic congestion, individually or cumulatively, taking account of any proposed mitigation;*
- *The scheme protects the safety of road users and pedestrians; and*
- *The scheme does not harm the special qualities of the South Downs National Park or the High Weald Area of Outstanding Natural Beauty through its transport impacts.*

Where practical and viable, developments should be located and designed to incorporate facilities for charging plug-in and other ultra-low emission vehicles.

Neighbourhood Plans can set local standards for car parking provision provided that it is based upon evidence that provides clear and compelling justification for doing so.'

12.52 Access Arrangements

12.53 A summary of the proposed access arrangements is set out below:

- Alterations to the previously approved Waitrose 'left-out' car park egress to provide an all-movements raised table access.
- Retention of the Waitrose ingress from Station Road. This was included in permission DM/19/3331.
- Residential traffic will utilise the improved Civic Way / Martlets MSCP Exit junction which will be an all-movement raised table access junction. This was included in permission DM/19/3331.
- The bus stop on the north side of Civic Way is to be retained as existing, with the bus stop relocated to accommodate the proposed pedestrian paths along the north side of Civic Way. Real time information will be provided at the stop. This was included in permission DM/19/3331.
- A walkway is to be provided near to the relocated bus stop, leading into the centre of the proposed development. This was included in the permission DM/19/3331.
- A 3.5m footway is provided on the east side of Civic Way to tie into the Station Road improvements designed by AECOM.
- Removal of redundant multistorey access junction to the east of Civic Way. This was included in the permission DM/19/3331.
- The addition of a 40m taxi bay on the east side of Civic Way. This was included in the previous permission. This was included in the permission DM/19/3331.
- The addition of a 12m Loading Only lay-by on the east side of Civic Way. This was included in the previous permission but is 2m larger in size.
- New tactile paving and an updated refuse island to south of Civic Way / Lower Church Road roundabout.

12.54 The main change from the extant scheme DM/19/3331 are alterations to the previously approved Waitrose 'left-out' car park egress on Civic Way to provide an all-movements raised table access junction. This access will be used by customer and emergency vehicles only.

12.55 The RSA submitted with the current application has not raised any highway safety issues. The Local Highway Authority (LHA) have not raised an objection to the proposed access arrangements. It is therefore considered that on this matter the application complies with policy DP21 in the MSDP and the guidance in the NPPF.

12.56 Impact on surrounding highway network

12.57 The submitted Transport Assessment (TA) considers the impact of the additional trips generated by the proposals on a number of identified junctions. As set out in the TA, the relevant question relating to the traffic effect is whether the proposal will result in significantly more traffic than the existing uses on the site and the permitted approval granted under DM/19/3331, and if so, whether there would be an unacceptable impact on highway safety or whether the impact on the road network would be severe.

12.58 The proposed development retains the 172 residential apartments, increases the number of hotel bedrooms from 89 to 102, removes the 1,338 sqm of office space, reduces the retail / café / restaurant space by 3,816 sqm and reduces the leisure space by 8,374 sqm when compared to permission DM/19/3331. Therefore, with the exception of the hotel, the previously permitted uses detailed above will decrease in development quantum as part of the proposals.

12.59 The TA submitted with the current application states that *'The traffic generation will be unaltered as the number of dwellings remains the same, whilst the traffic attraction of commercial uses will remain unaltered or more likely reduce when compared to permission DM/19/3331.'*

12.60 The LHA have not raised any concerns regarding the impact of this proposal on the capacity of the highway network. There are no reasons for your Planning Officer to come to a different view on this matter.

12.61 Accessibility

12.62 As the site is located within a town centre location it already benefits from good links to the wider town. The main measures proposed relating to enhancing accessibility are listed below:

- The bus stop on the east side of Civic Way is to be upgraded to include a new shelter with real time passenger information board. The stop will also be moved slightly north to accommodate the proposed footway/cycleway along the north side of Civic Way and internal site walkway. This was included in permission DM/19/3331.
- A walkway is to be provided near to the relocated bus stop, leading into the centre of the proposed development. This was included in the permission DM/19/3331.
- A 3.5m footway / cycleway is proposed on the east side of Civic Way to tie into the Station Road.
- Provision of additional cycle parking is proposed including Sheffield stands and a cycle hub. The hub will be a high-quality structure providing attractive covered cycle

storage, electric bike charging and a cycle repair facility. In excess of 75 cycle spaces are proposed as part of the proposals.

- 172 cycle spaces for the residential element of the scheme

12.63 The off-site accessibility measures outlined above will be secured through the s106 Legal Agreement that was completed for the extant scheme as there is a clause in that legal agreement that secures the same provisions in any subsequent planning permission granted under section 73 of the Town and Country Planning Act 1990.

12.64 On this matter it is considered that the application complies with policy DP21 of the MSDP and policy G6 of the BHNP.

12.65 Parking

12.66 On the previously approved application, an issue that was carefully considered was the level of car parking. The approved development DM/19/3331 will result in the loss of the existing Martlets multi-storey car park, as well as the small private car park to the rear of Martlets Hall and spaces within the both the Church Road and Civic Way service yards. The breakdown of these losses is as follows:

- 165 spaces from The Martlets multi-storey car park
- 27 spaces from the Civic Way service yard
- 14 spaces from the Martlets private car park
- 19 spaces from the Church Road service yard

12.67 The above list comprises 225 parking spaces. (For the purposes of the TA all the above spaces have been considered as 'public' as demand for these spaces is likely to remain post development.)

12.68 As part of the approved scheme, there would be an extension to the existing surface level Waitrose/Market Place car park. The extension of this car park provides for the following:

- 167 spaces extension to the Waitrose/Market Place car park

12.69 Having regard for the above, the total public provision associated with the 'public' element of the scheme was an overall reduction of 58 car parking spaces. In respect of the private provision, the approved scheme DM/19/3331 showed a total of 75 parking spaces at basement/lower ground level accessed off Civic Way via the Church Walk service yard (below proposed block A1). Taking all of this into account, the approved scheme included provision for a total of 242 parking spaces, split between the public and private provision.

12.70 The proposed scheme still provides for 75 spaces for the residential element of the scheme. Due to structural changes, including the provision of columns within the car park, 48 spaces are now proposed within the under-croft car park with 4 ground level spaces to the north of the apartments. Finally, 23 residential parking spaces are proposed within the main town centre / commercial car park accessed off Civic Way.

Therefore, the total number of residential spaces will remain as with the approved scheme DM/19/3331.

- 12.71 The BNHP sets out its own parking standards for new residential developments, which pre-date the WSSC standards. It is worth noting that within Appendix D of the BNHP the following is stated:

'In some areas within Burgess Hill, particularly those in the Town Centre it may be appropriate to constrain levels of parking further, although in these areas it would be realistic to promote lower levels of car ownership and therefore the following must be provided: Travel Plan measures, high level of public transport accessibility and comprehensive parking controls.'

- 12.72 Section 9 of the NPPF promotes sustainable transport and paragraph 110 sets out that *'...Significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes.'* Furthermore, paragraph 113 states:

'Maximum parking standards for residential and non-residential development should only be set where there is a clear and compelling justification that they are necessary for managing the local road network, or for optimising the density of development in city and town centres and other locations that are well served by public transport (in accordance with chapter 11 of this Framework). In town centres, local authorities should seek to improve the quality of parking so that it is convenient, safe and secure, alongside measures to promote accessibility for pedestrians and cyclists.'

- 12.73 Whilst the level of residential car parking would be below the standard in the BNHP, the above references to constraining parking in the town centre remains relevant. As the level of residential car parking remains the same as the previously approved scheme, development plan policy in relation to transport and parking remains the same, the NPPF continues to encourage the efficient use of land within town centres and there is no objection from the LHA, it is considered that the level of residential parking proposed remains acceptable.

- 12.74 In respect of the commercial parking, this revised scheme proposes 169 commercial car parking spaces, two more than previously proposed under DM/19/3331. The TA submitted with this application refers to the TA that was submitted with the previous application DM/19/3331, which noted that there were 1,195 car parking spaces in the six major car parks and smaller car parks within the Martlets and overall, the permitted proposals would change this to 1,137 spaces. The parking assessment concluded that none of the car parks identified exceeded their capacity at any point on the weekday or Saturday during the car park surveys and Burgess Hill Town Centre has significant spare parking capacity. The Waitrose car park is by far the most popular car park.

- 12.75 Given the fact that this current application now proposes a reduction in the floorspace of the development, the level of car parking remains virtually the same as on the consented scheme DM/19/3331 and there is no objection from the LHA, it is not considered that there are any grounds to resist this application in relation to car

parking. Development plan policy and national guidance in the NPPF still encourages LPAs to look at car parking flexibly.

12.76 Transport Conclusion

- 12.77 In conclusion on the above matters the development will provide satisfactory access and the proposed trip generation will not have a severe impact on the local highway network. The proposal contains measures to improve accessibility for both pedestrians and cyclists and no safety or highway capacity concerns have been identified by the LHA. The previously approved application DM/19/3331 was found to be acceptable in relation to transport matters and your Planning Officer considers there are no reasons to come to a different conclusion on this application.
- 12.78 The planning application is supported by a Residential Framework Travel Plan and a Non-Residential Framework Travel Plan. In their comments on this application, the LHA advise that the Travel Plans are accepted and provide visitors and staff workable means to access the site using more sustainable modes. The LHA advise that WSCC apply an auditing fee to all new travel plans and state that the travel plan and associated auditing fee would be secured via a s106 agreement.
- 12.79 The legal agreement attached with the original planning permission has a clause within it confirming that the provisions of the legal agreement will also apply to any subsequent planning permission that is granted under section 73 of the Town and Country Planning Act 1990. However, as WSCC's policy on Travel Plans has evolved since the grant of the original planning permission, there is no requirement in the original s106 legal agreement for a Travel plan auditing fee.
- 12.80 It is your Planning Officers view that the most appropriate way to deal with this matter is to require the applicant to enter into a Unilateral Undertaking with WSCC to secure the required travel plan auditing fee. It is considered that this would accord with the advice in the PPG relating to the use of planning conditions. Paragraph 005 Reference ID: 21a-005-20190723 of the PPG states:
- 'No payment of money or other consideration can be positively required when granting planning permission. However, where the 6 tests will be met, it may be possible use a negatively worded condition to prohibit development authorised by the planning permission until a specified action has been taken (for example, the entering into of a planning obligation requiring the payment of a financial contribution towards the provision of supporting infrastructure).'*
- 12.81 It is considered that a condition requiring the applicant to enter into a unilateral undertaking would accord with the above advice.
- 12.82 Having regard for all of the above it is considered that the application complies with policy DP21 of the MSDP and policy G6 of BHNP.

12.83 **Housing and Affordable Housing**

- 12.84 Policy DP30 of the MSDP deals with housing mix and requires housing developments to provide a mix of dwelling types and sizes that reflects current and future needs. Policy DP31 deals specifically with the provision of affordable housing

and requires developments to provide a minimum of 30% affordable housing on schemes of 11 no. dwellings or more. The policy goes on to state:

'Proposals that do not meet these requirements will be refused unless significant clear evidence demonstrates to the Council's satisfaction that the site cannot support the required affordable housing from a viability and deliverability perspective. Viability should be set out in an independent viability assessment on terms agreed by the relevant parties., including the Council, and funded by the developer. This will involve an open book approach. The Council's approach to financial viability, alongside details on tenure mix and the provision of affordable housing will be set out in a Supplementary Planning Document.'

- 12.85 Policy DP27 requires all development to meet the nationally described space standard and policy DP28 deals with accessibility and requires developments of 5 or more dwellings to make provision for 20% of dwellings to meet Category 2 – accessible and adaptable dwellings under Building Regulations – Approved Document M requirements M4(2), unless proposals meet one of the exceptions listed.
- 12.86 In relation to the housing mix, the approved scheme DM/19/3331 provided 100 one bed and 72 two bed apartments. This revised scheme provides 106 one bed and 66 two bed apartments. It is your Planning Officers view that this is a minor change from the previously approved scheme and the mix of revised for this revised proposal remains acceptable in accordance with policy DP30 in the MSDP. This is a town centre site where smaller apartments are appropriate and make efficient use of the site.
- 12.87 The revised layout fully meets the national space standards in accordance with policy DP27 of the MSDP and meets the target of policy DP28 for 20% of the units to meet Building Regulations M4(2) standards. The requirements of policy DP28 can be secured by a planning condition.
- 12.89 The previously approved application DM/19/3331 was submitted with a viability assessment as the applicants considered that the development could not provide the required amount of affordable housing as set out by policy DP31 (along with other infrastructure contributions). This assessment was independently assessed by suitably qualified consultants instructed by the Council, at the cost of the applicant, and it was agreed that the scheme was not capable of supporting any affordable housing. In line with policy DP31 in the MSDP, a review clause was included in the section 106 legal agreement to re-assess the values of the scheme at an appropriate later date. There is a clause within the legal agreement to ensure that the obligations of the legal agreement will also apply to any subsequent planning permission/s that are granted under section 73 of the Town and Country Planning Act 1990.
- 12.90 The reason for this planning application is to make changes to help the deliverability and viability of the scheme. It was accepted by the LPA in previously approved application that the scheme was not capable of providing any affordable housing contributions. The applicants have stated that the affordable housing considerations

all remain as per the existing permission, and your Planning Officer has no reason to dispute this.

12.91 Infrastructure

- 12.92 Policy DP20 in the MSDP realises infrastructure and states that developers will be expected to provide for or contribute towards the infrastructure and mitigation measures made necessary by their development. While the previously approved development would provide for a total of 172 residential apartments, the applicants outlined that the scheme was not economically viable to provide any affordable housing provision or other Section 106 financial contributions, as detailed within the Council's SDP 'Development Infrastructure and Contributions'. To support their case, the applicants submitted a viability assessment that was reviewed independently by a consultant instructed by the Council but funded by the applicant.
- 12.93 The LPA accepted that the previously approved scheme was not viable to provide either infrastructure contributions or any affordable housing. In accordance with Council policy, there is a review clause within the section 106 legal agreement attached to planning permission DM/19/3331 that will re-assess the viability of the scheme again, at a set point, and should there be additional value in the scheme, then monies may be reclaimed in-line with the terms of the clause. Any monies received this way would be allocated depending on the priority needs at the time.
- 12.94 The current section 73 application has been submitted because the previously approved scheme DM/19/3331 is not economically deliverable. The applicants have stated that the infrastructure and affordable housing considerations all remain as per the existing permission. Your Planning Officer has no reason to dispute this statement. There is a clause in the section 106 legal agreement that means that the obligations in the legal agreement would also apply to any subsequent planning permission granted under 73 of the Town and County Planning Act 1990. Viability is a material planning consideration, and Officers consider that remains an acceptable approach in line with Council policy. It remains the case that flexibility is required in situations like this to ensure that development can be brought forward.

12.95 Residential Amenity

- 12.96 There are two elements to this issue that need to be considered, the first relates to the impact on existing residential amenities and the second in relation to any impact on the residential amenities of future occupiers. In regard to this latter point, it is inherent within good planning that high quality living environments are created by new developments and that potential issues should be planned out at an early stage.
- 12.97 Policy DP26 has been set out in full earlier in this report. In respect of residential amenity, the test within the policy is to demonstrate that development *'does not cause significant harm to the amenities of existing nearby residents and future occupants of new dwellings, including taking account of the impact on privacy, outlook, daylight and sunlight, and noise, air and light pollution.'*
- 12.98 Notwithstanding the requirements of the development plan of the assessment of 'significant harm' in respect of the impact of a development on residential amenity,

paragraph 125 of the NPPF establishes a material planning consideration that affects the test to be applied on developments on brownfield land like this. Criteria c). of paragraph 125 states that decisions should:

‘...give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, proposals for which should be approved unless substantial harm would be caused, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land.’

12.99 Given the fact that the NPPF is a more recent document than the MSDP, it is considered that greater weight should be afforded to paragraph 125 of the NPPF and therefore the test of this application in residential amenity terms is therefore whether or not the proposal causes substantial harm.

12.100 Section 12 of the NPPF is deals design matters and paragraph 135 (f) sets out that decisions should ensure developments *‘create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.’*

12.101 It is also worth paragraph 130 (c) of the NPPF, which relates to achieving appropriate densities, which states:

‘local planning authorities should refuse applications which they consider fail to make efficient use of land, taking into account the policies in this Framework. In this context, when considering applications for housing, authorities should take a flexible approach in applying policies or guidance relating to daylight and sunlight, where they would otherwise inhibit making efficient use of a site (as long as the resulting scheme would provide acceptable living standards).’

12.102 Existing Residential Amenity

12.103 The nearest existing residential properties are located adjacent to north of the application site above the retail units in Church Walk. In addition, there are two units at ground floor level behind 105/107 Church Walk, adjacent to the exit of the existing multi-storey car park.

12.104 The application is supported by a Daylight and Sunlight Report to assess the effect of proposed development on daylight and sunlight to the existing surrounding properties. The methodology and criteria used for these assessments is provided by Building Research Establishment’s (BRE) guidance ‘Site layout planning for daylight and sunlight: A guide to good practice’ (BRE 209 2nd edition, 2022). As the applicants report correctly notes, the BRE guideline are advisory rather than a rigid set of rules and are there to assist the decision maker in assessing the application.

12.105 In respect of the BRE guidance, the applicants report notes that this was updated in 2022. The assessment methodologies and target metrics in respect of the impacts to neighbouring properties remain broadly unchanged from the earlier guidance save for some areas of clarification. The primary change relates to the assessment of internal daylight and sunlight amenity within the proposed habitable accommodation.

The applicants report states it is '*...important to note that the standard set out in BS EN70137 / BRE 209 (2022) are generally harder to achieve than the previous Average Daylight Factor (ADF) assessments adopted under the 2011 version of the guidance. A lower compliance rate with the new targets does is not therefore indicative of a less acceptable scheme as the difference in the assessment metrics should be noted.*'

12.106 It should be noted that on the originally approved application DM/15/3858, the officers report to committee stated:

'It is clear that in respect of the physical massing of the proposed development then there will be an impact on the residential amenities of those existing properties in Church Walk, both in terms of daylight/sunlight and a greater sense of enclosure. In majority of instances it is not considered that such harm could be considered as significant in relation to policy B3 of MSLP however, the impact on the two ground floor units to the rear of 105/107 Church Walk will be much greater and while it is recognised that these units were created in the knowledge of their proximity to the Martlets Shopping Centre, its servicing area and car park, the impact must be taken into account. The proposed development is likely to have a significant impact on the residential amenities of the occupiers of these two units.'

12.107 Therefore, under the first iteration of the scheme to redevelop the centre of Burgess Hill, as part of the assessment and subsequent approval of this application, these impacts were accepted. In the subsequently approved application DM/19/3331, the officers report to committee stated:

'Having regard to the design and form of the proposed scheme in relation to the existing properties, it is understandable that there are reductions in the level of daylight reaching some of the rooms, over and above what was considered in consenting the extant permission. The proposed development is likely to have a significant impact on the residential amenities of existing residents to the north, particularly 105 and 107 Church Walk, by means of loss of light and enclosure, and this will need to be considered in the overall planning balance. This view is consistent with those expressed by officers in relation to the extant permission.

In addition to the physical impact of the proposal, consideration needs to be given to any potential impacts resulting from the servicing of the proposed development, both in respect of deliveries and extraction/mechanical plant. It is appreciated that the residential units as they currently exist bound onto the existing service yard and as such experience a certain degree of noise and disturbance from such activities, however, the proposed development would intensify this.

It is considered appropriate that conditions are placed upon the development to restrict the timings of deliveries to ensure that residential amenities are protected as much as possible, while it is accepted that a balance needs to be struck to ensure that timings are not so restrictive as to affect the operation of the new commercial units. The suggested condition mirrors that which is attached to the extant permission.'

12.108 The conclusion to the applicants Daylight and Sunlight Report for the current application states:

'Our assessments have been undertaken using the Vertical Sky Component (VSC), No-Skyline (NSL) (daylight) and Annual Probable Sunlight Hours (APSH) (sunlight) tests set out within the BRE guidance. The majority of surrounding windows and rooms are in accordance with the recommendations in the BRE Guidelines for daylight & sunlight. Where there are transgressions from the BRE Guidelines' recommendations, when the impact of the current proposal is compared to the previously consented daylight & sunlight position, all windows in the surrounding properties; either experience an increase in VSC (daylight) with the current proposal in place compared to the consented position; or experience a reduction of less than 10% of their consented level of daylight; in our opinion, these are small reductions and are likely to result in a similar daylight and sunlight position experienced by the residents. There are a small number of rooms which experience larger reductions in daylight distribution but the majority of these rooms are considered to be either not sensitive or less sensitive to daylight. Moreover, as per the BRE Guidance, daylight distribution results shouldn't be relied upon where room layouts are not known.'

12.109 It is considered that in respect of the impact of the proposal on the amenities of existing residents to the north in respect of light, very similar conclusions to those which were drawn for the DM/19/3331 application can be drawn for this current proposal. The proposed development is likely to have a significant impact on the residential amenities of existing residents to the north, particularly 105 and 107 Church Walk, by means of loss of light and enclosure, and this will need to be considered in the overall planning balance.

12.110 Future Residential Amenity

12.111 In addition to the physical impact of the proposal, consideration needs to be given to any potential impacts resulting from the servicing of the proposed development, both in respect of deliveries and extraction/mechanical plant. It is appreciated that the residential units as they currently exist bound onto the existing service yard and as such experience a certain degree of noise and disturbance from such activities, however, the proposed development would intensify this.

12.112 On the previously approved application DM/19/3331 it was considered appropriate that conditions were placed upon the development to restrict the timings of deliveries to ensure that residential amenities are protected as much as possible, whilst accepting that a balance needed to be struck to ensure that timings were not so restrictive as to affect the operation of the new commercial units. As such, it is considered that with the same conditions regarding deliveries, future amenities in respect of this issue would be protected as much as possible and the impact on the amenities of existing occupiers from the use of the service yard and access would not justify a refusal of this planning application.

12.113 With regards to the impact on the amenities of future occupiers of the proposed development in respect of daylight/sunlight, because the proposed residential element remains very similar to the previously approved scheme DM/19/3331, it is

considered that the assessment contained within the previous officer's report remains relevant to the determination of this application. The previous report to committee on 3rd September 2020 stated:

'The main concern about future residential amenity is the quality of the environment created by the development, particularly given the height and depth of the proposed residential elements and the relationship with the courtyard. The proposal has a number of units that are only served by north facing windows.'

The applicants' 'Daylight and Sunlight' report also seeks to address the issues relating to the proposed residential units. It concludes that in terms of daylight, 416 rooms within the development have been analysed and 97% of them meet the target values of their room in terms of ADF (Average Daylight Factor). In respect of sunlight, the report has analysed 102 living areas (i.e. living/kitchen/dining) and where a south facing window is present (53 rooms), 37 (70%) of them meet the target values for both annual and winter APSH (Annual Probable Sunlight Hours). The submitted report considers this reasonable and makes the further point that all units will have access to an alternative source of sunlight amenity (i.e. balcony).

There is no evidence in front of officers to challenge the above conclusions. It is a fact that given the nature of the development there are only a limited number of potential south facing windows and while nearly all the rooms will achieve acceptable levels of daylight, significant number of the main habitable rooms will not achieve desirable levels of sunlight and it should be recognised that the amenity levels for those future occupiers would not comply with current development plan policy. The NPPF does make it clear however, that in 'considering applications for housing, authorities should take a flexible approach in applying policies or guidance relating to daylight and sunlight, where they would otherwise inhibit making efficient use of a site.'

The issues raised will need to be considered as part of the overall planning balance, but regard should be given to the fact that this is a town centre location where compromises to the overall living environment are often needed and it is for the decision maker to place appropriate weight to this issue in overall planning balancing exercise that is required.'

12.114 On the previous application, it was considered that given the nature of the proposed development there are only a limited number of potential south facing windows and while nearly all the rooms will achieve acceptable levels of daylight, a significant number of the main habitable rooms will not achieve desirable levels of sunlight, to the detriment of future residential amenities. However, in the overall planning balance, notwithstanding the above point, the proposed development was found to be acceptable and was approved. Given the fact that the policies in the MSDP relating to this issue remain the same as when application DM/19/3331 was approved and the similarity of the proposed residential element of the scheme to the previously approved scheme, it is not considered that there are any grounds to come to a different conclusion on this matter now to that which was reached on the consented scheme DM/19/3331.

12.115 Ecology

12.116 Policy DP38 in the MSDP states:

'Biodiversity will be protected and enhanced by ensuring development:

- Contributes and takes opportunities to improve, enhance, manage and restore biodiversity and green infrastructure, so that there is a net gain in biodiversity, including through creating new designated sites and locally relevant habitats, and incorporating biodiversity features within developments; and*
- Protects existing biodiversity, so that there is no net loss of biodiversity. Appropriate measures should be taken to avoid and reduce disturbance to sensitive habitats and species. Unavoidable damage to biodiversity must be offset through ecological enhancements and mitigation measures (or compensation measures in exceptional circumstances); and*
- Minimises habitat and species fragmentation and maximises opportunities to enhance and restore ecological corridors to connect natural habitats and increase coherence and resilience; and*
- Promotes the restoration, management and expansion of priority habitats in the District; and*
- Avoids damage to, protects and enhances the special characteristics of internationally designated Special Protection Areas, Special Areas of Conservation; nationally designated Sites of Special Scientific Interest, Areas of Outstanding Natural Beauty; and locally designated Sites of Nature Conservation Importance, Local Nature Reserves and Ancient Woodland or to other areas identified as being of nature conservation or geological interest, including wildlife corridors, aged or veteran trees, Biodiversity Opportunity Areas, and Nature Improvement Areas.*

Designated sites will be given protection and appropriate weight according to their importance and the contribution they make to wider ecological networks.

Valued soils will be protected and enhanced, including the best and most versatile agricultural land, and development should not contribute to unacceptable levels of soil pollution.

Geodiversity will be protected by ensuring development prevents harm to geological conservation interests, and where possible, enhances such interests. Geological conservation interests include Regionally Important Geological and Geomorphological Sites.'

12.117 Paragraph 187 of the NPPF sets out that planning policies and decisions should contribute to and enhance the natural and local environment and lists a series of ways that this should be done. Paragraph 193 relates specifically to the determination of planning applications and states, amongst other things, *'development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists;'*

12.117 The report submitted with the previous application DM/19/3331 did not identify any species or habitats of particular significance. The current application is supported by an Ecology Briefing Note, which summarises the findings of the Ecological Impact

Assessment that was submitted with the previous application DM/19/3331 and the updating survey in 2025.

12.118 Buildings 1, 2, 4, 5, 8, 9 and 10 were previously assessed as having low suitability for roosting bats due to the presence of gaps in soffits and bargeboards and gaps under hanging tiles and lead flashing. Emergence surveys of buildings 1, 2, 4, 5, 8, 9 and 10 were undertaken in 2019. No bats were recorded roosting in any of the buildings and there was very low bat activity across the site, with only two registrations of a single common pipistrelle *Pipistellus pipistrellus* bat recorded.

12.119 The Briefing Note with the current application advises that during the 2025 survey, the buildings were found to be in similar condition, with some further signs of deterioration having taken place, reducing suitability for roosting bats. The library building and Martlets Hall (Building 9) have since been demolished. There has been no change in the suitability of the site to support roosting bats, and the remaining six buildings are still assessed as having low suitability to support roosting bats. The Briefing Note states:

'As the previous surveys were carried out over five years ago, updating bat surveys of the buildings would usually be recommended. However, the results of the previous surveys returned very little bat activity across the site (two registrations) and no emergences/re-entries. Furthermore, the site is very well lit with light spill on the areas of vegetation and buildings, which further reduces the suitability for foraging/commuting bats. The site is also set within an urban landscape which lacks a good network of foraging/commuting corridors, further reducing the likelihood of a key foraging/commuting route for bats. Several of the features are also quite exposed and unlikely to be a suitable roosting site for bats due to fluctuations in thermal conditions. Overall, it would not be considered proportionate to update the bat activity surveys. Instead, suitable features (raised leading flashing, gaps within soffits and bargeboards etc.) should be removed by soft demolition by hand. If a bat is found, all works must stop, advise from an ecologist sought and a licence would need to be obtained from Natural England before works can start again. After soft demolition, the remainder of the site can be demolished using other methods.'

12.120 The Council's Ecological Consultant accepts the above position and raises no objection to this application, subject to conditions. Your Planning Officer has no reason to disagree with the Council's Ecological Consultant on this matter.

12.121 The Briefing Note also explains that in order to provide an enhancement for breeding birds ten new integral bird nest units, such as Schwegler Brick Nest Boxes (or similar) will be incorporated into the walls of new buildings.

12.122 Having regard to the above, it is considered that the proposals comply with policy DP38 of the MSDP and the principles contained within the NPPF.

12.123 Trees and Landscaping

12.124 Policy DP37 of the MSDP states that development that will damage or lead to the loss of trees, woodland or hedgerows that contribute, either individually or as part of a group, to the visual amenity value or character of an area, and/ or that have

landscape, historic or wildlife importance will not normally be permitted. Proposals for new trees/planting should be of suitable species (usually native). Policy DP26 refers to high quality design and layout that includes appropriate landscaping.

12.125 In order to facilitate the development a total of 14 trees will need to be removed and the submission supporting the extant permission identified that four of these trees were categorised 'A' grade trees, these include T56 (Red Oak) and T60 (London Plane) which are both located adjacent to Civic Way. The extant permission allowed for their removal and that still remains the case with the current scheme.

12.126 The scheme is supported by a landscape masterplan that shows significant new planting along Civic Way for the length of the application boundary, in addition to new tree planting within the expended surface car park and public realm between proposed blocks A and B. It should also be noted that the revised landscaping strategy submitted within this section 73 application proposes a significant increase in proposed tree planting as a result of the increased common public space between blocks A2 and B. Accordingly, the revised proposals represent betterment over the existing permission in regard to tree-loss and compensation.

12.127 While the loss of any tree to facilitate development is regrettable, the proposals do provide the opportunity to secure a replanting scheme that will, in the long term, represent a better landscaped environment for this part of the town. The final details of the planting scheme will be secured via a condition. It is considered that the application complies with policies DP26 and DP37 of the MSDP in regard to these matters.

12.128 Ashdown Forest

12.129 Under the Conservation of Habitats and Species Regulations 2017 (as amended) (the 'Habitats Regulations'), the competent authority – in this case, Mid Sussex District Council – has a duty to ensure that any plans or projects that they regulate (including plan making and determining planning applications) will have no adverse effect on the integrity of a European site of nature conservation importance. The European site of focus is the Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation (SAC).

12.130 The potential effects of development on Ashdown Forest were assessed during the Habitats Regulations Assessment process for the Mid Sussex District Plan. This process identified likely significant effects on the Ashdown Forest SPA from recreational disturbance and on the Ashdown Forest SAC from atmospheric pollution.

12.131 A Habitats Regulations Assessment screening report has been undertaken for the proposed development.

12.132 Recreational disturbance

12.133 Increased recreational activity arising from new residential development and related population growth is likely to disturb the protected near-ground and ground nesting birds on Ashdown Forest.

12.134 In accordance with advice from Natural England, the HRA for the Mid Sussex District Plan, and as detailed in the District Plan Policy DP17, mitigation measures are necessary to counteract the effects of a potential increase in recreational pressure and are required for developments resulting in a net increase in dwellings within a 7km zone of influence around the Ashdown Forest SPA. A Suitable Alternative Natural Greenspace (SANG) and Strategic Access Management and Monitoring (SAMM) mitigation approach has been developed. This mitigation approach has been agreed with Natural England.

12.135 The proposed development is outside the 7km zone of influence and as such, mitigation is not required.

12.136 Atmospheric pollution

12.137 Increased traffic emissions as a consequence of new development may result in atmospheric pollution on Ashdown Forest. The main pollutant effects of interest are acid deposition and eutrophication by nitrogen deposition. High levels of nitrogen may detrimentally affect the composition of an ecosystem and lead to loss of species.

12.138 The proposed development has been assessed through the Mid Sussex Transport Study (Updated Transport Analysis) as windfall development, such that its potential effects are incorporated into the overall results of the transport model which indicates there would not be an overall impact on Ashdown Forest. Sufficient windfall capacity exists within the development area. This means that there is not considered to be a significant in combination effect on the Ashdown Forest SAC by this development proposal.

12.139 The screening assessment concludes that there would be no likely significant effects, alone or in combination, on the Ashdown Forest SPA and SAC from the proposed development.

12.140 No mitigation is required in relation to the Ashdown Forest SPA or SAC.

12.141 A full HRA (that is, the appropriate assessment stage that ascertains the effect on integrity of the European site) of the proposed development is not required. The application complies with policy DP17 of the District Plan.

12.142 Air Quality and Noise

12.143 In relation to noise and air pollution policy DP29 in the MSDP states:

'The environment, including nationally designated environmental sites, nationally protected landscapes, areas of nature conservation or geological interest, wildlife habitats, and the quality of people's life will be protected from unacceptable levels of noise, light and air pollution by only permitting development where:

Air Pollution;

- *It does not cause unacceptable levels of air pollution;*
- *Development on land adjacent to an existing use which generates air pollution or odour would not cause any adverse effects on the proposed development or can be mitigated to reduce exposure to poor air quality to recognised and acceptable levels;*

- *Development proposals (where appropriate) are consistent with Air Quality Management Plans.'*

12.144 The current proposal does not result in material changes in respect of this issue and there are no objections to the revised proposal from the Environmental Protection Officer. Therefore, as with the previously approved scheme DM/19/3331 it remains appropriate to address this issue by way of a planning condition.

12.145 Contaminated Land

12.146 Paragraph 196 of the NPPF states that:

'Planning policies and decisions should ensure that:

a) a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination. This includes risks arising from natural hazards or former activities such as mining, and any proposals for mitigation including land remediation (as well as potential impacts on the natural environment arising from that remediation);

b) after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990;

and

c) adequate site investigation information, prepared by a competent person, is available to inform these assessments.'

12.147 The previous planning permission imposed a condition regarding contamination, which was subsequently amended by the non-material amendment application, reference DM/24/1064.

12.148 The current proposal does not result in material changes in respect of this issue and therefore it remains appropriate to address this issue by way of a planning condition.

12.149 Sustainability

12.150 Policy DP39 of the District Plan states:

'All development proposals must seek to improve the sustainability of development and should where appropriate and feasible according to the type and size of development and location, incorporate the following measures:

- *Minimise energy use through the design and layout of the scheme including through the use of natural lighting and ventilation;*
- *Explore opportunities for efficient energy supply through the use of communal heating networks where viable and feasible;*
- *Use renewable sources of energy;*
- *Maximise efficient use of resources, including minimising waste and maximising recycling/ re-use of materials through both construction and occupation;*

- *Limit water use to 110 litres/person/day in accordance with Policy DP42: Water Infrastructure and the Water Environment;*

Demonstrate how the risks associated with future climate change have been planned for as part of the layout of the scheme and design of its buildings to ensure its longer term resilience.'

12.151 It is important to recognise that in respect of policy DP39, whilst the wording of the policy is supportive of improving the sustainability of developments, there are no prescriptive standards for developments to achieve in respect of carbon emission reductions. Similarly, the wording of principle DG37 of the Council's Design Guide seeks applicants to demonstrate and consider sustainable matters as part of their design approach, including the use of renewable technologies, but it does not require their use. Paragraph 164 of the NPPF seeks to ensure new development helps '*...to reduce greenhouse gas emissions, such as through its location, orientation and design.*'

12.152 The application is supported by an Energy Statement that considers an energy strategy for the development. It sets out the following:

- Fabric first approach in accordance with Building Regulations
- Provision of energy efficient lighting
- Provision of time and temperature zone controls
- Air Source Heat Pumps to commercial and residential elements
- Water efficient components within sanitary areas and the specification of low flow taps as well as dual flush toilets with reduced flush volumes

12.153 The applicants Energy Statement advises that Photovoltaic panels are not proposed for the development as the required carbon targets have been achieved using heat pumps.

12.154 Having regard to the above, officers are satisfied that as was the case for the approved scheme DM/19/3331, the current proposal has sought to improve the sustainability of the development, and the application is therefore in accordance with Policies DP39 and DP42 of the MSDP and the guidance in the NPPF.

12.155 Drainage

12.156 Policy DP41 of the MSDP seeks to ensure that development can be satisfactorily drained, does not increase flooding elsewhere and Sustainable Drainage Systems (SuDS) are implemented, unless it is demonstrated to be inappropriate. The previously approved scheme DM/19/3331 indicated that that surface water will be discharged into an existing surface water sewer. The current application does not show any change from this previously approved arrangement. The previously approved scheme was found to be acceptable in relation to drainage and there are no grounds to come to a different conclusion on this matter now.

12.157 Foul water would be discharged to the existing public sewer system. This was found to be acceptable in relation to drainage and there are no grounds to come to a different conclusion on this matter now. The final detailed design can be controlled by condition and with this in place, the proposal complies with policy DP41 in the MSDP.

12.158 Use of Section 73 of the Town and Country Planning Act 1990

12.159 A concern has been raised about the appropriateness of using section 73 of the TCPA 1990 to make these changes. The person raising the concern is of the view that a new full planning application should be made for the changes that are sought in this application.

12.160 The PPG provides guidance on how planning permissions may be amended. The guidance in the PPG follows case law which has established the legal principles in the use of section 73 of the TCPA. The PPG explains that *'an application made under section 73 of the Town and Country Planning Act 1990 can be used to make a material amendment by varying or removing conditions associated with a planning permission. There is no statutory limit on the degree of change permissible to conditions under s73, but the change must only relate to conditions and not to the operative part of the permission.'*

12.161 Section 73 cannot be used to change the description of an application. In this case the description of the proposed development would not change and the 'operative part' of the application (i.e. the grant of permission for a redevelopment and regeneration of the centre of Burgess Hill) remains the same. The legal effect of a planning permission granted under section 73 is the creation of a new standalone planning permission that sits alongside the original planning permission, and it is then open to the applicant which of the two planning permissions they chose to implement.

12.162 In this case the operative part of the permission is not being changed. Your Planning Officer is therefore satisfied that it is appropriate for material amendments to the planning permission granted under reference DM/19/3331 to be made by way of this section 73 application.

12.163 Biodiversity Net Gain

12.164 Biodiversity net gain is required under a statutory framework introduced by Schedule 7A of the Town and Country Planning Act 1990. This planning permission is being granted on an application made under Section 73 of the Town and Country Planning Act 1990 and the original planning permission to which the Section 73 planning permission relates was granted before 12th February 2024. This application is therefore exempt from the requirement to provide biodiversity net gain.

13.0 Planning Balance and Conclusion

13.1 Planning legislation requires the application to be determined in accordance with the development plan unless material considerations indicate otherwise. It is therefore necessary for the planning application to be assessed against the policies in the

Development Plan and then to take account of other material planning considerations including the NPPF.

- 13.2 The Development Plan in this instance consists of the MSDP, the SADPD and the BHNP. Courts have confirmed that the Development Plan must be considered as a whole, not simply in relation to any one individual policy. It is therefore not the case that a proposal must accord with each and every policy within the Development Plan in order to comply with the Development Plan.
- 13.3 The policies contained within the NPPF are material considerations which should be taken into account in the determination of this application. This is confirmed within paragraph 231 of the NPPF. At the present time, the Council is unable to demonstrate a five-year supply of deliverable housing sites as per the requirements of paragraph 78 of the NPPF. In light of the above, this development needs to be considered in the context of the presumption in favour of sustainable development, having particular regard for the key policies indicated in paragraph 11(d)(ii) of the NPPF. As part of this process, the weight to be given to development plan policies will need to be assessed against the degree of conformity with the NPPF.
- 13.4 This application seeks to amend three conditions attached to a previously approved extant planning permission for the redevelopment of the Martlets Shopping Centre in the centre of Burgess Hill to provide additional retail floorspace, a cinema, a bowling alley, a gymnasium, a hotel and 172 residential units, along with the reconfiguration of a public carpark and public realm improvements. The purpose of the application is to amend the previously approved scheme to obtain planning permission for a revised scheme that is economically viable and can be delivered.
- 13.5 As this application is submitted under section 73 of the TCPA 1990 and seeks to amend conditions attached to a previous planning permission, it is not necessary to reassess all the issues associated with the planning application afresh. The assessment of this application should focus on the conditions that are proposed to be changed and the issues that arise from the changes that this would make to the previously approved scheme. The legal effect of approving this application would be a new standalone planning permission that sits alongside the previously approved scheme DM/19/3331. It would then be open to the applicant to decide which of the two planning permissions they choose to implement.
- 13.6 The principle of development has been established by virtue of the planning permission that has been granted for a similar type of development under DM/19/3331, which has commenced implementation and is extant. The redevelopment of the town centre is supported by policy DP2 of the MSDP and policies TC2, TC3 and TC4 of the BHNP. The amended scheme would represent a significant investment in the town centre of Burgess Hill and would provide significant economic benefits both during the construction phase and the subsequent operational phase of the development.
- 13.7 The proposal would result in the delivery of 172 residential units within a highly accessible and sustainable location, which would boost the Council's housing supply. This should be given substantial positive weight in the planning balance, particularly

as the Council cannot currently demonstrate a 5-year housing land supply as required by the NPPF.

- 13.8 It is considered that the scheme remains of a scale and form that is appropriate to its town centre location. The principle of a significant redevelopment, including the 11-storey residential element, has been accepted in the previously approved scheme and there are no reasons to come to a different conclusion on this matter now. It is your Planning Officers view that the revised scheme, with its reduction in overall building floorspace, has resulted in a scheme with a larger area of public open space in the centre of the town, which is acceptable in terms of its urban design.
- 13.9 Paragraph 125 of the NPPF states in part (at criteria c) that planning decisions should give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, proposals for which should be approved unless substantial harm would be caused. In this case substantial harm has not been demonstrated and as such substantial weight needs to be given in the planning balance to the value of developing this brownfield site.
- 13.10 As the application affects a listed building, the statutory requirement to have special regard to the desirability of preserving the building, its setting and any features of special interest must be taken into account when making any decision. In addition, in enacting section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, the desirability of preserving the settings of listed buildings should be given 'considerable importance and weight' when the decision taker carries out the balancing exercise, thus properly reflecting the statutory presumption that preservation is desirable.
- 13.11 It is your Planning Officers view that there would be some harm to the setting of the Grade 2 listed St John's Church, and this would be at the 'less than substantial' level as defined in the NPPF. It is therefore necessary to consider whether according to Para 215 of the NPPF sufficient public benefits would offset the harm which must be given significant importance and weight in accordance with S66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
- 13.12 Having regard to paragraph 215 of the NPPF, the development will deliver a comprehensive scheme to revitalise the town centre socially, economically and visually. The proposed commercial uses that form part of his application will provide a significant boost to both the daytime and nighttime economies of the town and the additional provision of 172 residential units will make a significant boost to the district housing supply. As such it is considered that the adverse impacts to the setting of the listed building would not on their own significantly and demonstrably outweigh the benefits of the scheme (even when given considerable importance and weight in accordance with S66(1) of the 1990 Act). Your Planning Officer considers that the same conclusion is reached in relation to the impact of the development on the setting of the St Johns Conservation Area.
- 13.13 With regards to transport, the access arrangements are similar to those previously approved, and the LHA are satisfied that the development will provide satisfactory access, and the proposed trip generation will not have a severe impact on the local

highway network. The proposal contains measures to improve accessibility for both pedestrians and cyclists and no safety concerns have been identified by the LHA.

- 13.14 The previously approved scheme DM/19/3331 was found not to be viable to provide any affordable housing or infrastructure contributions and remain deliverable. This current application has been made to revise the approved scheme DM/19/3331 because that is no longer viable and cannot be delivered in its consented form. It therefore remains the case that this revised scheme is not viable to provide any affordable housing or infrastructure contributions and remain deliverable. There is a review clause in the legal agreement for application DM/19/3331 that would enable a review of the schemes value at a specific point to ascertain if the scheme had generated sufficient funds to go towards affordable housing and infrastructure provision. There is a clause in this legal agreement that ensures that the same provisions would also apply to any subsequent planning permission (such as this) that is granted under section 73 of the TCPA 1990.
- 13.15 While as with the approved scheme DM/19/3331, the proposals would result in the loss of some existing trees on the site, the supporting landscape masterplan shows significant new planting along Civic Way for the length of the application boundary, in addition to new tree planting within the extended surface car park and public realm. The final details of the planting scheme will be secured via a condition, and such planting would be a positive addition to the town centre.
- 13.16 As with the approved scheme, it considered that through the use of conditions, matters associated with ecology, drainage, accessibility, air quality and noise mitigation can be appropriately controlled and there would be no adverse impacts with respect to these matters.
- 13.17 The Habitats Regulations Assessment for this application concludes that the proposed development would not have an adverse effect on the integrity of the Ashdown Forest SPA and would not have a likely significant effect, alone or in combination, on the Ashdown Forest SAC.
- 13.18 Weighing against the proposal, as with the approved scheme, is that while it has been demonstrated that there is sufficient spare capacity within the town centre car parks and on surrounding streets, the proposed level of parking associated with the residential element of the scheme does not comply with the standards set out in the BHNP.
- 13.19 Given the nature of the proposed development, there are only a limited number of potential south facing windows and while nearly all the rooms will achieve acceptable levels of daylight, a significant number of the main habitable rooms will not achieve desirable levels of sunlight, to the detriment of future residential amenities. Furthermore, the proposed development is likely to have a significant impact on the residential amenities of existing residents to the north, particularly 105 and 107 Church Walk, by means of loss of light and enclosure. This view is consistent with those expressed by officers in relation to the extant scheme DM/19/3331.
- 13.20 The less than substantial harm to the setting of the heritage assets identified above also weighs against the proposal, although for the reasons set out earlier in this

report, the public benefits of the scheme are considered to outweigh this less than substantial harm.

- 13.21 It is for the decision maker to consider the weight that should be attached to these issues, individually and collectively.
- 13.22 In light of all the above it is considered that the proposal complies with policies DP1, DP2, DP4, DP6, DP17, DP20, DP21, DP28, DP29, DP30, DP31, DP37, DP38, DP39, DP41 and DP42 in the MSDP and policy DP26 in relation to the overall design of the scheme and its impact on the character of the area. However, there is a conflict with policy DP26 (in relation to the impact on the residential amenities of existing residents to the north, particularly 105 and 107 Church Walk and future residents of the development in respect of achieving desirable levels of sunlight) and policy DP34.
- 13.23 In relation to the BHNP it is considered the application complies with policies TC2, TC3, TC4, TC6 and G6. The application conflicts with policy S4 in respect of the level of car parking provision.
- 13.24 Having regard to all the identified issues, it is considered that the proposal complies with the development plan when read as whole, which is the proper basis for decision making.
- 13.25 As the Council is currently unable to demonstrate a five-year supply of deliverable housing sites, it follows that the relevant policies for the supply of housing from the Development Plan are out-of-date (footnote 8 of paragraph 11 NPPF). As such, reduced weight should be given to these policies.
- 13.26 In these circumstances paragraph 11d of the NPPF provides for a presumption in favour of sustainable development which means that planning permission should be granted unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole (having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination), or specific policies in the NPPF that protect areas or assets of particular importance provide a strong reason for refusing the development.
- 13.27 The proposal would deliver 172 residential units within a highly accessible and sustainable location, which would boost the Council's housing supply. There would be a considerable improvement to the public realm from the development and significant economic benefits from the redevelopment of the town centre. These benefits would accord with the economic, social and environmental objectives as set out in paragraph 8 of the NPPF.
- 13.28 It is your Planning Officer's view that having regard to paragraph 11d of the NPPF, the adverse impacts of granting consent would not significantly and demonstrably outweigh the benefits of this development, as highlighted within this report, many of which will in any event be mitigated for as far as is possible. It is therefore

recommended that planning permission be granted for this development subject to the conditions set out in appendix A.

APPENDIX A – RECOMMENDED CONDITIONS

Conditions

1. The obligations under the planning obligation by way of Agreement dated 2nd July 2021 pursuant to the previous application DM/19/3331 will be equally applied to and satisfy the requirements necessitated under this application DM/25/1327.

Reason: To ensure the provision of transport and other infrastructure and to comply with policies DP20 and DP21 of the Mid Sussex District Plan 2014-2031.
2. The development shall take place in accordance with the Construction Management Plan by Construction Safety Solutions received on the 7th March 2024 and the phase 1 CMP plan drawing no. 21366-0341 rev P-01 in respect of phase 1 only as set out in conditions discharge application reference DM/24/0608, unless otherwise agreed in writing by the Local Planning Authority.
Please note that further information is required to be submitted and approved prior to the commencement of development of phases 2 and 3.
Reason: To ensure safe and neighbourly construction in the interests of amenity and road safety and to accord with Policies DP21, DP26 and DP29 of the Mid Sussex District Plan 2014-2031.
3. The development shall take place in accordance with the programme for phasing of the development as set out in conditions discharge application reference DM/24/0608, unless otherwise agreed in writing by the Local Planning Authority.
Reason: To ensure that the development is delivered in cohesive manner to accord with policies DP2, DP26 and DP31 of the Mid Sussex District Plan 2014-2031.
4. No development (excluding demolition), in each respective phase of the agreed programme, shall be carried out unless and until samples of materials and finishes to be used for external walls and roofs of the proposed buildings have been submitted to and approved by the Local Planning Authority.
Reason: To enable the Local Planning Authority to control the development in detail in the interests of amenity by endeavouring to achieve a building of visual quality and to accord with Policy DP26 of the Mid Sussex District Plan 2014-2031.
5. The development hereby permitted shall not commence (excluding demolition) unless and until details of the proposed foul and surface water drainage and means of disposal have been submitted to and approved in writing by the local planning authority. No building shall be occupied until all the approved drainage works have been carried out in accordance with the approved details. The details shall include a timetable for its implementation and a management and maintenance plan for the lifetime of the development which shall include arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime. Maintenance and management

during the lifetime of the development should be in accordance with the approved details.

Reason: To ensure that the proposal is satisfactorily drained and to accord with the NPPF requirements, Policy DP41 of the Mid Sussex District Plan.

6. No development (excluding demolition), in each respective phase of the agreed programme, shall commence unless and until the following details have been submitted to and approved in writing by the Local Planning Authority:
- a) 1:50 scale plans, elevation, and sections of entrance zones to the buildings
 - b) 1:20 drawing vignettes of the full height elevations and sections relating to each respective phase of development.
 - c) Details of the proposed renovations/changes to all existing front elevations must be provided. These should clearly illustrate and describe the full scope of works, specifying the materials to be used and RAL colour references for all elements of the front façades. The submission should address:
 - o Enhancements to signage design
 - o Specification of framing materials
 - o Colour selection and coordination.
 - o Brick restoration techniques
 - o Use of contrasting mortar colours for repointing to update the look and reduce the visual monotony of the existing long façades.
 - d) Drawings that show how the rainwater discharge arrangements will be provided and accommodated on the buildings.
 - e) Drawings showing all sustainability measures and their locations: solar panels, heath pumps etc.
 - f) Close up drawings (1/50 and 1/20 plans and elevations) of all important elements of the landscape, such as design of the main square, design of all ramps, steps, crossings, resting spaces, gathering spaces, frontage solutions to verge along Block A1, all works outside the red line boundary to tie into exiting public realm and works along all existing buildings and their thresholds, passage from the exiting public to a new square, path linking the square to a bus stop and the terraced zone.
 - g) Separate landscape drawing for street furniture, with schedule and details of all benches, resting spaces, bins etc.
 - h) Details and location diagram of any external railing with RAL colours provided
 - i) Details of all louvers
 - j) Details of the railing to the balconies
 - k) Details of all the external railings used for landscape design with RAL colours
 - l) Details of a gate between the two buildings that will have controlled access for residents (linked buildings)

Reason: To enable the Local Planning Authority to control the development in detail in the interests of amenity by endeavouring to achieve a development and buildings of visual quality and to accord with Policy DP26 of the Mid Sussex District Plan.

7. Prior to the commencement of development (excluding demolition), details of the mitigation measures to address the issues raised within the Wind Microclimate Desktop Study by BMT dated 16th August 2019 submitted with application DM/19/3331, shall be submitted to and approved in writing with the Local Planning Authority. The submission will be supported by a timetable for implementation and the scheme shall only be implemented in accordance with the approved details.

Reason: To ensure that an acceptable public environment is created and to accord with Policy DP26 of Mid Sussex District Plan 2014 - 2031.

8. Prior to the commencement of development (excluding demolition) approved by this planning permission (or such other date or stage in development as may be agreed in writing with the Local Planning Authority), the following components of a scheme to

deal with the risks associated with contamination of the site, including the identification and removal of asbestos containing materials, shall each be submitted to and approved, in writing, by the local planning authority:

- a) A site investigation scheme, based on the BJB Consulting Phase 1 Desk Top Study, to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
- b) Based on the site investigation results and the detailed risk assessment (a) an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
- c) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (b) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Reason: In the interests of health of future occupiers and to accord with Policy DP41 of the Mid Sussex District Plan 2014 - 2031 and paragraph 170 of the National Planning Policy Framework.

9. Development shall cease on site if, during any stage of the works, potential contamination is encountered which has not been previously identified, unless otherwise agreed in writing with the Local Planning Authority. Works shall not recommence before an assessment of the potential contamination has been undertaken and details of the findings along with details of any remedial action required (including timing provision for implementation), has been submitted to and approved in writing by the Local Planning Authority. The development shall only then be recommenced in accordance with the approved details.

Reason: In the interests of health of future occupiers and to accord with Policy DP41 of the Mid Sussex District Plan 2014 - 2031 and paragraph 170 of the National Planning Policy Framework.

10. The development shall be carried out in accordance with the levels details that were approved under conditions discharge reference number DM/24/0608 unless otherwise agreed in writing by the Local Planning Authority.

Reason: For the avoidance of doubt and to ensure that the development does not prejudice the appearance of the locality and to accord with Policy DP26 of the Mid Sussex District Plan 2014-2031.

11. The development shall be carried out in accordance with the details that were approved under conditions discharge reference number DM/23/0220 unless otherwise agreed in writing by the Local Planning Authority.

Reason: To protect the ecological value of the site and to accord with Policy DP38 of the Mid Sussex District Plan 2014-2031.

12. No development (excluding demolition) shall take place until a scheme for protecting the residential and any other noise sensitive units from noise generated by road traffic or other external sources, has been submitted to, and approved in writing by, the local planning authority. The scheme shall include an Acoustic Design Statement in line with the recommendations of ProPG: Planning & Noise Professional Practice Guidance on Planning & Noise 2017. All works that form part of the scheme shall be completed before any part of the noise sensitive development is occupied. Unless otherwise agreed in writing, the submitted scheme shall demonstrate that the maximum internal noise levels in bedrooms and living rooms in residential properties post construction will be 30 dB LAeq T (where T is 23:00 - 07:00) and 35 dB LAeq T

(where T is 07:00 - 23:00). Noise from individual external events typical to the area shall not exceed 45dB LAmax when measured in bedrooms internally between 23:00 and 07:00, post construction. In the event that the required internal noise levels can only be achieved with windows closed, then the applicant shall submit details of an alternative means of ventilation. Noise levels in gardens and public open spaces shall not exceed 55 dB LAeq 1 hour when measured at any period.

Reason: To safeguard the amenity of residents and accord with policies DP26 and DP29 of the Mid Sussex District Plan 2014-2031.

13. No part of the commercial elements of the development hereby approved shall be first occupied until such time as until a Servicing Management Plan for has been submitted and approved in writing by the Local Planning Authority. This shall set out the arrangements for the loading and unloading of deliveries, in terms of location and frequency, and set out arrangements for the collection of refuse. Once occupied the use shall be carried out only in accordance with the approved Plan.
Reason: To safeguard the operation of the highway and to protect residential amenity and to accord with policies DP21 and DP26 of the Mid Sussex District Plan 2014-2031.
14. No commercial goods or commercial waste shall be loaded or unloaded onto or from a delivery or collection vehicle and no such vehicles shall arrive or depart, within the application site except between the hours of 07:30 - 20:00 hours Monday to Saturday and 08:00 - 18:00 hours Sunday and Bank Holidays.
Reason: To safeguard the amenity of adjacent occupiers and to accord with Policies DP26 and DP26 and DP29 of Mid Sussex District Plan 2014-2031.
15. Unless otherwise agreed in writing, noise associated with fixed plant and machinery incorporated within the development shall be controlled such that the Rating Level, measured or calculated at 1-metre from the façade of the nearest existing noise sensitive premises, shall achieve at least 5dB below the background noise levels. Rating Level and existing background noise levels to be determined as per the guidance provided in BS 4142:2014. Details of fixed plant or machinery and any mitigation measures required to achieve this standard shall be submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented before the commercial operation concerned begins operating on site, and thereafter be maintained in accordance with the approved details. Details of post installation testing shall be submitted to the LPA upon request.
Reason: To protect residential amenity and to accord with policies DP26 and DP29 of the Mid Sussex District Plan 2014-2031.
16. Prior to the commencement of construction of any building subject of this permission, including construction of foundations, full details of a hard and soft landscaping scheme shall be submitted to and approved by the Local Planning Authority. These details shall include indications of all existing trees and hedgerows on the land, and details of those to be retained, together with measures for their protection in the course of development. In addition, a plan/strategy that demonstrates how the planting of the proposed line of trees along the Civic Way frontage will be coordinated with the underground services and is acceptable to the utility companies. All these works shall be carried out as approved.
The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed by the Local Planning Authority. Any trees or plants which, within a period of five years from the completion of development, die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interests of visual amenity and of the environment of the development and to accord with Policy DP26 of the Mid Sussex District Plan 2014 - 2031

17. Prior to the commencement of any residential part of the development hereby permitted, the details of a scheme of mitigation measures to improve air quality relating to the development shall be submitted and approved in writing by the Local Planning Authority. All works which form part of the approved scheme shall be completed before any part of the development is occupied and shall thereafter be maintained in accordance with the approved details.
Reason: To preserve the amenity of local residents regarding air quality and missions and to accord with policy DP29 of the Mid Sussex District Plan.
18. External lighting at the development hereby permitted shall not be brought into use until a lighting scheme has been submitted and approved in writing by the Local Planning Authority. The lighting scheme installation shall comply with the recommendations of the Institution of Lighting Professionals (ILP) "Guidance Note 1 for the Reduction of Obtrusive Light 2020" for Environmental zone E3. Thereafter the approved installation shall be maintained and operated in accordance with zone E3 requirements unless the Local Planning Authority gives its written consent to a variation.
Reason: To protect the amenity of local residents and to accord with policies DP26 and DP29 of the Mid Sussex District Plan 2014-2031.
19. Unless otherwise agreed in writing by the LPA, prior to the use of any business or commercial premises that involve the cooking of food, measures shall be implemented in accordance with an Odour Control Scheme submitted to, and approved in writing by, the Local Planning Authority, to prevent odour from cooking at the premises affecting neighbouring residential premises. The agreed measures shall be fully completed and operational prior to the first use of the unit and thereafter maintained unless any variations are approved in writing by the Local Planning Authority.
Reason: To protect residential amenity and to accord with policies DP26 and DP29 of the Mid Sussex Local Plan.
20. Unless otherwise agreed in writing by the LPA, prior to the occupation of the cinema, gym or bowling alley, a Noise Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Noise Management Plan shall assess the likely risks posed to residential amenity from the emission of noise from the intended use and shall include measures to protect residential amenity. The approved mitigation measures shall be implemented prior to the first use of the unit and thereafter maintained unless any variations are approved in writing by the Local Planning Authority
Reason: To protect residential amenity and to accord with policies DP26 and DP29 of the Mid Sussex Local Plan 2014-2031.
21. Prior to first occupation of any part of the development hereby approved the proposed modifications to the public highway, including accesses onto Civic Way, shall be designed/constructed, in general accordance with drawing 14091-012 rev F. A final scheme design shall be submitted to and approved in writing by the Local Planning Authority prior to construction. Thereafter, the scheme shall only be implemented in accordance with the approved details.
Reason: In the interests of road safety and to accord with policy DP21 of the Mid Sussex District Plan.

22. No part of the development shall be first occupied until the car parking spaces have been constructed in accordance with the approved Plans. These spaces shall thereafter be retained at all times for their designated use.
Reason: To provide car-parking space for the uses and to accord with policy DP21 of the Mid Sussex District Plan.
23. No part of any major use class or group of use classes within the proposed development hereby approved shall be occupied until:
(a) A Travel Plan for that major use class or group of use classes of the development has been submitted to and approved in writing with the Local Planning authority. The Travel Plan(s) shall be completed in accordance with the latest guidance and good practice documentation as published by the Department for Transport or as advised by the Highway Authority.
(b) The Travel Plan(s) once completed shall be implemented as specified within the document.
Reason: To ensure the adequate account is made of sustainable transport measures and to accord with Policy DP21 Mid Sussex District Plan.
24. Prior to the commencement of construction of any building subject of this permission, including the construction of foundations, plans and details of operational electric charging vehicle points shall be submitted to and approved in writing with the Local Planning Authority. The development shall not be occupied until the approved details have been fully completed and are operational.
Reason: To provide sustainable travel options and to accord with policies DP21 and DP39 of the Mid Sussex District Plan 2014-2031.
25. No part of the development shall be first occupied until covered and secure cycle parking spaces have been provided in accordance with plans and details submitted to and approved by the Local Planning Authority.
Reason: To provide alternative travel options to the use of the car in accordance with policy DP21 of the Mid Sussex District Plan.
26. Units A-005, 006, 009, 011, 012, 015, 025, 026, 033, 035, 036, 039, 049, 050, 057, 059, 060, 063, 073, 074, 081, 083, 084, 087, 097, 098, 105, 107, 108, 111, 124, 127, 130, 146, 149 and 152 hereby permitted shall be Part M4(2) (Adaptable and Accessible) compliant, and shall be fully implemented prior to completion of the development and thereafter be so maintained and retained. No dwelling shall be occupied until a verification report confirming compliance with category M4(2) has been submitted to and agreed with the local planning authority.
Reason: To ensure that the development provides a range of house types to meet accessibility and adaptability needs to comply with Policy DP28 of the Mid Sussex District Plan.
27. In respect of the units identified as Class E(b) (formally Class A3 use) on drawings hereby permitted, the premises shall be limited to the following hours of use:
Monday to Thursday: 0730 - 2330 hrs
Friday and Saturday: 0730 - 0000 hrs
Sunday & Public/Bank holidays: 0800 - 2330 hrs.
Reason: To safeguard the amenities of nearby residents and to accord with Policies DP26 and DP29 of the Mid Sussex District Plan.
28. No burning materials: No burning of demolition/construction waste materials shall take place on site.

Reason: To protect the amenity of local residents from smoke, ash, odour and fume and to accord with policy DP29 of the Mid Sussex District Plan.

29. The development hereby permitted shall be carried out in accordance with the plans listed below under the heading "Plans Referred to in Consideration of this Application".

Reason: For the avoidance of doubt and in the interest of proper planning.

30. All mitigation measures and/or works shall be carried out in accordance with the details contained in the Briefing Note (Rev 1) (ECOSA Ltd, July 2025) as already submitted with the planning application and agreed in principle with the local planning authority prior to determination.

This may include the appointment of an appropriately competent person e.g. an ecological clerk of works (ECow) to provide on-site ecological expertise during construction. The appointed person shall undertake all activities and works shall be carried out in accordance with the approved details.

Reason: To protect the ecological value of the site and to accord with Policy DP38 of the Mid Sussex District Plan 2014-2031.

31. Prior to any works above slab level, a Biodiversity Enhancement Strategy for protected, priority and threatened species, prepared by a suitably qualified ecologist in line with the recommendations of the Briefing Note (Rev 1) (ECOSA Ltd, July 2025), shall be submitted to and approved in writing by the local planning authority. The content of the Biodiversity Enhancement Strategy shall include the following:

- a) Purpose and conservation objectives for the proposed enhancement measures;
- b) Detailed designs or product descriptions to achieve stated objectives;
- c) Locations of proposed enhancement measures by appropriate maps and plans (where relevant);
- d) Persons responsible for implementing the enhancement measures; and
- e) Details of initial aftercare and long-term maintenance (where relevant).

The works shall be implemented in accordance with the approved details and shall be retained in that manner thereafter.

Reason: To protect the ecological value of the site and to accord with Policy DP38 of the Mid Sussex District Plan 2014-2031.

32. No commercial or residential units shall be occupied until a satisfactory Planning Obligation/Unilateral Undertaking has been completed to secure the Travel Plan auditing fees that are required by West Sussex County Council.

Reason: To ensure the sustainability of the development and to accord with policy DP21 of the Mid Sussex District Plan 2014-2031.

Biodiversity Net Gain

Plans Referred to in Consideration of this Application

The following plans and documents were considered when making the above decision:

Plan Type	Reference	Version	Submitted Date
Proposed Elevations	BHL-CWA-ZZ-ZZ-DR-A-0340 Sheet 2	PO	31.07.2025
Landscaping Details	0152-LDA-00-XX-M2-LA-1001	PO2	30.07.2025

Proposed Site Plan	BHL-CWA-ZZ-ZZ-DR-A-0301	P02	21.05.2025
Proposed Floor Plans	BHL-CWA-ZZ-00-DR-A-0310	P02	21.05.2025
Proposed Floor Plans	BHL-CWA-ZZ-01-DR-A-0311	P05	30.07.2025
Proposed Floor Plans	BHL-CWA-ZZ-02-DR-A-0312	P05	30.07.2025
Proposed Floor Plans	BHL-CWA-ZZ-03-DR-A-0313	P02	21.05.2025
Proposed Floor Plans	BHL-CWA-ZZ-04-DR-A-0314	P02	21.05.2025
Proposed Floor Plans	BHL-CWA-ZZ-05-DR-A-0315	P02	21.05.2025
Proposed Floor Plans	BHL-CWA-ZZ-06-DR-A-0316	P02	21.05.2025
Proposed Floor Plans	BHL-CWA-ZZ-07-DR-A-0317	P02	21.05.2025
Proposed Floor Plans	BHL-CWA-ZZ-08-DR-A-0318	P02	21.05.2025
Proposed Floor Plans	BHL-CWA-ZZ-09-DR-A-0319	P02	21.05.2025
Proposed Floor Plans	BHL-CWA-ZZ-10-DR-A-0320	P02	21.05.2025
Proposed Floor Plans	BHL-CWA-ZZ-11-DR-A-0321	P02	21.05.2025
Proposed Floor Plans	BHL-CWA-ZZ-12-DR-A-0322	P02	21.05.2025
Proposed Floor Plans	BHL-CWA-ZZ-00-DR-A-0323	P01	21.05.2025
Proposed Floor Plans	BHL-CWA-ZZ-01-DR-A-0324	P04	30.07.2025
Proposed Floor Plans	BHL-CWA-ZZ-02-DR-A-0325	P04	30.07.2025
Proposed Floor Plans	BHL-CWA-ZZ-03-DR-A-0326	P01	21.05.2025
Proposed Floor Plans	BHL-CWA-ZZ-04-DR-A-0327	P01	21.05.2025
Proposed Floor Plans	BHL-CWA-ZZ-05-DR-A-0328	P01	21.05.2025
Proposed Floor Plans	BHL-CWA-ZZ-06-DR-A-0329	P01	21.05.2025
Proposed Floor Plans	BHL-CWA-ZZ-07-DR-A-0330	P01	21.05.2025
Proposed Floor Plans	BHL-CWA-ZZ-08-DR-A-0331	P01	21.05.2025
Proposed Floor Plans	BHL-CWA-ZZ-09-DR-A-0332	P03	30.07.2025
Proposed Floor Plans	BHL-CWA-ZZ-10-DR-A-0333	P03	30.07.2025
Proposed Floor Plans	BHL-CWA-ZZ-11-DR-A-0334	P03	30.07.2025
Proposed Floor Plans	BHL-CWA-ZZ-12-DR-A-0335	P01	21.05.2025
Proposed Floor Plans	BHL-CWA-ZZ-01-DR-	P02	21.05.2025

Proposed Floor Plans	A-0336 BHL-CWA-ZZ-02-DR-	P02	21.05.2025
Proposed Floor Plans	A-0337 BHL-CWA-ZZ-03-DR-	P02	21.05.2025
Proposed Elevations	A-0338 BHL-CWA-B1-ZZ-DR-	P04	31.07.2025
Proposed Elevations	A-0339 BHL-CWA-ZZ-ZZ-DR-	P04	30.07.2025
Proposed Elevations	A-0340 Sheet 1 BHL-CWA-ZZ-ZZ-DR-	P01	21.05.2025
Proposed Elevations	A-0341 BHL-CWA-ZZ-ZZ-DR-	P03	30.07.2025
Proposed Sections	A-0342 BHL-CWA-B1-ZZ-DR-	P02	21.05.2025
Proposed Sections	A-0343 BHL-CWA-ZZ-ZZ-DR-	P02	30.07.2025
Proposed Sections	A-0344 BHL-CWA-ZZ-ZZ-DR-	P02	21.05.2025
Proposed Elevations	A-0345 BHL-CWA-ZZ-ZZ-DR-	P01	21.05.2025
	A-0346		

APPENDIX B – CONSULTATIONS

MSDC Urban Designer

The scheme sufficiently addresses the principles set out in the Council's Design Guides and accords with policy DP26 of the District Plan; I therefore raise no objection to this planning application. To secure the quality of the design, I would nevertheless recommend conditions requiring the approval of the following details/information:

- Details and samples of the facing materials (include mortar, all windows/door frames RAL colours, and details of stone effect elements).
- 1:50 scale plans, elevation, and sections of entrance zones to the buildings
- 1:20 drawing vignettes of the full height elevations and sections relating to each respective phase of development.
- Details of the proposed renovations/changes to all existing front elevations must be provided. These should clearly illustrate and describe the full scope of works, specifying the materials to be used and RAL colour references for all elements of the front façades. The submission should address:
 - Enhancements to signage design
 - Specification of framing materials
 - Colour selection and coordination.
 - Brick restoration techniques

- Use of contrasting mortar colours for repointing to update the look and reduce the visual monotony of the existing long façades.
- Drawings that show how the rainwater discharge arrangements will be provided and accommodated on the buildings.
- Drawings showing all sustainability measures and their locations: solar panels, heat pumps etc.
- Detailed landscape drawings: hard and soft landscaping details
- Close up drawings (1/50 and 1/20 plans and elevations) of all important elements of the landscape, such as design of the main square, design of all ramps, steps, crossings, resting spaces, gathering spaces, frontage solutions to verge along Block A1, all works outside the red line boundary to tie into existing public realm and works along all existing buildings and their thresholds, passage from the existing public to a new square, path linking the square to a bus stop and the terraced zone.
- Separate landscape drawing for street furniture, with schedule and details of all benches, resting spaces, bins etc.
- Details and schedule of the external lighting: that includes:
 - External Car Park Lighting
 - Pedestrian Lighting (mounted luminaires, inground recessed and catenary type lighting, architectural lighting for seating / steps and building façade)
- Details and location diagram of any external railing with RAL colours provided
- Details of all louvers
- Details of the railing to the balconies
- Details of all the external railings used for landscape design with RAL colours
- Details of a gate between the two buildings that will have controlled access for residents (linked buildings)

MSDC Conservation Officer

This application seeks amendments to the approved scheme for redevelopment of the site, including revisions to the detailed design of residential block A1, which faces across the adjoining road junction towards Grade II* listed St John's Church and the St John's Conservation Area, as well some changes to the surrounding landscaping. In terms of the general height, massing and appearance of the building, and of surrounding landscaping scheme when viewed from, or in the context of, the adjacent heritage assets these changes are relatively minor, and will not in my opinion result in a materially different impact on the setting of the Church and Conservation Area to the approved scheme. The other amendments relate to use and design issues for parts of the scheme set away from the assets, and again will not materially affect the impact of the proposal on their setting or significance.

In this context, and in the knowledge that the detail of the proposal will be fully considered by the Council's Urban Design Officer, I have no objection to the proposal on built heritage grounds.

MSDC Housing Officer

To be reported.

MSDC Community Leisure Officer

To be reported.

MSDC Environmental Protection Officer

Having reviewed the details of the application, I can confirm that the matters under consideration, namely architectural detailing, highway modifications, and plan compliance, do not fall within the remit of the Environmental Protection team. As such, I have no comments to make on this application.

MSDC Contaminated Land Officer

Having reviewed the details of the application, I can confirm that the matters under consideration, namely architectural detailing, highway modifications, and plan compliance, do not fall within the remit of Contaminated Land. As such, I have no comments to make on this application.

MSDC Ecology Consultant

Summary

We note that Condition 6 relates to the submission of 1:20 scale vignettes, Condition 21 relates to modifications to the public highway and Condition 29 states that the development should be carried out in accordance with the listed plans.

We have now reviewed the updated Briefing Note (Rev.1) (ECOSA Ltd., July 2025) relating to Buildings 1, 2, 4, 5, 8 and 10 and the need for mitigation measures for roosting bats. The results of the previous surveys in 2019 returned very little bat activity across the site (two registrations) and no emergences/re-entries of any bats. Furthermore, the site is very well lit with light spill on the areas of vegetation and buildings, which further reduces the suitability for foraging/commuting bats. The site is also set within an urban landscape which lacks a good network of foraging/commuting corridors, further reducing the likelihood of a key foraging/commuting route for bats. Several of the potential roost features are also quite exposed and unlikely to be a suitable roosting site for bats due to fluctuations in thermal conditions. Overall, the report considers that it would not be proportionate to update the bat activity surveys. Instead, it recommends that suitable features (raised leading flashing, gaps within soffits and bargeboards etc.) should be removed by soft demolition by hand. If a bat is found, all works must stop, advise from an ecologist sought and a licence would need to be obtained from Natural England before works can start again. After soft demolition, the remainder of the site can be demolished using other methods.

We support this professional judgement for buildings which have low suitability to support bats which is in line with industry good practice guidelines for bat surveys (Collins ed., 2023).

We are therefore now able to support the variation in Condition 29 to support a lawful decision on this s73 application.

We also support the proposed ten new integral bird nest units, such as Schwegler Brick Nest Boxes (or similar) which will be incorporated into the walls of new buildings recommended in the Briefing Note (Rev.1) (ECOSA Ltd., July 2025) to secure net gains for biodiversity. These are considered reasonable biodiversity enhancements for protected, Priority and threatened species, which meet the requirements in Paragraph 187d and 193d of the National Planning Policy Framework (December 2024). The reasonable biodiversity enhancement measures should be outlined within a separate Biodiversity Enhancement Strategy and should be secured by a condition of any consent.

This will enable LPA to demonstrate its compliance with its statutory duties including its biodiversity duty under s40 NERC Act 2006 (as amended). We note that s73 applications are exempt from mandatory Biodiversity Net Gains.

Impacts will be minimised such that the proposal is acceptable, subject to the conditions below based on BS42020:2013. We recommend that submission for approval and implementation of the details below should be a condition of any planning consent.

Recommended conditions

1. ACTION REQUIRED IN ACCORDANCE WITH ECOLOGICAL APPRAISAL RECOMMENDATIONS

“All mitigation measures and/or works shall be carried out in accordance with the details contained in the Briefing Note (Rev.1) (ECOSA Ltd., July 2025) as already submitted with the planning application and agreed in principle with the local planning authority prior to determination.

This may include the appointment of an appropriately competent person e.g. an ecological clerk of works (ECoW) to provide on-site ecological expertise during construction. The appointed person shall undertake all activities, and works shall be carried out, in accordance with the approved details.”

Reason: To conserve protected and Priority species and allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 (as amended) and s40 of the NERC Act 2006 (as amended).

2. PRIOR TO ANY WORKS ABOVE SLAB LEVEL: BIODIVERSITY ENHANCEMENT STRATEGY

“Prior to any works above slab level, a Biodiversity Enhancement Strategy for protected, Priority and threatened species, prepared by a suitably qualified ecologist in line with the recommendations of the Briefing Note (Rev.1) (ECOSA Ltd., July 2025), shall be submitted to and approved in writing by the local planning authority.

The content of the Biodiversity Enhancement Strategy shall include the following:

- . Purpose and conservation objectives for the proposed enhancement measures;
- . detailed designs or product descriptions to achieve stated objectives;
- . *locations of proposed enhancement measures by appropriate maps and plans (where relevant);*
- . persons responsible for implementing the enhancement measures; and
- . *details of initial aftercare and long-term maintenance (where relevant).*

The works shall be implemented in accordance with the approved details shall be retained in that manner thereafter.”

Reason: To enhance protected, Priority and threatened species and allow the LPA to discharge its duties under paragraph 187d of NPPF 2024 and s40 of the NERC Act 2006 (as amended).

We recommend that any ecology conditions secured on the consent for DM/19/3331 which have not yet been discharged, are attached to any new consent for this application.

WSSC Highways

Comments 18th July 2025

Thank you for sending this through. I have had the opportunity to review the updated RSA based on the latest drawings. The update does not raise any points with the RSA. The other observations in Section 3 I have already covered in my previous LHA response. With regards the other points of the application these are relatively minor and wouldn't constitute any other changes to our comments.

Comments 18th June 2025

Background

WSSC in its role of Local Highway Authority (LHA) has been consulted on the proposals for highway safety, capacity and access.

The proposals are for alterations to permission DM/19/3331 (and subsequent minor amendments) to be submitted by Section 73 application.

The latest application will retain the 172 residential apartments, increase the number of hotel bedrooms from 89 to 102, remove the 1,338 sq.m of office space, reduce the retail / café / restaurant space by 3,816 sq.m and reduce the leisure space by 8,374 sq.m when compared to permission DM/19/3331. The highway aspect of the proposals are supported by way of a Transport Statement (TS) which was compiled following pre-application advice with the LHA in May 2025.

Traffic Movements

Having assessed the information within the TA it is not likely that the traffic generation will change as the number of dwellings remains as in 2019 and, whilst the traffic attraction of commercial uses is also likely to stay the same as previously permitted under DM/19/3331.

Parking and Sustainable Transport

The site is well located to encourage travel by sustainable modes including the use of walking, cycling and public transport. These will provide opportunities for staff and visitors to travel to the site. The attached Travel Plan within the supporting information would be accepted and provide visitors and staff workable means to access the site using more sustainable modes.

This accords with the requirements of WSCC. The applicant should note that WSCC apply an auditing fee to all new travel plans. The travel plan and associated auditing fee would be secured via a s106 agreement. The Travel Plan auditing fees reflect the amount of local authority officer time required to evaluate the initial plan, assess the monitoring data and participate in on-going review and agreement to any amended plans in the future, including post planning once the development is built out and occupied. The costs have been benchmarked against fees charged by other Local Authorities and are considered to be proportionate and reflective of the costs incurred.

No changes are proposed to the number of parking spaces and these will remain the same as the permitted under application DM/19/3331. The previous application considered the proposed car parking provision acceptable and the town centre car parks have been calculated as functioning within car parking capacity for the future with development scenario. Cycle parking for both elements of the proposals is within the LHA's parameters.

Stage 1 Road Safety Audit (RSA)

In accordance with the adopted LHA's 'Road Safety Audit Policy', a up-to-date Stage 1 RSA (dated 15th May 2025) has been undertaken on the latest drawings. The RSA is in accordance with the GG119 governance document by an independent Audit.

All issues within the RSA have been addressed by the Design Team. With regards to Problem 3.2 which required the LHA's input by the Auditor this has been assessed by the County Highways Team and we would have a preference for the existing right turn facility to be kept as per the permitted application DM/19/3331.

Conclusion

Having regard for the history at the site and the additional information submitted the LHA does not consider that the proposal would have 'severe' impact on the operation of the highway network, therefore is not contrary to the National Planning Policy Framework (para 116), and that there are no transport grounds to resist the proposal.

WSCC Lead Local Flood Authority

Thank you for your consultation on the above site, received on 27 May 2025. We have reviewed the application as submitted and wish to make the following comments.

This planning application is for the Variation of conditions 6, 21 and 29 relating to planning application DM/19/3331 - amendment of approved drawings to improve the viability and deliverability of the scheme.

We have no objection or further comments subject to the variation of with respect to surface water drainage and flood risk.

Please note if the LPA decide to grant planning permission, we wish to be notified for our records should there be any subsequent surface water flooding that we may be required to investigate as a result of the new development.

WSSC Infrastructure

To be reported.

Historic England

Historic England provides advice when our engagement can add most value. In this case we are not offering advice. This should not be interpreted as comment on the merits of the application.

We suggest that you seek the views of your specialist conservation and archaeological advisers. You may also find it helpful to refer to our published advice at <https://historicengland.org.uk/advice/find/>

It is not necessary to consult us on this application again, unless there are material changes to the proposals. However, if you would like advice from us, please contact us to explain your request.

South Down National Park Authority

Although the application site is located outside of the National Park, the Council has a statutory duty to consider the Purposes of the National Park when making its determination.

The two statutory purposes of the SDNP designation are:

- To conserve and enhance the natural beauty, wildlife and cultural heritage,
- To promote opportunities for the public understanding and enjoyment of the special qualities of their areas.

If there is a conflict between these two purposes, conservation takes precedence. There is also a duty to foster the economic and social wellbeing of the local community in pursuit of these purposes.

Section 245 of the Levelling-Up and Regeneration Act 2023 (S.245 duty) amends and strengthens the Section 11A (2) duty of the National Parks and Access to the Countryside Act 1949 upon relevant authorities, which includes the National Park Authority itself, to 'seek to further the specified purposes of Protected Landscapes'.

The National Park's comments on the development are as follows:

The application site is in central Burgess Hill, some 2km from the boundary of the National Park.

Accordingly, the Authority has no comments to make.

Southern Water

Thank you for your correspondence, please see our comments below regarding the above application.

Conditions

Southern Water has no objections to conditions 6 (Detailed drawings) 21 – (Public highway modifications to be in general accordance with drawing 14091-012 rev C) 29 – (Approved plans).

For further advice, please contact Southern Water, Southern House, Yeoman Road, Worthing, West Sussex, BN13 3NX (Tel: 0330 303 0119)

Website: southernwater.co.uk or by email at: SouthernWaterPlanning@southernwater.co.uk

Gatwick Airport

The proposed development has been examined from an aerodrome safeguarding perspective and it does not conflict with safeguarding criteria. We therefore have no objection to this proposal.

Sussex Police

Thank you for your correspondence of 27th May 2025, advising me of a planning application for variation of conditions 6, 21 and 29 relating to planning application DM/19/3331 - amendment of approved drawings to improve the viability and deliverability of the scheme at the above location, for which you seek advice from a crime prevention viewpoint.

I have had the opportunity to examine the detail within the application. I offer the following comments.

Condition 6

No development (excluding demolition), in each respective phase of the agreed programme, shall commence unless and until detailed 1:20 scale vignettes including both full elevation and section drawings showing the typical features and detailing for the frontages of block A1 (residential), block A2 (hotel), block B (cinema), unit 1 and a typical unit on the west side of the pedestrian street, have been submitted and approved in writing with the Local Planning Authority.

In addition, the following shall also be provided.

Details of 'Green Wall' between the block A1 and A2, including maintenance programme

Details of the treatment of the eastern flank of block B

Details of the treatment of the northern flank of block A2 (hotel)

Details and design of the kiosk

The scheme shall only be implemented in accordance with the approved details.

Reason: To enable the Local Planning Authority to control the development in detail in the interests of amenity by endeavouring to achieve a building of visual quality and to accord with Policy DP26 of the Mid Sussex District Plan.

Condition 21

Prior to first occupation of any part of the development hereby approved the proposed modifications to the public highway, including accesses onto Civic Way, shall be designed/constructed, in general accordance with drawing 14091-012 rev C. A final scheme design shall be submitted to and approved in writing by the Local Planning Authority prior to construction. Thereafter, the scheme shall only be implemented in accordance with the approved details.

Reason: In the interests of road safety and to accord with policy DP21 of the Mid Sussex District Plan.

Condition 29

The development hereby permitted shall be carried out in accordance with the plans listed below under the heading "Plans Referred to in Consideration of this Application".

Reason: For the avoidance of doubt and in the interest of proper planning.

I have previously commented upon the application with my correspondence of PE/MID/19/25/A & PE/MID 19/25/B

Other than to advise the applicant or their agent of the newly amended SBD Residential Guide 2025 edition 1 and the SBD Non-Residential Guide 2025. I have at present no further crime prevention advice to offer.

I have no objection to the variation of conditions 6, 2, & 29.

I thank you for allowing me the opportunity to comment.

Sussex Police would have no objection to the proposed application as submitted from a crime prevention perspective.

The Crime & Disorder Act 1998 heightens the importance of taking crime prevention into account when planning decisions are made. Section 17 of the Act places a clear duty on both police and local authorities to exercise their various functions with due regard to the likely effect on the prevention of crime and disorder. You are asked to accord due weight to the advice offered in this letter which would demonstrate your authority's commitment to work in partnership and comply with the spirit of The Crime & Disorder Act.

Active Travel England

Following a high-level review of the above planning consultation, Active Travel England has determined that standing advice should be issued and would encourage the local planning authority to consider this as part of its assessment of the application. Our standing advice can be found here: <https://www.gov.uk/government/publications/active-travel-england-sustainable-development-advice-notes>

Health & Safety Executive

The above consultation relates to an application to vary conditions 6, 21 and 29 of the extant permission DM/19/3331. The consented application comprises:

- Block A1: A relevant building of 170 residential units over 11 levels.
- Block A2: A building within the curtilage of a relevant building consisting of commercial uses including retail, gym, hotel and offices.
- Block B: A building within the curtilage of a relevant building consisting of retail, cinema and library uses.

The Design and Access Addendum provided with the s73 application outlines the fire safety related amendments as being limited to the following:

Amendments for HRB and BS991 Compliance:

1. Secondary stair and secondary evacuation lift added to tallest element of the scheme on the South Western Boundary with Block A2.
2. Internal Arrangement of flats redesigned as a result of incorporating a second stair and evacuation lift within the same building footprint.
3. 2100mm x 1500mm wheelchair waiting areas incorporated into corridors.
4. Secondary escape stair and firefighting lift from the communal roof garden added to 7th floor roof terrace. Stair core to the north end of Block A1 extended to roof level.
5. Mechanical smoke vents added to central corridors
6. Mechanical smoke vents increased in size to meet fire strategy 0.8m² clear internal space requirement
7. Natural smoke vents increased in size to meet fire strategy cross-sectional 1m² clear internal area space requirement.
8. Hobs in open plan kitchens relocated to maintain a 1800mm heat radius + 900mm escape route around hob

HSE was not consulted on application DM/19/3331 as it predated the establishment of HSE as a statutory consultee for fire safety matters in relevant buildings. Accordingly, HSE has limited its assessment to the matters listed in the Design and Access statement provided with the current consultation.

Following a review of the information within this application, HSE is content with the fire safety design to the extent it affects land use planning considerations.