

Committee Date:	23/07/2025		
Item No.	2		
Site Address:	150a-170 Penwith Road SW18 4QA		
Application Number:	2025/1633	Date Validated:	07/05/2025
Ward:	Wandle	Officer:	Julia Kelly
Application Type:	Variation of Condition		
Proposal:	Variation of condition 2 (approved drawings) and 27 (number of residential units) of planning permission dated 30/10/2020 ref. 2019/1427 (Demolition of existing buildings and erection of a part three, part four-storey plus basement level building to provide 1,246 sq.m. of retail (Class A1); 316 sq.m. of office (Class B1a); 617 sq.m. of light industrial (Class B1c), 827 sq.m. of storage and distribution (Class B8) floorspace, and 17 residential units of both private and affordable tenure, with associated balconies and terraces, cycle parking provision and a new sub-station) (as amended under application dated 14/01/2022 ref. 2021/5688) to allow reconfiguration of 4 flats to 6 flats on first floor level with associated minor elevational changes.		
Recommendation Summary:	Approve with conditions subject to legal agreement, CIL liable.		

INTRODUCTION:

This application is for a variation of condition 2 (approved drawings) and condition 27 (number of residential units) of planning permission ref. 2019/1427 by Section 73 of the Town and Country Planning Act (as amended). This provides the ability to make minor amendments or modifications to a scheme without complying with conditions previously imposed. As such any permission granted under this route is a fresh planning permission, however, in assessing this variation application only the amendments to the scheme are considered and this application does not present an opportunity to re-examine the merits of the original application. This report will therefore only consider the changes to the proposed scheme reported in the 'Application Details' section of the report against the Development Plan and material planning considerations: it will not repeat the full details and considerations of the original decision. The full details of the initiating consent, ref. 2019/1427, can be viewed on the Council's website. The main changes are set out in the 'Application Details' Section below, but can be summarised as:

Creation of an additional 2 residential units (19 in total) with associated amendments to unit mix; associated reduction in affordable housing provision from 8 units (47%) out of the 17 to 6 units (32%) out of the 19; minor amendments to other residential unit layouts; minor elevational changes.

SITE DETAILS:

0.154 ha site with frontages onto the SE side of Penwith Road and the NW side of Thornsett Road. Following redevelopment the site is currently occupied by a four-storey (plus basement level) mixed commercial/residential use building. The building is partially occupied, with a

Marks and Spencer foodstore operational on the ground floor and part basement, with some office and some of the residential units on the site also currently occupied.


Adjoining the site on its eastern side is a terrace of three-storey commercial/residential properties which have frontages onto Garratt Lane. Adjacent to the application site on its western side along Penwith Road is a three-storey commercial building occupied by a mixture of commercial uses and following the granting of prior approval some residential use. Beyond this (on the other side of the river Wandle) is a single storey café with two storey terraced residential units beyond. To the north on the opposite side of Penwith Road facing the application site are three-storey blocks of flats, with two-storey terraced residential properties to the west of these across the other side of the river Wandle. The Wandle public house lies to the north-east on the opposite corner of Penwith Road with Garratt Lane.

On the Thornsett Road frontage the site is adjoined on its south-western side by two-storey commercial buildings. Further single storey and two-storey commercial properties lie to the south of the opposite side of Thornsett Road, with a group of two storey residential properties beyond the junction of Groton Road with Thornsett Road opposite the site up to the junction with Garratt Lane.

CONSTRAINTS:

Flood Zone 2: Medium flood risk zone
Thornsett Road
Earlsfield Local Centre
Wandle Valley Regional Park
Archaeological Priority Area
Local Centre Protected Other Frontages



 <p>Wandsworth</p>	<p>Application No: 2025/1633</p> <p>Address: 150A - 170 Penwith Road and 2 - 8 Thornsett Road SW18 4QA</p>	<p>Scale: 1:1095</p>	<p>N ↑</p>
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REASON FOR REFERRAL:

The Council's Constitution does not give delegated powers to officers to determine the application in the way recommended and must be determined by the Planning Applications Committee.

RELATED PLANNING APPLICATIONS:

December 2024 (2023/4517) planning permission refused for Variation of condition 2 (approved drawings) and condition 27 (number of residential units) of planning permission dated 26/07/2019 ref. 2019/1427, as amended by application dated 14/09/2021 ref. 2021/3516 and application dated 14/01/2022 ref 2021/5688, to allow internal reconfiguration of the four residential units at first floor level to provide 6 x 1-bedroom units (with the development providing 19 residential units in total).

Reason for refusal: The proposed development fails to provide or justify an appropriate level of affordable housing delivery, contrary to policy LP23 of the Local Plan (adopted July 2023) and policy H4 of the London Plan (adopted 2021) and the objectives of the National Planning Policy Framework (2024).

January 2025: Appeal into below refusal of consent dismissed.

February 2024 (2023/4518) planning permission refused for Change of use of basement unit from class B8 (storage) to dual B8 (storage)/class E (Commercial/Business and Service) flexible use. (Reason for refusal: The development, due to the proposed mix of uses and the location of the site within the designated Thornsett Road Locally Significant Industrial Area, would be detrimental to the overriding objective to protect land and premises for industrial use and to retain a strategic reservoir of industrial land within the borough, contrary to policy LP34 of the Wandsworth Local Plan (adopted July 2023).

May 2024: Appeal into below refusal of consent dismissed.

October 2023 (2022/1029) Planning permission refused for variation of condition 2 (approved drawings) and condition 27 (number of residential units) pursuant to planning permission dated 30/10/2020 ref 2019/1427 (Demolition of existing buildings and erection of a part three, part four-storey plus basement level building to provide 1,246 sq.m. of retail (Class A1); 316 sq.m. of office (Class B1a); 617 sq.m. of light industrial (Class B1c), 827 sq.m. of storage and distribution (Class B8) floorspace, and 17 residential units of both private and affordable tenure, with associated balconies and terraces, cycle parking provision and a new sub-station) as amended by 2021/3516 and 2021/5688, to allow internal reconfiguration of the 4 residential units at first floor to provide 6 x 1 bed residential units (with the development providing 19 residential units in total), minor amendments to the layout of the second floor residential units, and to enable the basement B8 unit to have a flexible dual B8/Class E use.) [Reason for refusal: The development, due to the proposed mix of uses and the location of the site within the designated Thornsett Road Locally Significant Industrial Area, would be detrimental to the overriding objective to protect land and premises for industrial use and to retain a strategic reservoir of industrial land within the borough, contrary to policy LP34 of the Wandsworth Local Plan (adopted July 2023).

January 2022 (2021/5688): Non-material amendment to planning permission dated 30/10/2020 ref 2019/1427 (Demolition of existing buildings and erection of a part three, part four-storey plus basement level building to provide 1,246 sq.m. of retail (Class A1); 316 sq.m. of office (Class B1a); 617 sq.m. of light industrial (Class B1c), 827 sq.m. of storage and distribution (Class B8) floorspace, and 17 residential units of both private and affordable

tenure, with associated balconies and terraces, cycle parking provision and a new sub-station) to remove the total number of residential units and also to bring the scheme up to date in terms of the 2020 Use Classes Order. [Revised description of development: Demolition of existing buildings and erection of a part three, part four-storey plus basement level building to provide floorspace for Class E and Class B8 uses and residential units of both private and affordable tenure, with associated balconies and terraces, cycle parking provision and a new sub-station].

September 2021 (2021/3516): Variation of condition 2 (in accordance with approved drawings) pursuant to planning permission dated 30/10/2020 ref 2019/1427 (Demolition of existing buildings and erection of a part three, part four-storey plus basement level building to provide 1,246 sq.m. of retail (Class A1); 316 sq.m. of office (Class B1a); 617 sq.m. of light industrial (Class B1c), 827 sq.m. of storage and distribution (Class B8) floorspace, and 17 residential units of both private and affordable tenure, with associated balconies and terraces, cycle parking provision and a new sub-station) to allow design changes to the main entrance and provision of a secondary customer access to the retail unit from Thornsett Road.

30 October 2020: Appeals into the below two refusals of planning permission both allowed by the Planning Inspectorate*.

July 2019 (2019/1426): planning permission refused Demolition of existing buildings and erection of a part three, part four-storey, plus basement level building, to provide 1,233 sq.m. of retail (Class A1); 1,444 sq.m. of office (Class B1a); 1,415 sq.m. of light industrial (Class B1c) and 221 sq.m. of storage and distribution (Class B8) floorspace, together with a new sub-station.

[Reason for refusal: The proposed development, due to the intended mix of uses and the location of the site, would be contrary to the designation of the Thornsett Road Locally Significant Industrial Area, with the B1A office use and A1 retail use provision within the proposed development being inappropriate in this location, and detrimental to the overriding objective to protect land for industrial use and retain a strategic reservoir of industrial land within the borough. The development would be contrary to development plan policy, in particular policies EI1; EI3 and EI6 of the Local Plan Employment and Industry Document (adopted December 2018), policy 4.4 of the London Plan (adopted March 2016) and paragraphs 47 to 48 and 80 to 81 of the NPPF (2019). [*Appeal A]

July 2019 (2019/1427) planning permission refused Demolition of existing buildings and erection of a part three, part four-storey plus basement level building to provide 1,246 sq.m. of retail (Class A1); 316 sq.m. of office (Class B1a); 617 sq.m. of light industrial (Class B1c), 827 sq.m. of storage and distribution (Class B8) floorspace, and 17 residential units of both private and affordable tenure, with associated balconies and terraces, cycle parking provision and a new sub-station. [Reason: The proposed development, due to the intended mix of uses and the location of the site, would be contrary to the designation of the Thornsett Road Locally Significant Industrial Area, with the B1A office use, A1 retail use and C3 residential provision within the proposed development being inappropriate in this location, and detrimental to the overriding objective to protect land for industrial use and retain a strategic reservoir of industrial land within the borough. The development would be contrary to development plan policy, in particular policies EI1; EI3 and EI6 of the Local Plan Employment and Industry Document (adopted December 2018), policy 4.4 of the London Plan (adopted March 2016) and paragraphs 47 to 48 and 80 to 81 of the NPPF (2019).] [*Appeal B].

APPLICATION DETAILS:

The application proposes a variation of condition 2 in order to amend the approved drawings currently associated with the consented development for the site, and also to amend condition 27 which states the overall number of residential units shall not exceed 17. Specifically, it seeks amendments relating to the first floor and second floor levels of the currently approved development. The works proposed have already taken place on site without express consent and this application is therefore seeking to regularise the current on-site position.

At first floor level, it is proposed to replace the four flats currently approved under planning permission 2019/1427 at this level (comprising two x 3-bedroom 5 person flats, a 2-bedroom 3 person flat and a 1-bedroom 2 person flat), with six x 1- bedroom 2 person flats instead. As this would result in an increase in the total number of residential units within the envelope of the building from 17 to 19 the applicants are also seeking to amend condition 27 of the current consent which restricts the residential (Class C3) accommodation within the development to no more than 17 units overall.

The proposed 6 first floor residential units would continue to be located along the north side of the building facing towards Penwith Road, and to be accessed from this street via staircases at each end of the building with a corridor joining them, together with a single lift. The southern side of the first floor of the building would remain in its consented office and light industrial use (formerly Class B1a and B1c, now Class E) use, although a narrow area of approx. 32 sq.m. would be transferred from the approved commercial floorspace into residential use in order to realign the corridor. This is in connection with two of the flats proposed being provided as accessible units at first floor level, rather than providing these at second floor level as previously approved.

The applicants are also proposing some minor adjustments under this S73 application to the layout of the residential units at second floor level, moving internal walls slightly which results in some changes to the overall size of the units and also to their associated amenity space by a few sq.m. in each case. The overall number of bedspaces in each of the flats on the upper two floors would, however, remain as previously approved (six x 1-bedroom 2-person units, six x 2 bedroom 4- person units and one x 3-bedroom 6-person unit).

As part of their submission the applicants have offered the 6 one-bedroom flats at first floor level to be provided as affordable units, on the basis of shared ownership, with all other units in the building provided as private tenure (representing a 32% affordable housing provision by unit). The currently approved scheme on the site provides for 8 of the 17 residential units (47% by unit) as affordable housing, all on the basis of shared ownership, plus payment of a commuted sum of £254,630.

Proposed Dwellings (Gross) by Tenure and Size as approved under 2019/1427

Tenure	Unit Size	Total
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	Studio	1 bedroom	2 bedroom	3 bedroom	4+ bedroom	
Market	0	3	5	1	0	9
Social Rent	0	0	0	0	0	0
Intermediate	0	4	2	2	0	8
Total	0	7	7	3	0	17

Proposed Dwellings (Gross) by Tenure and Size as proposed under current application

Tenure	Unit Size					Total
	Studio	1 bedroom	2 bedroom	3 bedroom	4+ bedroom	
Market	0	6	6	1	0	13
Social Rent	0	0	0	0	0	0
Intermediate	0	6	0	0	0	6
Total	0	12	6	1	0	19

The only external amendments being sought are to the north (Penwith Road) elevation where the configuration of windows and recesses between the brick columns have been slightly changed from the currently approved elevation to reflect the internal amendments to flats and terraces behind at first and second floor level, with parts of the floorplate brought forward to the columns, and 6 balconies created at first floor level instead of 4. No changes to the ground or third floors elevations are proposed, or to the overall height and scale of the approved building. All of the proposed external materials would remain as previously approved.

The development would continue to be car free. The provision of 32 secure and covered cycle parking spaces for the residential element of the development was approved under the current consent, and no changes are proposed to this level of provision.

The following suite of documents were submitted in support of the application:

- Design and Access Statement
- Planning statement
- Affordable Housing Statement
- Addendum to energy assessment (including new build (as designed) Energy
- Compliance calculations)
- Transport technical note
- Fire safety statement

COMMUNITY INFRASTRUCTURE LEVY ESTIMATE

CIL Estimate	
Mayoral	Borough
TBC	TBC

The actual amount of CIL can only be confirmed once all relevant details are approved and any relief claimed.

CONSULTATION:

Number of letters sent	202
Site Notice	Yes
Press Notice	Yes
Number of responses received	1
Number of neighbour objections	0
Number of neighbour support	1
Number of neighbour comments	0

Neighbour Representations received can be read in full on the Council's web site (until a decision is made).

Neighbour Consultation Summary

SUPPORTS: summarised as:

These flats have been un-inhabited for years due to the rejections by the Council. It is such a waste of good living space in an area where demand is very high. This issue has been ongoing for so long and just want this part of the building to be finalized. It is also causing disruption for the residents who currently live there as the building cannot be handed over until all the flats are sold.

External Consultation Responses: summarised as:

TfL: The closest section of the Strategic Road Network (SRN), the A217 Garratt Lane, is located within 75 metres of the site. TfL has a duty under the Traffic Management Act 2004 to ensure that any development does not have an adverse impact on the SRN. However, given the nature and scale of the application TfL has no objections. Cycle parking should be secured in line with London Plan policy T5 (Cycling) minimum standards and London Cycling Design Standards guidance.

Network Rail: Have no comments to make on the application.

Environment Agency: No objection to the proposed variation of conditions.

Internal Consultation (and external consultants on behalf of Council)

Responses: summarised as:

Waste Management: 19 flats require suitable space for a total of 3 x 1100 bins for refuse plus 2 x 1280 litre bins for mixed recycling, plus 2 x 240 litre food recycling bins, with the 19th flat triggering the need for a 2nd recycling bin (which could be 660 litres).

One might fit in the existing bin store but this would narrow the available access for occupants and obstruct the inward opening door. If the inward opening door could go outwards and/or be located further down the wall this could allow more space for the additional bin. It is not clear what occupants are intended to do with bulky items awaiting collection. Allocated hard

standing space provision for e.g. a sofa and armchair is an SPD requirement for developments with 10 or more flats.

Biodiversity Officer: The proposed changes would not have any impact on the ecology of the site.

Economic Development (Wandsworth Workmatch): Confirm that no additional employment obligations are triggered via this application.

Lead Local Flood Authority: No flood risk issues with this application.

Director of Housing (Strategy, Compliance and Enabling): The DHSCE is aware that the independent viability review of the scheme undertaken by the Council's consultants (Carter Jonas) in November 2024 concluded that the scheme generated a viability deficit when all 19 units were modelled as private sale. Based on that outcome, they advised that the scheme was unable to provide contributions to affordable housing. A more recent viability assessment has not been provided, but the DHSCE understands that the applicant is willing to provide the 6 x 1-bed flats on the first floor as intermediate tenure affordable housing.

Whilst the present viability position of including 6 x 1-bed intermediate units has not been established, the DHSCE would request the applicant consider providing some 2-bed intermediate units to achieve a unit size mix that more closely complies with the Council's policy objectives for intermediate housing.

If planning consent is granted, the DHSCE requires the Council's intermediate affordability criteria to be applied to the intermediate units as follows:

- 50% of the intermediate units to be affordable to applicants with gross household incomes up to £56,200 p.a. if provided as an intermediate ownership product such as shared ownership, or up to £44,700 p.a. if provided as an intermediate rent product, including London Living Rent.
- 50% of the intermediate units to be affordable to applicants with gross household incomes up to £90,000 p.a. if provided as an intermediate ownership product such as shared ownership, or up to £67,000 p.a. if provided as an intermediate rent product, including London Living Rent.
- Total housing costs (rent, mortgage repayments and service charges) must not exceed 40% of an applicant's net household income, with net household income calculated as 70% of gross household income.

Both affordable and private units are located in a single building with a shared entrance, and whilst this should not present any issues in terms of housing management, the DHSCE expects the applicant to work with the affordable housing provider to ensure that service charges are kept down to a reasonable level.

Flats 2 and 3 on the first floor, both of which form part of the affordable provision, would be designed as accessible to comply with the requirements of Building Regulations Part M4(3) 'Wheelchair User Dwellings'. The DHSCE requires the applicant to consult the Council's Housing Occupational Therapist on the design and detailed layout of these units to ensure they meet the Council's requirements. It is noted however that there is only one lift and so these flats are not ideal for wheelchair users and suggest they are only marketed to those with mobility difficulties who could manage a flight of stairs in an emergency.

RELEVANT PLANNING POLICIES:

National Planning Policy Framework (NPPF) (2024)

Section 2; Achieving Sustainable Development

Section 4: Decision-making

Section 5: Delivering a sufficient supply of homes

Section 6: Building a strong, competitive economy

Section 7: Ensuring the vitality of town centres

Section 9: Promoting Sustainable Transport

Section 11: Making effective use of land

Section 12: Achieving well-designed places

Section 15: Conserving and enhancing the natural environment

Other National Guidance

PPG

National Design Guide (2019), Secured by Design Homes 2019 (version 2, March 2019)

Secured by Design Commercial Developments 2015 (version 2)

Technical Housing Standards – nationally described space standard

London Plan (2021)

GG1 (Building strong and inclusive communities);

GG2 (Making the best use of land);

GG4 (Delivering the homes Londoners need)

GG6 (Increasing efficiency and resilience);

Policy D1 (London's form, character and capacity for growth);

Policy D3 (Optimising site capacity through the design-led approach);

Policy D4 (Delivering good design);

Policy D5 (Inclusive design);

Policy D12 (Fire safety);

Policy H1 (Increasing housing supply)

Policy H6 (Affordable housing tenure)

Policy H10 (Housing size mix)

Policy E7 (Industrial intensification, co-location and substitution);

Policy G5 (Urban greening);

Policy G6 (Biodiversity and access to nature);

Policy SI 3 (Energy infrastructure);

Policy SI 8 (Waste capacity and net waste self-sufficiency);

Policy SI12 (Flood Risk Management);

Policy SI13 (Sustainable drainage);

Policy T4 (Assessing and mitigating transport impacts);

Policy T5 (Cycling);

Policy T6 (Car parking);

Policy T7 (Deliveries, servicing and construction);

Policy DF1 (Delivery of the Plan and Planning Obligations).

Mayor of London's Supplementary Planning Guidance (SPG's):

Housing (2016)

Homes for Londoners: Affordable Housing and Viability (2017)

Character and Context (2014)

Sustainable Design and Construction (2014)

Wandsworth Local Plan (2023):

LP1 (The Design-led Approach);
LP2 (General Development Principles);
LP3 (Historic Environment);
LP7 (Residential Development on Small Sites);
LP10 (Responding to the Climate Crisis);
LP11 (Energy Infrastructure);
LP12 (Water and Flooding);
LP13 (Circular Economy, Recycling and Waste Management);
LP14 (Air Quality, Pollution and Managing Impacts of Development);
LP23 (Affordable Housing);
LP24 (Housing Mix);
LP34 Managing land for Industry;
LP27 (Housing Standards);
LP49 (Sustainable Transport);
LP50 (Transport and Development);
LP51 (Parking, Servicing and Car Free Development);
LP62 (Planning Obligations).

Wandsworth's Supplementary Planning Documents (SPD's):

Housing (2016)
Planning Obligations (2020)
Refuse and recyclables in developments (2014)

Local Plan Review

The Council has submitted amendments to its adopted Local Plan to the Secretary of State for independent examination (as included in the Wandsworth Local Plan Partial Review - Publication (Regulation 19) Consultation): The amendments propose revisions to the following policies:

- LP23: Affordable Housing
- LP24: Housing Mix
- LP28: Purpose-Built Student Accommodation
- LP29: Housing with Shared Facilities
- LP30: Build to Rent
- LP31: Specialist Housing for Vulnerable People and for Older People

The proposed revisions are material to the assessment of planning applications and enforcement decisions, but in line with Paragraph 49 of the NPPF, carry limited weight at present due to their early (pre-examination) stage in the plan preparation process and the need to duly consider unresolved objections.

PLANNING CONSIDERATIONS:

The main considerations material to the assessment of this application have been summarised as follows:

- Principle of Development

- Design
- Standard of Accommodation and unit mix
- Affordable Housing
- Amenity Impact
- Highways and transportation
- Sustainability and environmental considerations
- Fire safety

1 Principle of Development

- 1.1 The currently approved development on the site (under ref. 2019/1427) was allowed on appeal after being refused permission by the Council, and is for 17 residential units together with employment and retail floorspace as part of a mixed-use redevelopment of the site.
- 1.2 The application site is located within the Thornsett Road Locally Significant Industrial Area (LSIA). Policy LP34 of the Local Plan confirms that residential use is not one of the appropriate uses permitted within a LSIA, with the justification for this being that “The encroachment of residential uses into these industrial areas can harm their operation and limit their capacity and, in order to protect the strategic reservoir, the SILs and LSIAs in the borough are therefore not appropriate locations for any sort of residential use”.
- 1.3 As such the residential element (and other non-confirming commercial uses) of the originally proposed scheme were resisted by the Council when it refused planning permission in 2019. The Planning Inspector when allowing the subsequent appeal against the Council’s refusal concluded, however, that residential use *would* be acceptable on the site despite its location within a protected industrial area, stating the proposed flats would provide a benefit in terms of the Government’s objective, as set out in the NPPF, of significantly boosting the local supply of housing.
- 1.4 The Inspector considered that benefit to be further enhanced in this particular case by the highly sustainable location of the site, close to the shops, services and other facilities within Earlsfield centre, and with good access to public transport, as well as the level of affordable housing being offered as part of the development.
- 1.5 Given the conclusions reached by the Planning Inspector when allowing residential use on the site, despite its location within the Thornsett Road LSIA and contrary to the objectives of policy LP34, it would be difficult to now resist the principle of creating additional residential units through internal amendments to the layout of existing floorspace, sub-dividing space within the envelope of the currently approved building.

2 Design

- 2.1 The NPPF attaches great importance to the design of the built environment and good design is a key aspect of sustainable development. As with London Plan policy D1 (London’s form, Character and Capacity for growth) policy LP1 of the Local Plan encourages the optimisation of sites by using a design-led approach to ensure buildings have a high level of physical integration with their surroundings and consideration of broader place-making with developments encouraged to respond to local character and history and to reflect the identity of local surroundings and materials. Design policies should, however, avoid unnecessary prescription or detail

and should concentrate on guiding the overall scale, density, massing, height, landscape, layout, materials and access of new development in relation to neighbouring buildings and the local area more generally.

- 2.2 In this case the proposed amendments being sought would see the overall scale, massing and height of the building remain as currently approved (and as built out) under the currently approved planning permission.
- 2.3 The changes proposed to the external appearance along the Penwith Road frontage at first floor level are modest. They are to align with the proposed internal reconfiguration and include the removal or repositioning of some windows and recesses and the addition of more balconies between the brick columns. These amendments would not significantly alter the appearance of the building, and the overall design concept for this elevation remains as a regular rhythm of brick columns with openings set between them. External materials also remain as previously approved.
- 2.4 The proposal would therefore comply with local plan policy LP1 and the objectives of the London Plan and the NPPF with regard to design considerations.

3 Standard of Accommodation and Unit Mix

- 3.1 The two additional residential units sought under this application are created through rearrangement of internal floorspace within the existing envelope of the building, with associated changes to the unit mix.
- 3.2 As originally approved the 17-unit scheme was for 7 x one-bedroom, 7 x two-bedroom and 3 x three-bedroom flats. The current 19-unit scheme proposes 12 x one-bedroom, 6 x two-bedroom and 1 x three-bedroom units.
- 3.3 Policy LP24 of the Local Plan seeks a range of unit sizes to be provided for market units in new residential developments, with the proportion of one-bedroom units sought indicated between 30-40%.
- 3.4 Under the proposed scheme 6 flats (32%) would be one-bedroom market units. This represents an increase compared to the 3 (18%) one-bedroom market units within the currently approved scheme. This therefore still falls within the appropriate range identified under Local Plan policy LP24.
- 3.5 Policy LP27 of the Local Plan requires new residential units to comply with the Nationally Described Space Standard. Under the Space Standards, a minimum floorspace of 50sq.m is required for a 1-bedroom/2-person unit. The National Space Standards also require a floor to ceiling height of at least 2.3 m for 75% of the GIA.
- 3.6 The unit specification for the proposed 6 flats to be created out of the approved 4 units on this floor would be as follows:
1. One-bedroom, 2 person 51 GIA and 5 sq.m. of amenity space
 2. One-bedroom, 2 person 59 GIA and 5 sq.m. of amenity space
 3. One-bedroom, 2 person 59 GIA and 5 sq.m. of amenity space
 4. One-bedroom, 2 person 50 GIA and 5 sq.m. of amenity space
 5. One-bedroom, 2 person 50 GIA and 5 sq.m. of amenity space
 6. One-bedroom, 2 person 52 GIA and 5 sq.m. of amenity space

The unit sizes, room sizes and floor to ceiling heights would therefore comply with the relevant standards as set out in Local Plan, London Plan and Nationally Described Space Standards.

- 3.7 The other 13 units within the development (located on the second and third floors) would all exceed minimum floorspace standards after the slight amendments to their layouts being proposed as part of this application.
- 3.8 Policy LP27 of the Local Plan states that all new residential development will be expected to provide dual-aspect accommodation, unless it can be suitably demonstrated that a single aspect dwelling would provide for a more appropriate design solution and have sufficient access to daylight and privacy.
- 3.9 In this instance the 6 units being formed would effectively be single aspect, facing in a north-westerly direction. They would include a glazed door facing in a north-easterly direction giving access onto their small front balconies which would give a slight degree of dual aspect.
- 3.10 This arrangement was accepted by the Planning Inspector for the previously approved 4 flat layout at first floor level, and as such it is considered it would be reasonable to continue to accept this arrangement for the 2 additional units. It would, in any case, be impossible to provide dual aspect units given the building is already in place with class E use provided on the remainder of the first floor level facing south-east onto Thornsett Road.
- 3.11 In terms of outdoor amenity space all of the proposed one-bedroom flats at first floor would have a 5 sq.m. balcony. This is half the size normally sought for a new build dwelling of this size under policy LP27. It is acknowledged, however, that the first floor balconies for the four existing approved flats on this level also fall below minimum amenity space size for the units concerned. This arrangement was again accepted by the Planning Inspector when allowing the currently approved scheme despite being contrary to the amenity standards sought under local plan policy at that time.

Accessibility

- 3.12 Policy D5 of the London Plan and Local Plan policy LP27 require developments to be accessible to people with disabilities. 10% of new dwellings should be able to be used by people in wheelchairs at the point of completion, with the remaining new units designed to be accessible or easily adaptable for future wheelchair users.
- 3.13 Two of the six flats now being proposed at first floor level would be provided to Part M4(3) wheelchair user standard (equating to just over 10% of the overall 19 units) with the other units complying with the requirements of M4(2) Accessible and Adaptable Dwellings. These first floor accessible units would replace the previously proposed accessible units which were to have been provided on the second floor of the building under the currently approved scheme.
- 3.14 The proposed Category 3 flats would be of a satisfactory size and layout, however, their location on the first floor presents some issues. As such the Council's specialist

housing occupational therapist officer considers that due to the building having just a single lift these units would not be particularly suitable for marketing to wheelchair users but could be marketed to those with mobility difficulties who could manage a flight of stairs in an emergency.

- 3.15 As stated the building does include a general access lift for non-ambulant users, with the applicants stating it is not feasible to introduce a second lift. Indeed, it is noted that whilst it is good practice part M does not require 2 lifts to be installed for this particular building. The applicants have stated that the single lift would be provided within a separate protected common corridor with a protected ventilation shaft providing at least 60 minutes fire protection. They state that in the event of a fire the lift could therefore potentially still be available for escape for people with impaired mobility.
- 3.16 As approved under the current consent the two M4(3) wheelchair units would be located on the second floor of the building. This would require occupants negotiating approx. 46 stairs from second floor to ground floor level in the event of the single lift not being available during an emergency, whereas this would be reduced to approx. 20 stairs under the current proposal for moving these down to the first floor level.
- 3.17 Whilst clearly this arrangement is not ideal, the relocation of these accessible units to the first floor would be preferable to them being where currently consented on the second floor - a situation that was itself accepted by the Planning Inspector when granting permission for the currently approved development.
- 3.18 On balance, whilst acknowledging these shortcomings it is concluded the proposal represents an improvement in terms of accessibility and degree of compliance with policy LP27 compared to the currently approved situation.

4 Affordable Housing

- 4.1 London Plan policy H4 seeks to maximise the delivery of affordable housing and secure the Mayor's strategic target of 50% of all new homes to be genuinely affordable.
- 4.2 Wandsworth Local Plan policy LP23 states that the Council will seek the maximum provision of affordable housing in accordance with the London Plan strategic target. The policy also requires on-site delivery, with off-site provision only accepted in exceptional circumstances and a payment of a financial contribution only when it is clearly demonstrated to the Council's satisfaction that an alternative site cannot be identified to deliver the affordable housing.
- 4.3 On major new developments local plan policy LP23 seeks a mix of at least 50% low-cost rent products to be provided with a balance of other intermediate products. Development should provide a mix of dwelling sizes that meets identified local housing needs.
- 4.4 Whilst still at an early stage consideration of the Local Plan review has been undertaken. The overall objective to maximise affordable housing delivery is acknowledged, however, as this application relates to variation of an existing consent granted in 2020 and involves alterations to a building that is already in place and

partially occupied, the specific revisions to policy LP23 (Affordable Housing) are not deemed relevant in this case.

- 4.5 The existing consent for the mixed-use development on the site (ref. 2019/1427, allowed on appeal) provides for 17 flats in the residential element of which eight (47% by unit number) were to be affordable housing (shared ownership) units. The approved affordable unit mix was as follows: 3 x 1-bedroom units; 3 x 2-bedroom units; and 2 x 3-bedroom units. In addition to the on-site affordable housing provisions, the S106 legal Agreement which accompanies the permission secures an off-site affordable housing contribution of £254,630 in lieu of additional affordable housing. To date none of these affordable housing provisions have been forthcoming.
- 4.6 The current S73 application proposes to increase the overall number of residential units within the development by two from 17 to 19 flats. There are no significant changes being made to the overall amount of residential and commercial floor space within the erected building, with the revisions to the residential accommodation primarily involving replacing the four flats previously approved on the first floor (comprising 1 x 1-bedroom, 1 x 2-bedroom and 2 x 3-bedroom) with 6 x 1-bedroom flats. Of the proposed 19 resultant units, six (32% by unit) are now being offered as affordable housing on the basis of shared ownership.
- 4.7 When considering the current application it is important to refer back to and understand the application history on this site, particularly in relation to the affordable housing offers and associated viability appraisals.
- 4.8 When undertaking viability assessments, to define land value a Benchmark Land Value (BLV) must be established. This is a critical part of assessing viability, with the BLV the baseline against which the viability of a particular scheme is tested.
- 4.9 The National Planning Practice Guidance states a BLV should be established on the basis of the Existing Use Value (EUV) plus a premium for the landowner. EUV is the value of the land in its existing use (existing use value is not the price paid and should disregard hope value). The 'plus' is the premium, which should reflect the minimum return at which it is considered a reasonable landowner would be willing to sell their land. The premium should provide a reasonable incentive for a landowner to bring forward land for development whilst allowing a sufficient contribution to fully comply with policy requirements.
- 4.10 The originally consented mixed use scheme which includes residential use on the application site (allowed on appeal) was accompanied by a viability appraisal based on the EUV methodology.
- 4.11 Since then subsequent viability assessments submitted by the applicant have used an Alternative Use Value (AUV) methodology instead of an EUV to establish the BLV. This includes the most recent one which was submitted in September 2024 in relation to application 2023/4517 (which was refused consent in December 2024).
- 4.12 When adopting the AUV methodology these appraisals use the alternative all commercial development permitted at the site (on appeal) under application reference 2019/1426 as the basis for the Alternative Use Value. The value of the site with that commercial consent is thereby increased beyond the Existing Use Value used for the initial viability appraisal for the currently consented application 2019/1427. These later

appraisals support the applicants' currently held position that the scheme is no longer viable with regards to being able to provide any affordable housing as part of the development.

- 4.13 When considering viability the National Planning Practice Guidance addresses whether alternative uses can be used in establishing benchmark land value:

For the purpose of viability assessment alternative use value (AUV) refers to the value of land for uses other than its existing use. AUV of the land may be informative in establishing benchmark land value. If applying alternative uses when establishing benchmark land value these should be limited to those uses which would fully comply with up to date development plan policies, including any policy requirements for contributions towards affordable housing at the relevant levels set out in the plan. Where it is assumed that an existing use will be refurbished or redeveloped this will be considered as an AUV when establishing BLV.

Plan makers can set out in which circumstances alternative uses can be used. This might include if there is evidence that the alternative use would fully comply with up to date development plan policies, if it can be demonstrated that the alternative use could be implemented on the site in question, if it can be demonstrated there is market demand for that use, and if there is an explanation as to why the alternative use has not been pursued. Where AUV is used this should be supported by evidence of the costs and values of the alternative use to justify the land value. Valuation based on AUV includes the premium to the landowner. If evidence of AUV is being considered the premium to the landowner must not be double counted.

(Paragraph: 017 Reference ID: 10-017-20190509)

- 4.14 The Council's Local Plan does not specify what should be the basis of assessing BLV. Applying the circumstances set out in the PPG where AUV could be used the guidance states, however, this should only be considered where the uses '*fully comply with up to date development plan policies , if it can be demonstrated that the alternative use could be implemented on the site in question, if it can be demonstrated there is market demand for that use, and if there is an explanation as to why the alternative use has not been pursued*'.
- 4.15 In this case the alternative use on which the applicants later viability appraisals are based is not fully compliant with the Local Plan (adopted July 2023) as it includes uses, namely retail and office use, which are not permitted under policy LP34 due to the sites location within the Locally Significant Industrial Area (LSIA).
- 4.16 It is also, however, acknowledged that in this particular case these non-policy compliant uses were accepted and allowed on the site when planning permission was granted on appeal under application 2019/1426, despite the Council having a similar restrictive-use policy in place. At that time the Planning Inspector acknowledged in his decision that the proposal failed to accord with the adopted development plan by incorporating non-compliant retail and office uses. He concluded in the planning balance, however, that the proposed non-policy compliant elements of the development would be unlikely to undermine the functionality or attractiveness of the industrial offer, and that the redevelopment of the site, without such uses included, would be unviable (albeit also accepting that this should be seen in the context of

there being no assumption under adopted local plan policy of re-development of the site within the Plan period).

- 4.17 What is clear is that the different viability methods are materially different, and that varying the method of benchmarking the site's value has significant implications on establishing its potential to deliver a surplus and thereby provide affordable housing.
- 4.18 The Council have previously accepted a viability appraisal for the application site based on using the AUV methodology after receiving advice that this was a lawful approach to be taken by the applicants. This was in relation to application ref. 2022/1029. This included a proposal identical to the current S73 application to convert the existing 17 residential units into 19 flats and also proposed 6 of the one-bedroom units be provided as affordable housing, but that application also included proposed changes to the use to the existing basement commercial unit. At the time that viability appraisal was submitted the planning permission on which the applicants AUV was based was still extant (with the consent valid until 30 October 2023).
- 4.19 Carter Jonas independently reviewed the applicants viability appraisal on that scheme on behalf of the Council. They stated that the proposed residential-led scheme had not fundamentally changed from when they previously assessed it under the original (appeal allowed) application, but because the AUV now being used was significantly higher than the EUV benchmark value used within the previous viability assessment, the appraisal showed that the proposed scheme could not viably provide any affordable housing. If an EUV-based benchmark were to have been adopted then Carter Jonas were of the view that there would be a significant surplus for use towards affordable housing.
- 4.20 When application 2022/1029 was brought before the Committee in August 2022 Members resolved to grant permission for the development, including the 19 residential units of which 6 (32%) would be affordable.
- 4.21 That recommendation was, however, subsequently amended to a refusal some 14 months later (in October 2023) following the applicants refusal to proceed with the S106 and allow the planning permission to be issued due to their unwillingness to accept a condition restricting the commercial use of the basement unit. Application 2022/1029 was therefore subsequently refused, although this was not on the basis of the proposed residential element of the development or the level of affordable housing being offered, only on the basis of the proposed use of the basement commercial unit.
- 4.22 Following that refusal (and its dismissal on appeal) the applicants made a subsequent application (ref. 2023/4517) relating to the residential element of the scheme only, omitting the proposed changes to the commercial unit which formed the basis of the previous refusal. This application again proposed the 19 residential units, but this time offered only 2 of the one-bedroom units (11%) as affordable housing rather than the previously proposed 6 (32%) of units.
- 4.23 That application was accompanied by an updated viability appraisal (dated September 2024), that was again based on an AUV rather than EUV, with the difference being that the planning permission (ref. 2019/1426) on which the applicants AUV was based had since lapsed.

- 4.24 Carter Jonas again reviewed the submitted viability appraisal and accepted that on the basis of AUV the scheme delivered a deficit. Again, however, they highlighted that if the viability had been considered on the basis of an EUV plus methodology, a wholly private scheme would deliver a surplus.
- 4.25 Application 2023/4517 was subsequently refused consent by Members on the basis that the proposal failed to provide or justify an appropriate level of affordable housing delivery, contrary to adopted policy. The report to committee also highlighted the concern that whilst on-site provision of affordable housing should always be the starting point of any offer, officers and their advisors considered two affordable units likely to be below the threshold that most registered providers would generally seek to acquire on a site and that in practice be very unlikely that the two affordable housing units being offered would actually be taken up by a Registered Provider.
- 4.26 This brings matters to the current position, where the applicants have now submitted another S73 application which, in terms of the residential element, reverts back to the same situation originally proposed under application 2022/1029, namely with 19 residential units proposed of which 6 (32%) are again being offered as affordable units.
- 4.27 The current submission includes an affordable housing statement, this document does not include any new calculations or appraisal but rather it refers back to the previously submitted September 2024 viability appraisal (which given this document is less than a year old is acceptable). To reiterate Carter Jonas who reviewed that last appraisal on behalf of the Council concluded that the proposed development when assessed against AUV is unable to support any affordable housing contribution, but if an EUV plus methodology had been used it would deliver a surplus.
- 4.28 The existing situation on-site is one where the mixed-use redevelopment (with 19 rather than 17 residential units) is already in place, with parts of the new building (both some private residential units and some of the commercial elements) already sold and occupied, but with no affordable housing delivered on site to date.
- 4.29 This is clearly a very frustrating situation to be in nearly 5 years since the original planning permission for the site was granted on appeal, especially given the significant importance the Inspector placed on this when allowing the currently approved development (2019/1427) stating in his decision notice: "*The provision for needed affordable housing in the borough in particular attracts significant additional weight in favour of the Appeal B scheme.*"
- 4.30 The current proposal, whilst disappointing compared to the 47% affordable housing expected under the 2019 scheme, is nevertheless an improved outcome compared to the most recent refused scheme (2023/4517) which only proposed 2 affordable units (equating to an 11% delivery).
- 4.31 The applicants have also highlighted the fact that the Council have previously accepted the principle of the 19 residential units with a 32% contribution towards affordable housing (noting this same arrangement did not form part of the reasons for refusal under application 2022/1029). The applicants therefore consider this to be an acceptable offer to move matters forward.

- 4.32 It is acknowledged that officers and Members did previously accept the principle of a 19 unit residential element on the site with a 32% affordable housing offer, although crucially at that time the scheme on which the AUV methodology was based was still extant.
- 4.33 Despite this the current 32% affordable offer is considered to be a more reasonable offer in terms of delivering some affordable units on the site, and in addressing the surplus identified by Carter Jonas when adopting an EUV plus method rather than the applicants AUV method.
- 4.34 Within the currently submitted affordable housing statement the applicants have also stated that they have an interested party for the proposed 6 one-bedroom affordable housing units and would like to proceed with delivering these as soon as possible.
- 4.35 It is accepted that the delivering of these 6 units, which comprise all of the residential units on the first floor of the building, would be easier to secure a registered provider for than in terms of practical management when just 2 of these were being offered on site with the remaining first floor units proposed to be market tenure.
- 4.36 In summary, it is considered that the applicant has still not robustly justified why AUV should continue to be used to determine the BLV of this site, and as such the conclusions of their latest viability appraisal that the scheme is unable to deliver any affordable housing are not accepted. Despite the conclusions of the applicants own viability report they are nevertheless now offering 6 on-site affordable units rather than just 2 as previously proposed.
- 4.37 The current offer of a 32% affordable housing provision still falls below the 47% that was envisaged at the time of the original planning consent, and on which the Planning Inspector placed considerable weight when permitting the development. On balance, however, officers consider that the current offer, when taking all relevant matters into account, including the current on-site circumstances, now probably offers the best option available to move current, somewhat stalemate position, between the parties forward and secures a reasonable level of affordable housing on the site.
- 4.38 This offer, if accepted, should be secured through a deed of variation to the S106 legal agreement to ensure the 6 affordable housing units are delivered on site and in accordance with the Council's intermediate affordability criteria.

5 Amenity Impact

- 5.1 Local Plan policy LP2 seeks to ensure the amenity of existing and future occupiers is not adversely impacted by a proposal in terms of daylight and sunlight, overlooking, overbearing impact or harm to visual amenities, as well as health and safety issues (noise, vibration, air pollution, light pollution, odours, contamination, disturbance during construction).
- 5.2 The building envelope approved under application 2019/1427 is already in place and there would be no change under the currently proposed S73 application to its overall scale, height or massing.
- 5.3 The internal modifications and layout changes sought on the first and second floor levels have resulted in some windows and balconies on the north facing (Penwith

Road) elevation being slightly amended. These changes do not, however, have any impact on daylight, sunlight or overshadowing. Changes to window positions and balconies on this elevation do not result in any significant changes to outlook, privacy or overlooking beyond that which would already have resulted under the currently permitted development, which itself includes a range of fenestration and balconies on this elevation.

- 5.4 For the reasons outlined above it is considered the proposal would not harm the amenity of occupiers of surrounding sites to an unacceptable degree and would therefore accord with Local Plan policy LP2.

6 Highways and Transportation

- 6.1 Policies LP50 and LP51 of the Local Plan are concerned with promoting sustainable transport and managing the transport impacts of development. The currently approved scheme on the site is car free and this arrangement would remain the same under the proposed S73 application.
- 6.2 The applicant has submitted a Transport Technical Note in support of the application (as an addendum to the initial Transport Assessment submitted with the currently approved scheme). This concludes that the increase in the number of residential units from 17 to 19 would not have any detrimental impact on highway capacity. This conclusion is accepted by the Council's transportation officer.
- 6.3 The site is located in an area with good public transport accessibility (PTAL 5), just a short walk from Earlsfield railway station and close to a number of bus routes on Garratt Lane.
- 6.4 The site is located within the Earlsfield controlled parking zone (CPZ) with parking controls on Mondays to Fridays from 0930 to 1630. As part of the S106 agreement associated with the existing planning permission, future residents of the development are prohibited from applying for residents' parking permits to avoid adding to existing on-street parking stress within the CPZ. This exclusion would similarly be applied to the additional units.
- 6.5 The currently approved development includes a total of 32 secure cycle parking spaces for the residential element. No changes are proposed to this level of cycle provision. This is considered acceptable and would still meet the minimum requirements of the London Plan and the Local Plan.
- 6.6 Consequently, it is considered that the difference in vehicle movements and car parking demand associated with the proposed development would not be materially harmful and the scheme would continue to provide appropriate cycle parking provision. The proposal would therefore accord with the London Plan and policies 50 and LP51 of the Local Plan.

7 Sustainability

- 7.1 London Plan Policy SI2 states that development proposals should make the fullest contribution to minimising carbon dioxide emissions in accordance with the following energy hierarchy:

Be lean: use less energy and manage demand during operation

Be clean: supply energy efficiently and cleanly

Be green: use renewable energy

Be seen: monitor and report on energy performance

- 7.2 Local Plan policy LP10 requires developments to achieve high standards of sustainable design and construction to mitigate the effects of climate change and realise the Council's ambition of becoming zero carbon by 2050.
- 7.3 The current application relates to internal reconfiguration works within the already built envelope of the building, and the additional units formed would be expected to meet and achieve the same minimum targets and energy efficiency measures that have already been secured for the currently approved development.
- 7.4 An Addendum to the approved Energy Assessment accompanies this application. This sets out how the proposal continues to promote energy efficiency through the use of the most suitable technologies for the building use and building layout. The current proposal includes the use of roof mounted photovoltaic panels to provide on-site renewable energy generation to offset on-site carbon emissions with a 24.13 kW peak PV array. This array ensures the development meets the minimum requirement to reduce 35% of its expected on-site emissions to the domestic portion of the building, with an associated carbon off-set payment to achieve zero carbon.
- 7.5 The development has also been future proofed to allow for connection to a District Heat Network should one become available in the locality.
- 7.6 These measures have already been secured through existing conditions and obligations in the S106 legal agreement and would be carried over onto any new consent.
- 7.7 London Plan policy SI 5, and the Council's adopted local plan require new dwellings to be designed to ensure a maximum of 110 litres of water is consumed per person per day. Local plan policy LP10 also reflects these requirements. This is secured by condition on the existing consent and would again be carried over onto any subsequent new consent issued under this S73 proposal.
- 7.8 Subject to the conditions and S106 obligations specified regarding energy savings being achieved, and a mechanism to secure the updated carbon offset payment, the proposal is considered to comply with the objectives of the London Plan and Local Plan policy LP10.

8 Flood Risk and SuDs

- 8.1 The application site lies within Flood Zone 2 (defined as having a 0.1-1% annual probability of fluvial flooding, or a 0.1-0.5% probability of tidal flooding). The main source of flood risk is from the River Wandle which lies some 35m to the west of the application site.
- 8.2 The approved wider development includes various mitigation measures relating to finished floor levels, provision of a flood storage tank in the basement, implementation of a surface water drainage strategy and preparation of a flood response plan. These provisions are secured by conditions under the existing consent.

- 8.3 As there are no significant changes proposed to the external structure of the building or to the form of the basement, the remodelling of the first floor to provide 6 residential units rather than 4 would not increase the flood risk of the site. The content of the Flood Risk Assessment for the whole development, including the proposed flood mitigation recommendations, would still apply and the proposal would not exacerbate flood risk elsewhere.
- 8.4 The proposal would therefore continue to meet the requirements of policy LP12 of the Local Plan and effectively manage flood risk, drainage and water resources.

9 Waste Management

- 9.1 Policy LP2 of the Local Plan sets out that developments must include sufficient waste and recycling storage facilities on-site. The Council's adopted Refuse and Recyclables SPD outlines requirements for communal general and recycling bins in developments of 5 or more units.
- 9.2 A ground floor bin stores accessed internally from the building and externally from Thornsett Road is currently approved on the site. An increase from 17 to 19 flats would require suitable space for an additional recycling bin. The bin store appears to be large enough to allow for this, although arrangements to maintain unobstructed access for occupants and collection to all bins would need to be maintained and properly managed.
- 9.3 Separate bin stores are provided for the commercial waste, which is likely to be serviced through private collection.
- 9.4 Overall, the proposal is considered to be in an acceptable degree of accordance with policy LP2 and the Refuse and Recyclables SPD in terms of waste storage and collection facilities, particularly when taking account of the currently permitted development and its accepted arrangements.

10 Fire Safety

- 10.1 Policy D12 of the London Plan requires that in the interests of fire safety and to ensure the safety of all building users that development proposals achieve the highest standards of fire safety, and that these are embedding at the earliest possible stage.
- 10.2 The building has already been constructed on site, however, the applicants have submitted an updated Fire Safety Statement to take account of the proposed internal and minor external amendments being sought.
- 10.3 The submission includes details of fire appliance access and means of escape, fire detection and means of warning, and confirms the use of non-combustible materials in the buildings construction. It outlines how the development would continue to meet the relevant fire regulation requirements to make it both safe and compliant with Building Regulations.
- 10.4 The information submitted is considered sufficient to meet the requirements of London Plan policy D12.

11 S.106 Planning Obligation

- 11.1 The existing S106 legal agreement associated with the currently approved development includes obligations relating to the provision of affordable housing; exclusion of the development from being able to apply for parking permits within the CPZ; travel plan obligations; carbon off-set contribution; future proofing the development with regard to district heating network connection; the provision of management workspace and a local employment agreement.
- 11.2 It is a procedural function that a S73 application to vary conditions results in a new planning permission being issued. If the proposal is found to be acceptable to the Planning Applications Committee a deed of variation to the existing section 106 legal agreement under application ref.2019/1427 would therefore be required to capture and bring forward all the obligations within the existing S106 to any new permission granted under the current application ref. 2025/1633, whilst taking account of the proposed changes to the affordable housing provision within this.

12 Conclusion/Planning Balance

- 12.1 Consideration has been given to section 38 (6) of the Planning and Compulsory Purchase Act 2004 which requires decision makers to have regard to the Development Plan when determining planning applications unless material considerations indicate otherwise, and to the NPPF which states that there is a presumption in favour of sustainable development.
- 12.2 The overall scale and mass of the overall development would not alter under the S73 proposals. It is considered that the proposed design changes to the Penwith Road elevation are of a relatively minor nature and would physically integrate well with the approved building. The overall character and appearance of the development would remain as currently approved. The proposal would comply with Local Plan policy LP1 and the provisions of the NPPF with regards to design considerations.
- 12.3 The internal reconfiguration to the layout of the building to provide 6 smaller rather than 4 larger residential units on the first floor, together with minor modifications to the approved layouts at second floor level, would provide an acceptable standard of accommodation for future occupiers in relation to unit size, and access to daylight, outlook, privacy and amenity space, in accordance with policy LP27 of the Local Plan.
- 12.4 The proposed development would not cause any significant harm to the amenities of surrounding residential properties in relation to loss of daylight, sunlight, outlook or privacy, nor would it be likely to result in any additional excessive levels of noise and disturbance over and above that which could be expected from the currently consented scheme. The development would be in accordance with policy LP2 of the Local Plan with regards to amenity impact.
- 12.5 The proposed development would continue to be car-free. It is expected that the vehicle movements and car parking demand associated with the proposed development would not be materially harmful. Satisfactory cycle parking facilities would continue to be provided. The development does not to raise any significant transport concerns and would be in accordance with Local Plan policies LP50 and LP51.
- 12.6 Subject to compliance with current conditions and S106 obligations, the proposal is considered to be acceptable in terms of energy saving, limiting water consumption,

reducing flood risk, waste management and fire safety, in accordance with policies LP2 and LP10 of the Local Plan and London Plan policy D12.

- 12.7 Areas of policy non-compliance with the development include the principle of adding residential use within the LSIA, contrary to Local Plan policy LP34. As noted in the assessment above, however, the Planning Inspector when allowing the current development on the site, which already includes 17 residential units, placed weight on the Government's objective, as set out in the NPPF and the London Plan, of significantly boosting the local supply of housing, and considered that residential use in this highly sustainable location with good access to public transport was acceptable, despite its location within a protected industrial area. Whilst providing 2 additional residential units the current proposal would not result in any further significant loss of industrial floorspace as it would principally involve reconfiguration of the internal layout of the existing permitted residential units within the building.
- 12.8 The S73 proposal would provide a total of 19 residential units of which 6 one-bedroom flats (32%) have been identified by the applicant as being provided as affordable units on the basis of shared ownership. This represents a significant reduction in affordable housing compared to the 47% (8 out of 17 units) approved under the currently consented scheme.
- 12.9 The applicants rely on a previously submitted viability report (dated September 2024) which has been assessed independently on behalf of the Council. The Council's independent advisor concludes that when benchmarking the site's value using the Alternative Use Value (AUV) adopted by the applicants the scheme cannot viably deliver any affordable housing provision. When adopting the alternative methodology of Existing Use Value plus to establish the Benchmark Land Value the Council's advisors conclude the scheme would deliver a surplus.
- 12.10 The planning permission (ref. 2019/1426) on which the applicants AUV is being based has now lapsed and is therefore not capable of being implemented. In addition, a different development (approved under application ref. 2019/1427) is essentially completed on site and is partially occupied, and it would be that consent that would be adapted to implement the S73 proposal. The applicants have not robustly justified why the AUV methodology should be used to determine the BLV instead of EUV plus, which the Council contend is the correct method of calculating the Benchmark Land Value in this case.
- 12.11 Despite the opposing positions taken by the applicants and the Council on the correct way of establishing the BLV and therefore on the viability of the development, the applicants have offered an on-site provision of six one-bedroom affordable units (on the basis of shared ownership), representing a 32% affordable provision. They have also indicated that they have a provider ready to take up these affordable units.
- 12.12 The Local Plan Review, as stated above, has little weight at this stage and its provisions are not specifically relevant to this S73 case. Whilst the affordable housing offer is disappointing compared to what was originally envisaged as being provided on this site, the current offer is, on balance, considered acceptable.
- 12.13 The application proposal has some areas of policy compliance and some areas of non-compliance and disbenefits as summarised above. Overall, and in the planning balance, when taking the development plan as a whole, as well as taking account of

the existing consent for the site which is a material planning consideration, as well as the planning history since then, in this instance, it is not considered that the identified harm would outweigh the benefits. Planning permission should therefore be granted, subject to a deed of variation to secure the on-site affordable housing, as well as linking this consent to the other obligations within the existing S106 agreement.

RECOMMENDATION: Approve subject to deed of variation of Section 106.

The Head of Service be authorised to Approve the application as delegated by the Planning Applications Committee subject to the following actions:

1) The completion, at the cost to the Applicant, of a Deed of Variation under the Town and Country Planning Act 1990 in a form accepted by the Head of Service as securing the provisions detailed in section 11 of the report;

OR

In the event that the legal agreement is not completed within six months of the date of the PAC resolution and no alternative date for completion being agreed with the Assistant Director (Planning & Transport Strategy) to REFUSE permission for the substantive reason that the scheme fails to mitigate the adverse impacts noted within the officer report and is therefore contrary to the policies contained within the Development Plan

Subject to the following:

Revised conditions:

2. The development hereby permitted shall be carried out in accordance with the following approved plans: 5219-BAL-ZZ-GF-DR-A-07-0402; 5219-BAL-ZZ-01-DR-A-07-0403; 5219-BAL-ZZ-R-DR-A-07-0404; 5219-BAL-ZZ-XX-DR-A-07-0405; 5219-BAL-ZZ-XX-DR-A-07-0406; 5219-BAL-ZZ-XX-DR-A-07-0407; 5219-BAL-ZZ-A2-DR-A-07-0408 rev. P3.

Reason: To ensure a satisfactory standard of development and to allow the local planning authority to review any potential changes to the scheme.

27. The residential (Class C3) accommodation hereby approved shall not exceed 19 units overall.

Reason: To control the number of residential units, to accord with the planning application, in accordance with Core Strategy Policy IS5 and DMPD Policy DMH3.

Other existing conditions to be carried from the original permission to the S73 consent:

1. The development hereby permitted shall begin no later than 3 years from 30th October 2020.

[NOTE: Condition complied with].

3. No development shall take place, including any demolition, until a construction management plan has been submitted to and approved in writing by the local planning authority. The construction management plan shall include details of (but not be limited to) the routing of construction vehicles, time of vehicle arrival and departure, any proposed temporary traffic and pedestrian management measures during the course of construction and shall include measures to mitigate against the impact of noise, dust and low air quality, based on AQDRA (Air Quality and Dust Risk Assessment). The demolition and construction works shall be carried out in accordance with the approved plan.

[NOTE: Condition discharged under application ref. 2021/1369 dated 09/07/2021]

4. No development shall take place, including any demolition, until a stage 1 written scheme of archaeological investigation (WSI) has been submitted to and approved in writing by the local planning authority. For land that is included within the WSI, no demolition or development shall take place other than in accordance with the agreed WSI, and the programme and methodology of site evaluation and the nomination of a competent person(s) or organisation to undertake the agreed works. If heritage assets of archaeological interest are identified by stage 1 then a stage 2 WSI shall be submitted to and approved by the local planning authority in writing. For land that is included within the stage 2 WSI, no demolition/development shall take place other than in accordance with the agreed stage 2 WSI which shall include: A. The statement of significance and research objectives, the programme and methodology of site investigation and recording and the nomination of a competent person(s) or organisation to undertake the agreed works; B. The programme for post-investigation assessment and subsequent analysis, publication and dissemination and deposition of resulting material. This part of the condition shall not be discharged until these elements have been fulfilled in accordance with the programme set out in the WSI.

[NOTE: Condition discharged under application ref. 2021/1769 dated 24/08/2021]

5. Prior to commencement of development full details of existing and proposed site levels shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

[NOTE: Condition discharged under application ref. 2021/1369 dated 09/07/2021]

6. No piling shall take place until a piling method statement (detailing the depth and type of piling to be undertaken and the methodology by which such piling will be carried out, including measures to prevent and minimise the potential for damage to subsurface water infrastructure and protocol for vibration monitoring, and the programme for the works) has been submitted to and approved in writing by the local planning authority. Any piling shall be undertaken in accordance with the terms of the approved piling method statement.

[NOTE: Condition discharged under application ref. 2021/1369 dated 09/07/2021]

7. Prior to commencement of any superstructure works details and samples of materials proposed to be used on all external surfaces of the development shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved materials. Superstructure in this instance is defined as any works following the construction of the ground floor slab.

[NOTE: Condition discharged under application ref. 2021/1369 dated 09/07/2021]

8. Prior to commencement of any superstructure works details of landscaping and treatment of those parts of the site not covered by buildings, to include hard landscaping materials, species of new planting/seeding, including full details of any tree pits, and details of any existing plants/trees to be retained, shall be submitted to and approved in writing by the local planning authority. All planting, seeding, and turfing included in the approved details shall be carried out prior to the occupation of any part of the development, or in accordance with a programme agreed in writing with the local planning authority. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority agree otherwise. Superstructure in this instance is defined as any works following the construction of the ground floor slab.

[NOTE: Condition discharged under application ref. 2021/1369 dated 09/07/2021]

9. The refuse and recycling storage facilities shall be provided in accordance with the approved plans prior to first occupation of the development and shall be retained as such thereafter.

10. Details of any external plant or ventilation equipment, including ducting and air conditioning units, and the measures to be taken to control noise, vibration and air quality in relation to this equipment, shall be submitted to and approved in writing by the local planning authority prior to its installation. The equipment shall be installed in accordance with the approved details and thereafter operated and maintained in accordance with the manufacturer's instructions.

(NOTE: Details approved under application ref. 2022/4387 dated 15/12/2022 and application ref. 2023/2937 dated 28/09/2023)

11. Prior to the first occupation of any part of the development hereby approved: the cycle storage areas shall be provided in accordance with the approved plans, and fitted with cycle parking facilities in accordance with further details of their type, design and position which shall firstly be submitted to and approved in writing by the local planning authority; and shower and locker facilities for the associated cyclists shall be installed in accordance with details which shall firstly be submitted to and approved in writing by the local planning authority. The approved cycle storage areas and associated parking, shower and locker facilities shall be retained permanently thereafter for their intended purpose.

(NOTE: Condition discharged under application ref. 2022/2802 dated 10/03/2023)

12. Prior to occupation of any part of the development, details of a delivery and servicing plan, including hours of operation, shall be submitted to and approved in writing by the local planning authority. The development shall be occupied and operated in accordance with the approved delivery and servicing plan.

(NOTE: condition discharged under application ref. 2022/2802 dated 10/03/2023 and application ref. 2023/4215 dated 05/01/2024)

13. Prior to the commencement of development (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 shall each be submitted to and approved in writing by the local planning authority: 1) An additional site investigation scheme, based on the existing Phase 2 report, to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site. 2) The results of the site investigation and detailed risk assessment referred to in (1) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken. 3) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (2) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action. Any changes to these components require the express consent of the local planning authority. The scheme shall be implemented as approved.

[NOTE: Condition discharged under application ref. 2021/1369 dated 09/07/2021]

14. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted and obtained written approval from the local planning authority for, a remediation strategy detailing how this unsuspected contamination shall be dealt with. The remediation strategy shall be implemented as approved, verified and reported to the satisfaction of the local planning authority.

15. No development shall be commenced, other than demolition, until a drainage strategy detailing any on and/or off-site drainage works and the timetable for its implementation has been submitted to and approved in writing by the local planning authority. Whilst the principles and installation of sustainable drainage schemes are to be encouraged, no drainage systems for the infiltration of surface water drainage into the ground are permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to Controlled Waters. The development shall be carried out in accordance with the approval details.

[NOTE: Condition discharged under application ref. 2021/1769 dated 24/08/2021]

16. The development shall not be occupied until details have been submitted to and approved in writing by the local planning authority to demonstrate that the development has been carried out in accordance with the approved Sustainability Statement by Max Fordham, dated March 2019. These details shall demonstrate that the development has secured a minimum 35% reduction in CO2 emissions below the maximum threshold set in Building Regulations Part L 2013.

(NOTE: Condition discharged under application ref. 2022/2802 dated 10/03/2023)

17. The development shall achieve a minimum 'Outstanding' rating under BREEAM UK New Construction 2014 (or such equivalent standard that replaces this) for the Shell/Shell and Core stage and an 'Outstanding' rating under BREEAM Refurbishment and Fit-Out 2014. Where it is not possible to achieve BREEAM 'Outstanding' the pre-assessment shall fully demonstrate this and detail how the developer has strived to maximise the score

achieved and has aimed to target all mandatory BREEAM 'Outstanding' Credits. a) Within 3 months of works (other than demolition) commencing on the site, unless otherwise agreed in writing by the local planning authority (LPA), a BREEAM UK New Construction 2014 (or such equivalent standard that replaces this) Shell and Core Interim (Design Stage) Certificate for the non-residential element of the development, issued by the Building Research Establishment (BRE), shall be submitted to the LPA to show that a minimum 'Outstanding' rating will be achieved. b) Within 3 months of first occupation of any part of the non-residential element of the development, unless otherwise agreed in writing, a BREEAM UK New Construction 2014 Shell and Core Final (Post-Construction) Certificate (or such equivalent standard that replaces this) for the non-residential areas, issued by the BRE, shall be submitted to and approved in writing by the LPA to demonstrate that an 'Outstanding' rating has been achieved. All the measures integrated shall be retained for as long as the development is in existence. c) Prior to commencement of the fit-out of any non-residential unit within the development, unless otherwise agreed in writing by the local planning authority, a BREEAM Refurbishment and Fit-out 2014 Parts 3 and 4 Interim (Design Stage) Certificate, issued by the BRE shall be submitted, by the fit-out contractor for that unit, to and approved in writing by the LPA to show that a minimum 'Outstanding' rating will be achieved. d) Within 3 months of first occupation of any of the non-residential units within the development, unless otherwise agreed in writing by the LPA, a BREEAM Refurbishment and Fitout Parts 3 and 4 Final (Post-Construction) Certificate, issued by BRE, shall be submitted, by the fit-out contractor for that unit, to and approved in writing by the LPA to demonstrate that an 'Outstanding' rating has been achieved. All the measures integrated shall be permanently retained thereafter unless otherwise agreed in writing by the LPA.

(NOTE: Condition partially discharged under application ref. 2022/5128 dated 08/02/2023 and partially discharged under application ref. 2024/2225 dated 16/08/2024)

18. Details of any external lighting proposed within the development, both during the construction phase and thereafter, shall be submitted to and approved in writing by the local planning authority before its installation, including clear georeferenced lux contour plans and details of measures to control light spill. The lighting shall be installed and maintained in accordance with the approved details.

[NOTE: Condition discharged (construction phase only) under application ref. 2021/1769 dated 24/08/2021 and under application ref. 2022/5128 dated 08/02/2023).

19. No development shall take place until a scheme of proposed air quality mitigation measures to protect future occupiers of those parts of the development fronting Penwith Road from air pollution exposure has been submitted to and approved in writing by the local planning authority. The submitted mitigation scheme shall follow a baseline monitoring period through NO₂ diffusion tube to establish the required level of mitigation. The scheme for air quality mitigation applicable to each part of the development fronting Penwith Road shall be implemented in its entirety in accordance with the details approved under this condition before that part of the development is first occupied, and the measures shall be retained as such thereafter.

[NOTE: Condition discharged under application ref. 2021/1769 dated 24/08/2021].

20. The use of non-road mobile machinery of net power between 37kW and 560kW used in the construction of the development shall meet at least Stage IIIB of the EU Directive 97/68/EC and its amendments. This will apply to both variable and constant speed engines for both NO_x and PM. Prior to works commencing on site, any non-road mobile machinery of net power between 37kW and 560kW to be utilised in the construction of the development shall be registered on the web-site <https://nrmm.london/>.

21. The development hereby approved shall be carried out in accordance with the recommendations of the submitted flood risk assessment by JBA Consulting, dated December 2018, and the mitigation measures within that report shall be fully implemented before occupation of any part of the development.

22. No works shall be commenced to the residential units at first floor level and above, until details of a scheme of measures to provide effective resistance to the transmission of airborne and impact sound from the non-residential units immediately below or adjacent to them have been submitted to and approved in writing by the local planning authority. The scheme shall be in accordance with British Standard: 8233 Guidance on sound insulation and noise reduction for buildings and the approved measures shall be installed prior to the first occupation of the affected residential units and shall be retained thereafter.

(NOTE: Condition discharged under application ref. 2022/2802 dated 10/03/2023)

23. Other than those areas specifically identified as such on the approved plans, no roof area of the development hereby permitted shall be used as a balcony, roof terrace or similar amenity area without the prior written consent of the local planning authority.

24. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any future amendment to or reenactment of that Order, no satellite dishes, telecommunications masts or equipment or associated structures, shall be installed on the approved buildings without the prior written approval of the local planning authority.

25. No internal fit-out to the proposed residential units shall be commenced until details have been submitted to and approved in writing by the local planning authority to show how for the residential part of the development a maximum water use of 110 litres per person per day will be achieved in line with the Water Efficiency Calculator for new dwellings from the Ministry of Housing Communities and Local Government published in 2009. The measures concerned shall be installed in accordance with the approved details before any residential unit is occupied and shall be retained thereafter for as long as the development is in existence.

(NOTE: Condition discharged under application ref. 2022/2802 dated 10/03/2023)

26. No more than 6 of the private residential units within the development shall be occupied until all of the industrial floorspace (Class B1c and B8) within the development hereby approved has been practically completed and is available for fit out and occupation.