

Recommendation Report for Approval of Reserved Matters Following Outline Approval

REF NO:	AL/50/24/RES
LOCATION:	Land to the rear of Meadow Way Westergate
PROPOSAL:	Reserved matters application for the appearance, landscaping, layout and scale (pursuant to outline permission AL/178/22/OUT) for the construction of up to 89 residential dwellings, open space, and associated works. This application is in CIL zone 3 and is CIL liable as new dwellings.

<b>SITE AND SURROUNDINGS</b>
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DESCRIPTION OF APPLICATION	<p>The application seeks reserved matters for 89 dwellings with associated public space, landscaping, parking, ecological mitigation, and drainage. Approval of scale, layout, external appearance, and landscaping are sought. AL/178/22/OUT approved the access arrangements.</p> <p>Of the 89 total, 27 will be affordable units (7 first homes, 18 affordable rented, 2 shared ownership). In addition, 43 of the homes (28 market &amp; 15 Affordable) will be built to the M4(2) Building Regulations standard and 4 will be to the M4(3) standard, the latter being solely within the affordable tenure.</p> <p>The scheme includes 213 allocated parking spaces plus 18 visitor spaces. Five of the allocated spaces meet the disabled standard and are provided for the M4(3) units. Cycle parking is indicated to either be within cycle storage sheds in rear gardens, in garages or a communal store. All properties will have bin storage spaces and there will be bin collection points dotted around the layout. Plans of the garages and the cycle sheds are included.</p> <p>With the exception of the flatted buildings (3 storeys), all other dwellings are two storeys. The flatted building provides 9 x 1 bed units and there are also two pairs of maisonettes with 1 bedroom each. The building designs are mixed with several different house types including detached, semi-detached, and terraced.</p> <p>As per the outline permission, the site will have a main vehicular access onto Meadow Way on the eastern side of the site. This takes the form of a 5.5m wide carriageway with a 2m footway on one side. These dimensions and arrangement continues through the layout via the main estate road. A footpath will be provided on the western side to meet Hook Lane and there will also be a footpath link at the eastern end</p>
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onto the footpath that runs parallel. The latter includes a tactile paved crossing point in the estate road to allow the footpath to be reached from the new footway.

The submission is presently unclear with regard to the amounts of Public Open Space (POS), but the main area is at the eastern edge although this is also shown as drainage attenuation. This area also includes equipped and unequipped play areas. There are additional landscaped/wildlife buffer areas along the northern and southern boundaries and at the western end. An electric substation is shown adjacent to the main estate road just in from the site access, but no details are provided as to its appearance.

Following a meeting between the applicant, planning consultant and the case officer on 18 July, the applicant submitted a written response to the issues raised on 02 August including a set of amended plans designed to resolve the stated concerns. This submission has been reviewed as a whole but has not been accepted as an amendment to the scheme as it conflicts with the council guidance on determining planning applications and would require consultation that would delay determination of the application.

Para 061 (Reference ID: 14-061-201403060 of the PPG makes it clear that it is at the discretion of the Local Planning Authority whether to accept changes to an application that are designed to overcome objections, to determine if the changes need to be re-consulted upon, or if the proposed changes are so significant as to materially alter the proposal such that a new application should be submitted.

The applicant has highlighted the Government's recent Ministerial Statement (30 July 2024) which sets out that the focus should be on 'turbo boosting' the supply of housing across the UK and is a material consideration. They consider on this basis, amendments to this application should be allowed so as not to delay delivery of the homes. The LPA accept the need to increase housing delivery but this should not be at the expense of poor design and the determination of this application at the current time will provide an opportunity for the issues to be properly resolved through the planning process in order to secure a sustainable and well-designed housing development that contributes in a positive way to the local area not just through the delivery of homes.

SITE AREA	3.80 hectares
RESIDENTIAL DEVELOPMENT DENSITY	23.4 dwellings per hectare.
TOPOGRAPHY	The site and surrounding land is generally level.
TREES	There are no trees within the site area but there are trees, tree groups and hedges along all of the boundaries. The

application proposes to remove part of tree group G6, the whole of G7 Beech, and part of G10 all to facilitate the site access from Meadow Way. The site is covered by a Tree Preservation Order (TPO) which protects 2 x Oak trees on the western boundary, a group of 2 Coast Redwoods also on the western boundary, and 2 x Oak Trees on the eastern boundary. TPO tree T1 is proposed to be crown lifted to provide circa 2.5m vertical ground clearance on the eastern side. The other (non-TPO) pruning works are as follows:

T1 - Crown lift radially to provide circa 2.5m vertical ground clearance.

T2 - Crown lift radially to provide circa 2.5m vertical ground clearance.

H2 - Selectively prune the hedgerows eastern and western extents by circa 1.5m to provide sufficient room for construction.

G3 - Selectively prune oversailing parts of the group's eastern crown spread by up to circa 1-2m to enable the erection of boundary treatments.

**BOUNDARY TREATMENT**

The site is bordered by mature trees to the west, a hedgerow to the south, hedgerows/mature trees to the north, and mature trees/residential fences to the east.

**SITE CHARACTERISTICS**

The site comprises a single large arable field which is bordered to the south by a footpath with residential development beyond, to the west by a residential property and Hook Lane, to the east by a group of dwellings on Meadow Way and to the north by an open field with agricultural buildings.

**CHARACTER OF LOCALITY**

The site is located to the north and west of existing residential development. Existing residential development is predominantly low density and one or two storeys in height.

**RELEVANT SITE HISTORY**

AL/178/22/OUT	Outline planning application with all matters reserved, except principal means of access and demolition of 24 Meadow Way, for the construction of up to 89 No residential dwellings, with access taken from Meadow Way, together with the provision of open space, landscaping and associated infrastructure.	Refused 26-04-23
		<b>Appeal: Allowed+Conditions 08-12-23</b>
AL/107/16/RES	Application for Reserved Matters application following Outline Planning Permission AL/39/13 for the demolition of Oakdene and all other structures within the site and the erection of 79 dwellings, public open space, children's play areas, landscaping, drainage measures, sub-station, pumping station and all other associated	ApproveConditionally 24-05-17

works.

AL/178/22/OUT was allowed on appeal in December 2023. The land to the immediate south was granted reserved matters in 2017 (AL/107/16/RES) for 79 dwellings and has been completed. No pre-application advice was sought prior to this submission.

## REPRESENTATIONS

Aldingbourne Parish Council object for the following reasons:

- (1) Occupation of the site must be phased to align with sewage treatment reinforcement works.
- (2) The flatted building is not in character with the surrounding development.
- (3) The site is prone to groundwater flooding which could compromise the surface water drainage system
- (4) The drainage submission is incomplete and inadequate to demonstrate drainage of the whole site.
- (5) Inappropriate lighting scheme particularly the tall columns at plots 56 & 57, impact on protected bat species.
- (6) No details of any works to widen/light the existing footpath to which the Parish Council would object strongly to.
- (7) No development should commence until after the A29 realignment works have taken place; and
- (8) Do not require any more playgrounds in the Parish and would prefer allotments.

35 letters of objection raising the following concerns:

- (1) The previous application on this site was refused.
- (2) No requirement for 89 homes in this location and conflict with the Neighbourhood Plan.
- (3) Loss of grade 1 agricultural land.
- (4) Harm to wildlife using the field.
- (5) Light and Noise pollution from use of the access.
- (6) The vehicular access should be from Hook Lane.
- (7) Vehicle tracking drawings do not include the access with Meadow Way.
- (8) No detail on the access with Meadow Way.
- (9) Access not wide enough to allow refuse collections.
- (10) No details on construction traffic/parking.
- (11) Local bus services are inadequate.
- (12) Demolition of a house to create the access.
- (13) Harm to bats navigating in the area.
- (14) Colony of Slow worms on the site.
- (15) Great Crested Newts present in the area.
- (16) Occupation of the site must be phased to align with sewage treatment reinforcement works.
- (17) The site is prone to ground and surface water flooding which will be exacerbated by runoff.
- (18) Increased congestion and safety issues on the A29 and at the access junction with Meadow Way.
- (19) The development must contribute to local infrastructure.
- (20) Local medical and education services are inadequate.
- (21) Overlooking and loss of light from the flatted building.
- (22) Security concerns due to site access/main estate road proximity to Lamorna Gardens residents.
- (23) Impact of new lighting on dark skies.
- (24) Noise disturbance from the proposed play area.
- (25) Noise/disturbance from the sales area which should be moved away from existing houses.
- (26) Harm to offsite trees.
- (27) Insufficient bat/bird nesting bricks.

- (28) No bungalows are proposed.
- (29) The flatted building is not in character with the surrounding development.
- (30) Don't want any works to take place to the footpath.
- (31) Do not require any more playgrounds in the Parish and would prefer allotments.
- (32) No information whether overhead cables removed or retained and the impact of this on electricity supplies.
- (33) Location of the substation near houses.
- (34) Negative impact of affordable housing on the attractiveness of the area.
- (35) Clustering of affordable housing.
- (36) Houses should only be sold to local people.
- (37) Impact on a private right of way across the land at the western end.
- (38) No. 23 Meadow Way does not want their house affected by the demolition of 24; and
- (39) No community consultation by Redrow.

#### COMMENTS ON REPRESENTATIONS RECEIVED:

Many of the issues raised are relevant to either the principle of development or the access arrangements and so relate to the outline application. These include Parish Council objections (3) & (7) and local resident objections (1) to (9), (11) to (15), and (17) to (20). The same is true of matters relating to construction management, foul and surface drainage strategies as these matters are covered by conditions attached to the outline permission. As these are not relevant to the reserved matters, it is not relevant to respond to these through this report. In respect of the remainder of the objections these are either discussed in the conclusions section or commented on below.

#### Parish Council:

- (5) The council's ecologist shares a concern with the lighting scheme in relation to bats and this is discussed in the conclusions however it should be noted that the light installations adjacent to plots 56 & 57 are bollard style lights not columns.
- (6) There are no proposals to widen or light the existing footpath. All lighting on the southern boundary is bollard style; and
- (8) The outline permission contains a condition that requires the scheme provide public open space and play areas. To deviate from this would require a variation of condition application by the applicant. The councils Landscape Officer also sets out a requirement for play areas. Finally, to rely on off-site play areas would likely result in residential occupiers driving to access such facilities and thus affect the sustainability of the development site.

#### Local Residents:

- (22) The security concerns are noted but it is material that the development has been approved in principle and the vehicular/pedestrian access arrangements also agreed. There is also a hedged public footpath between the development and Lamorna Gardens that provides a natural barrier.
- (24) The proposed play area will generate some noise, but it is sited 30m from the nearest existing residential garden and 43m from the nearest dwelling. These distances are sufficient to prevent disturbance particularly given the backdrop of a new residential estate. Noise levels will not be constant and will also be dependent on the prevailing wind direction/strength.
- (25) The sales area has to be positioned close to the site access as otherwise there would be conflict and safety issues between customers and construction works. The sales area use will not be any noisier than a normal residential use and will also only be temporary.
- (28) Council policy does not require the use of bungalows for a site of this size.
- (30) Refer to point (6) above.
- (31) Refer to point (8) above.

(32) Temporary impact on electricity supply is not a material planning considerations.

(34) Planning policy stipulates that 30% of all homes must be affordable in nature therefore it is a requirement that the development provide these.

(36) The s106 agreement signed in relation to the outline permission did not contain a stipulation that the homes must only be sold to local people, and it is not possible to introduce such a requirement at this stage.

(37) Land ownership is not a material planning consideration. The presence of a planning permission does not allow the person/s benefiting from that permission to use or misuse land that does not belong to them. Land ownership issues are instead governed by civil law.

(38) Permission has been granted to create the access by demolishing no. 24. The applicants will need to enter into a party wall agreement with no. 23. This is not a material planning consideration; and

(39) Whilst it is actively encouraged, there is no actual planning requirement for the applicant to carry out community consultation.

## CONSULTATIONS

### CONSULTATION RESPONSES RECEIVED:

SUSSEX POLICE - no objection but list a number of advisory notes regarding improving security.

SOUTH DOWNS NATIONAL PARK - no objection in regard to impacts on the setting of the National Park. This is in light of (1) the distance of the site from the National Park boundary; (2) the intervening development (including the A27); and (3) the topography and landscape character of the intervening area which does not create any visual relationship between the site and the National Park. However, request that lighting be carefully considered.

WSCC FIRE & RESCUE - request that a condition be imposed to secure sufficient fire hydrants.

WSCC HIGHWAYS - request more information/plan amendments with respect to pedestrian footways, pedestrian crossing points, surface materials, and cycling facilities.

WSCC LEAD LOCAL FLOOD AUTHORITY - object due to the absence of an acceptable Drainage Strategy having regard to local and national policy requirements. List nine issues that require addressing through a revised Strategy.

ADC TREE OFFICER - objects due to the relationship of important offsite (TPO protected) trees and proposed plots 38 & 46-48. Request a landscape buffer between these trees and any proposed development.

ADC LEISURE & LANDSCAPE - objects due to insufficient detail of the play areas, insufficient number of un-equipped play areas, insufficient useable Public Open Space (noting the proposed wet drainage features in the same area) and decentralised location of the same. Also comments that proposed tree planting is small in size and also primarily in locations (private gardens, on-street parking areas) where they will be at future risk for removal. There is also limited tree planting within the open space areas due to the drainage requirements.

ADC AFFORDABLE HOUSING MANAGER - no objection to the affordable mix but objects to the clustering of the affordable housing.

ADC ENVIRONMENTAL HEALTH - request more detail regarding lighting and electric vehicle charging.

ADC ECOLOGY OFFICER - request more information as required by outline condition 4 (regarding lighting and biodiversity net gain). Also comments that more universal bird bricks are required than currently indicated.

#### COMMENTS ON CONSULTATION RESPONSES:

Comments noted and will be addressed in conclusions section except as discussed below.

WSCC FIRE & RESCUE - a fire hydrant condition was imposed on the outline permission.

ADC ENVIRONMENTAL HEALTH - it is unclear from the consultation comments what is missing in terms of lighting therefore this is given low weight. It is clear however, that there is no detail of the proposed electric vehicle charging point specifications and this is required by a condition on the outline so should have been submitted.

#### POLICY CONTEXT

Designations applicable to site:

- Outside the Built-Up Area Boundary (BUAB).
- Current/Future Flood Zone 1.
- Lidsey Treatment Catchment Area.
- Tree Preservation Order ref TPO/AL/2/23
- Public Right of Way (PRoW) ref ALD/299/1 along the southern boundary.
- WSCC Mineral Safeguarding Area (Sharp Sand & Gravel).
- ANDP Biodiversity Corridor (Hook Lane).
- CIL Zone 3.
- Within 12km of the Singleton & Cocking Tunnels Special Area of Conservation.
- Area of Advert Special Control; and
- Archaeological Notification Area.

#### DEVELOPMENT PLAN POLICIES

##### [Arun Local Plan 2011 - 2031:](#)

AHSP2	AH SP2 Affordable Housing
DDM1	D DM1 Aspects of form and design quality
DDM2	D DM2 Internal space standards
DSP1	D SP1 Design
ECCSP1	ECC SP1 Adapting to Climate Change
ECCSP2	ECC SP2 Energy and climate change mitigation
ENVSP1	ENV SP1 Natural Environment
ENVDM4	ENV DM4 Protection of trees
ENVDM5	ENV DM5 Development and biodiversity
HWBSP1	HWB SP1 Health and Wellbeing
HDM1	H DM1 Housing mix
LANDM1	LAN DM1 Protection of landscape character
QEDM2	QE DM2 Light pollution
QEDM3	QE DM3 Air Pollution
QESP1	QE SP1 Quality of the Environment

TDM1	T DM1 Sustainable Travel and Public Rights of Way
TSP1	T SP1 Transport and Development
WDM3	W DM3 Sustainable Urban Drainage Systems

<a href="#">Aldingbourne Neighbourhood Plan 2019-31 Policy H3</a>	Housing Density
Aldingbourne Neighbourhood Plan 2019-31 Policy H4	Affordable Housing
Aldingbourne Neighbourhood Plan 2019-31 Policy H8	Outdoor space
Aldingbourne Neighbourhood Plan 2019-31 Policy EH1	Built up area boundary
Aldingbourne Neighbourhood Plan 2019-31 Policy EH5	Surface water management
Aldingbourne Neighbourhood Plan 2019-31 Policy EH6	Protection of trees and hedgerows
Aldingbourne Neighbourhood Plan 2019-31 Policy EH10	'Unlit Village' status
Aldingbourne Neighbourhood Plan 2019-31 Policy EH12	Protection of bat habitats
Aldingbourne Neighbourhood Plan 2019-31 Policy GA1	Promoting sustainable movement
Aldingbourne Neighbourhood Plan 2019-31 Policy GA3	Parking and new developments

**PLANNING POLICY GUIDANCE:**

NPPDG	National Design Guide
NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance

**SUPPLEMENTARY POLICY GUIDANCE:**

SPD11	Arun Parking Standards 2020
SPD12	Open Space, Playing Pitches & Indoor & Built Sports Facilities
SPD13	Arun District Design Guide (SPD) January 2021

**POLICY COMMENTARY**

The Development Plan consists of the Arun Local Plan 2011 - 2031, West Sussex County Council's Waste and Minerals Plans, The South Inshore & South Offshore Marine Plan and Made Neighbourhood Development Plans. The policies are published under Regulations 19 and 35 of the Town and Country Planning (Local Planning) (England) Regulations 2012. The relevant policies of the Aldingbourne Neighbourhood Development Plan are considered within this report.

**DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states:-



"If regard is to be had to the development plan for the purpose 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."

The proposal conflicts with relevant Development Plan policies in that the submission is deficient in many respects and therefore does not achieve a high standard of design quality and represents an overdevelopment of the site. There is also insufficient information in respect to drainage, highway safety/movement and certain items required by the outline conditions.

Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that

- (2) in dealing with an application for planning permission the authority shall have regard to -
- (a) the provisions of the development plan, so far as material to the application,
  - (aza) a post examination draft neighbourhood development plan, so far as material to the application,
  - (b) any local finance considerations, so far as material to the application, and
  - (c) any other material considerations.

**OTHER MATERIAL CONSIDERATIONS**

There are no other material considerations to be weighed in the balance with the Development Plan.

**CONCLUSIONS**

PRINCIPLE:

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states applications should be determined in accordance with the development plan unless material considerations indicate otherwise. Section 38(5) states: "If to any extent a policy contained in a development plan for an area conflict with another policy in the development plan, the conflict must be resolved in favour of the policy which is contained in the last document". Therefore, the Aldingbourne Neighbourhood Development Plan (ANDP) would take precedence over the Arun Local Plan (ALP) should there be any conflict between the two.

AL/178/22/OUT established the principle of development for the erection of up to 89 dwellings together with the provision of open space, landscaping, and associated infrastructure. Vehicular access was agreed to be from Meadow Way (via the demolition of no. 24) and there would also be pedestrian access onto Hook Lane. The outline permission established the principle of development including in respect of flood risk, traffic generation, highway safety, archaeology, impact on wildlife, loss of agricultural land, mineral safeguarding, countryside location, foul drainage (the principle of the new dwellings connecting to the network) and provision of affordable housing, public open space & children's play.

On Tuesday 30 July, the government released a new version of the NPPF for consultation and this is now a material consideration (albeit with relatively low weight) in the determination of planning applications. However, none of the amendments have any impact on the assessment of this application.

COMPLIANCE WITH OUTLINE CONDITIONS:

It has been established by case law that applications for the approval of reserved matters must be within the ambit of the outline planning permission and must be in accordance with the conditions annexed to the outline planning permission. Certain conditions imposed by the outline set parameters for the nature and form of the Reserved Matters submission and these are analysed below. When determining whether reserved matters fall within the ambit of an outline planning permission the courts have allowed a little

freedom of interpretation with the usual test being whether any changes make a material difference to the essence of what was approved.

(3) The Reserved Matters (RM) is to be in accordance with the Site location plan 1318.01; Parameter plan 13.18.03; Proposed Site Access drawing 1809023-04 Revision C; Improvements to Pedestrian Route and Bus Stops at Westergate Street drawing 1809023-06 Revision B; and Hook Lane Pedestrian / Cycle Access Arrangement drawing 1809023-07 Revision A.

The scheme is in full accordance with these drawings. It is noted that the parameter plan shows the vast majority of the Public Open Space (POS) on the eastern side of the site and the layout reflects this however, this area is also shown as drainage. This plan does not prevent open space from also being shown elsewhere in the layout.

(4) The RM must include details of existing trees/hedges, landscaping (including 2:1 new planting & native trees), boundary treatments including hedgehog gaps, external lighting, POS & play provision, a Biodiversity Gain Plan, a reptile mitigation strategy, and a biodiversity enhancement strategy.

The RM includes most of the requirements, but the following are omitted: hedgehog holes in fencing, lighting on the houses themselves (noting that lamps appear to be shown on some of the elevations - The Buxton house type for example) and no plan to show the breakdown of POS. It is accepted that some of these items may be easy to resolve.

(5) The RM must include details of electric vehicle charging points (EVCP), a levels survey, cycle storage details (including elevations) and a colour materials schedule.

The RM includes EVCP provision for all except the flats and there is no indication of the charger specification. The other information has been submitted. The EVCP specification would be easy to resolve.

(6) The RM is to include details of any temporary sales areas.

These have been included.

(7) The RM is to include details of the provision of M4(2) and M4(3) housing to meet the council's policies.

This has been included. The submission is slightly deficient against the council's own policy note but this does not have Supplementary Planning Document (SPD) status and is outweighed by ANDP policy H2 which the scheme does comply with.

(8) The RM is to include details of roads, paths, and parking areas.

These are included.

The omitted details are not significant in their own right and could potentially be secured by conditions on the reserved matters, but it is clear that if they are not provided then the reserved matters would not be in complete accordance with the outline.

#### LANDSCAPING:

ALP policy LAN DM1 requires that development have special regard to the conservation of the setting of the South Downs National Park (SDNP), including views into and out of the Park. Development must

also respect the particular characteristics and natural features of the relevant landscape character areas. ALP policy D DM1 requires new landscaping. Policy ENV DM4 states TPO protected trees or those that contribute to local amenity should not be damaged or felled unless the development meets the certain criteria including that the benefits outweigh the loss of trees or woodland.

ANDP policy EH1 states development in the countryside must protect the local landscape character and wider setting of the South Downs National Park and support the dark skies policy. The ANDP 'dark skies' policy (EH10) states development proposals which detract from the unlit environments of the Parish will not be supported but that new lighting must conform to the highest standard of light pollution restrictions. Policy EH6 relates to trees and is similar in scope to ENV DM4.

The SDNP Authority state no impact on the setting of the National Park but respect consideration of the impact of new lighting. The starting point is that it would be inappropriate to prevent any form of lighting in a residential environment as this would result in safety and security issues. The proposed lighting scheme comprises 1m high bollard style lamps to the boundary areas with 6m columns predominantly sited along the main estate road (12 total). There is a 13th column light towards the northern boundary (adjacent plot 27), but this is 20m from the northern boundary where there is an extensive group of retained trees.

The bollard lights will all be fitted with rear back shields to prevent light spill onto hedgerows / boundary vegetation for the protection of bats. All lighting temperatures are 3000K and this is in accordance with the comments of the council's ecologist. Notwithstanding the request for more information by Environmental Health, the lighting proposals appear to have been carefully considered and will minimise the amount of light spill outside of the site confines.

The councils Landscape Officer states in respect of landscaping that whilst the submitted scheme is suitable for application and location, new trees are shown to be small in size and in places where they will be subject to future pruning or removal (adjacent parking areas or in/adjoining private gardens). In addition, due to the drainage features on the POS areas, there is no potential for any tree planting within the grassed areas, only around the edges. A total of 107 new trees are proposed to be planted which easily meets the requirement for two trees to be planted for each one lost and so whilst the Landscape Officer concerns are noted, it would be difficult to justify refusal solely on these grounds.

The proposed scheme fells a minimal number of trees, and these are required to allow the proposed estate road to meet the agreed vehicular access point. There is also minimal pruning proposed although work is proposed to a TPO tree. However, it is clear from the layout that plots 38 and 46-48 will be sited just east of important off-site TPO trees and this results in a change of use of land within the Root Protection Areas and the potential for future nuisance value to residential occupiers. This will result in future pressure for these trees to be felled and pruned which would conflict with the purpose of the TPO. It is also likely that the view of the TPO tree in the NW corner will be obscured from public view by the new houses. The Tree officer objects on this basis and requests a landscaped buffer along the western boundary.

The applicant argues in response that the Tree Officer did not raise these issues at the outline stage. The Tree officer did not actually respond at the outline stage but if they had of done, then they would not have assessed the layout in any detail given it was clearly illustrative.

In summary, the proposal is acceptable in respect of landscape and lighting impact, but the layout will harm important off-site trees and the scheme does not maximise the potential value of new tree planting. There is conflict with ALP policies D DM1 and ENV DM4, and with ANDP policy EH6.

LAYOUT, APPEARANCE AND SCALE:

ALP policies D SP1 and D DM1 require development make the best possible use of land by reflecting or improving on the character of the site/surrounding area. Policy AH SP2 seeks to ensure affordable housing is visually indistinguishable from market housing and layouts avoid large clusters. ANDP policy H3 states density should be appropriate to location whilst H9 requires that house designs include certain 'add-on' items (e.g., gutters, satellite dishes, meter boxes). The National Design Guide (NDG) is a material consideration in the determination of this application, as well as the Arun Design Guide (ADG).

The Arun Design Guide suggests a density of 15-25 for detached/semi-detached houses in village locations and states density should decrease with distance from the centre of a settlement, to ensure development relates sensitively to its setting and addresses edges of the site in a positive way. It is noted that the overall density is within this range and that the layout does transition from a dense form of development (terraced dwellings and flats) on the southern boundary to a more spacious form (larger detached dwellings) on the northern edge. As such the density is acceptable in this instance.

However, it must be noted that outline permission was given for up to 89 dwellings and this does not mean that 89 dwellings are achievable having regard to the full range of policies on design, layout, scale, and character. The transition from south to north is too pronounced in that the southern area appears cramped and it is noted that there are no other instances of terracing outside of the southern area. This density is also at a juxtaposition to the more spacious northern edge of the recent development to the south which has predominantly semi- and detached dwellings along this edge.

It is also clear that the surrounding form of development is either bungalows or chalet bungalows and two storey houses. There are no instances of flatted buildings in either the recent development to the south or the other adjoining roads. There are some instances of three storeys (such as 21 & 22 Lamorna Gardens, and Swan Court, Pine Close, off the A29) but these are few and far between so as not to define the character. On this basis the proposed flatted building is out of character in both principle and scale. Furthermore, its siting on the main estate road and its large uninspiring bulky design means that it will be prominent in views from the vehicular access.

It is recognised that some objectors have suggested the flatted building should instead be sited on the northern boundary, but this view is not shared as this would be in conflict with the ADG on density and would also result in a greater landscape impact. Instead, the flatted building should either be omitted from the scheme or reduced in scale to a maximum of two storeys and then sited in a less prominent position. It is noted that four maisonettes are also proposed and that these are a kind of flat however as these outwardly resemble dwellings, they would be acceptable.

The applicant has stated that the scale of the flatted building is appropriate on the grounds that the parameter plan states "a maximum 2.5 storey development (up to 11.5m)". This is accepted however this is a maximum and does not automatically imply that this is acceptable particularly as the parameter plan was prepared by a previous applicant and the LPA did not assess scale at the outline stage.

As with the flatted building, the proposed substation is also sited prominently on the main estate road. This is a minor concern in comparison to the others, and could be resolved by additional landscaping but this would be better sited from a visual perspective off one of the secondary roads.

It is recognised that the layout is required to broadly follow the agreed parameter plan and it does do this. However, this plan was prepared when the scheme was illustrative, and it does not follow that the illustrative scheme was acceptable in all respects. The Local Planning Authority's (LPA) main concern with the layout as a whole is that the open spaces is all at the eastern end and is insufficient in amount having regard to the drainage scheme (this will be discussed separately).

The scheme to the south includes a broadly central 'square' of open space and play facilities which is overlooked by surrounding properties and provides a positive focus to the visitors entering the site. The arrangement on the adjacent site is not perfect however as this 'square' also includes a balancing pond which is surfaced with rocks and has fencing around it. When dry (which in experience it predominantly is), it has an artificial appearance which detracts from the streetscene.

There is an opportunity with the proposed scheme to replicate this arrangement somewhat by creating a centrally sited rectangular area of open space along the main estate road (perhaps in place of plots 14-20 or 62-79) area of open space with a play area. The addition of this along with the removal of the flatted building and a mixing of the densities across the site (along with resolution of other issues yet to be discussed) may result in a scheme capable of officer support.

In terms of design, it is positive that the layout includes landmark buildings which are predominantly high quality (with the exception of the flatted building). However, the overall house design approach is haphazard. The street scenes show a mix of dwelling designs and material colours which no overall sense of place within the scheme. It would be positive if the layout area was split into character areas with each having specific features and variation between each.

There is also concern with the proposed affordable housing which is entirely located along the southern edge in the denser part of the site. The council's policy (backed up by the consultee comments) is clear that large clusters must be avoided, and that affordable housing should be spread through a site. In addition, affordable housing must be visually indistinguishable from market housing.

The proposed scheme does not achieve this as all of the flats and maisonettes are affordable whilst the affordable housing also has its own house types. The changes between the house types are not significant but they are clearly different. In addition, whilst it is accepted that there are three market terraced dwellings along the southern edge, it is clear that all other terraced dwellings in this location are affordable. It would be preferable if the affordable housing was spread out into two or three clear clusters and that a dwelling type other than terraced or flats were incorporated into the affordable tenure. There should also be a mixing of house types to maintain quality levels between tenures.

The applicant has stated that the affordable housing is not clustered as although they are all in a line, they are served by different access roads with a maximum of 6 dwellings per cluster and a mix of affordable tenures in each. This argument is not accepted as it is clear that all affordable dwellings are along the southern boundary with none anywhere else in the site.

The submission also includes a levels plan which is relevant to the consideration of scale. This shows that whilst the homes will be raised above the existing ground level, this will not be by a significant amount (a maximum of 0.5m but mostly less than this).

In summary, the proposal is acceptable in respect of density requirements but is not in character with the surrounding area in terms of scale, does not promote good design quality or a sense of place and fails to provide an acceptable scheme regarding affordable housing. There are also concerns with the main streetscene and the distribution of POS.

### PUBLIC OPEN SPACE (POS) AND PLAY:

#### Public Open Space (POS) & Play

ALP policies OSR DM1 and HWB SP1 are relevant to the consideration of POS and play provision but there are no applicable policies contained within the ANDP. The Council's supplementary planning document (SPD) for 'Open Space, Playing Pitches, Indoor and Built Sports Facilities' (January 2020) sets

out specific requirements for on-site POS and play provision. The comments of the council's Landscape officer are also relevant to this issue.

The SPD sets out an overall requirement of 7,343m<sup>2</sup> POS (this total includes 1,077m<sup>2</sup> of play) to include an equipped play area (LEAP) and at least two unequipped play areas (LAPs). The submission does not state anywhere what the total amount of POS has been achieved and there is also no plan to show how this requirement has been met with the on-site spaces (i.e. a breakdown of areas). In addition, it is clear that the main open space area on the eastern side of the site also doubles as a drainage attenuation feature. The submitted Design & Access Statement (DAS) states on p.35 that:

"A large space for an attenuation basin with swale extension has been retained in the northeast corner of the site. It is intended to retain a permanently wetted area within the infiltration basin so that biodiversity and visual amenity benefits can be created".

It is not appropriate to consider an area that will hold water at certain times of the year (or be permanently wet) as useable POS and therefore it is not possible to consider this within the POS requirements. The following comments are made in respect of the other areas of the site that may be being counted by the developer as POS:

- Small strips of ground and verge edges are not acceptable as POS
- Areas proposed for planting or green infrastructure cannot be considered as useable POS; and
- The area in the south-western corner includes and is alongside a footpath to the rear of a dwelling. It does not contribute to forming a welcoming and usable area of greenspace for the community.

Although, no calculations have been provided to specify exactly indicate where and how much POS is being provided, given the need to discount the drainage area and the fact that the other areas are limited in their usability by their shape, it is clear that the scheme does not provide the policy required amount of open space.

It is also clear that only one LAP has been shown (against a requirement for more than one) which is right next to the LEAP. This in itself is not acceptable as play areas should be spread through the site to allow residents easy access to these. These factors further reinforce the suggestion of having a centralised area of open space with a further play area. These may also necessitate a reduction in dwelling numbers, but it is clear that permission was granted for up to 89. The councils landscape officer also advises that there is insufficient detail of the play provision. Normally, this could be subject to a condition however it is material that it is a requirement of an outline condition to provide this detail with the reserved matters.

The proposal as a whole conflicts with relevant ALP policies including the Open Space SPD.

#### OTHER MATTERS:

The following issues are relevant to the reserved matters determination but do not neatly fit under the above headings.

#### (A) Housing Mix

ALP policy H DM1 requires a mix of housing to meet local needs and for all housing development to provide a mix of dwelling types and sizes to address this need and demand. The policy acknowledges that the final mix will be negotiated on a site-by-site basis, having regard to the most up to date Strategic Housing Market Assessment (SHMA).

Paragraph 63 of the "Updated Housing Needs Evidence" (September 2016) stated the evidence highlights a direction towards the provision of 2 and 3 bed units for market units and smaller affordable units. Table 29 identifies a suggested broad mix of market housing by size for the District:

- 1-bed dwellings: 5-10% of all dwellings.
- 2-bed dwellings: 40-45% of all dwelling.
- 3-bed dwellings: 35-40% of all dwellings; and
- 4+ bed dwellings: 10-15% of all dwellings.

Separate ratios are given for affordable rented and intermediate/starter homes however this element of the mix is governed by the s106 legal agreement. The scheme proposes the following mix: 5% 1 bed, 40% 2 bed, 40% 3 bed, and 15% 4+ bed (8% 4 bed and 7% 5 bed). This mix is in accordance with the SHMA guidance and so there is no policy conflict.

(B) Residential Amenity & Space Standards:

ALP policies D DM1, D DM2 and QE SP1 are relevant. The ADG sets out guidance on interface distances between houses:

- Back-to-back: min. 21m between habitable rooms of properties or to existing buildings.
- Back/front to side: min. 14m between habitable rooms and side gable of adjacent property (technically, there is no stated requirement for front to side, but the impact is the same therefore it is appropriate to consider this).
- Front to front: min. 16m between habitable rooms and site boundary to existing landscaping.
- Front gardens should provide a minimum of 2m defensible space; and
- The rear gardens of residential houses should be at least 10.5m deep.

There are no conflicts in respect of the relationship to any existing residential properties outside of the site as all of the above distances are exceeded. The proposed flatted building would generate some concern though as its extra height would allow clearer longer distance views of the rear gardens of properties on Lamorna Gardens. Some residents also highlight the potential for light loss/shading from the flatted building. However, it is a significant distance from the houses on Meadow Way to the east and is positioned to the North of the homes on Lamorna Gardens and Hasler Grove. These factors mean there will be no adverse impacts on existing properties in this respect.

There are several issues with the distances between dwellings within the site as set out below (all distances measured using the council's website and therefore approximate):

- The NW elevation of the flatted building is 13.1m from the side of no. 80.
- The NE elevation of the flatted building is a mix of 12.2m and 13.8m from the side of no. 5.
- The rears of nos. 4 & 5 to the side of no. 6 is 13.2m.
- The front of no. 49 is 10.8m from the side of no. 33.
- The front of nos. 52 & 53 is 11.1m from the side of no. 32; and
- The front-to-front interfaces between nos. 15-20 and 62-79 are all less than the required 16m (these are in a range of 12-13m).

It is recognised that the ADG is guidance not policy therefore should not be rigidly applied. However, in many cases the shortfalls are significant, and no justification has been provided for why a lower standard should be adopted, particularly given the policy requirement to ensure high quality living environments.

The applicant states that the scheme is an appropriate design solution for the site in accordance with the approved parameters that will deliver an efficient use of land. They also argue that the officer's report

from the outline application stated that "Overall, sufficient information has been submitted on the parameters plans and the Illustrative Masterplan to demonstrate that the site could accommodate 89 dwellings and no objections are raised in relation to density or landscape impacts." This is accepted as true but the outline application was not determined against the same policies and design criteria as the reserved matters and this is why the outline was granted for up to 89 dwellings rather than a set figure of 89. This statement does not set any form of precedent for standards not being achieved in the detailed design.

Most of the proposed front and rear garden depths are acceptable however, there are some instances where rear gardens are not up to the standard. These are where it has been necessary to provide a rear garden access. These are at plots 46 (9.2m), 68 (9.6m), 71 (9.5m), and 77 (8.6m). Again, these are significant shortfalls versus the required 10.5m standard.

In terms of flats, the ADG sets out a need for (1) private amenity spaces such as balconies or terraces of at least 3sqm of useable space; and (2) communal shared spaces - a minimum of 40sqm plus 10sqm for each unit if not provided as balcony space. The maisonette provision is appropriate with each of the four dwellings having a private garden space exceeding the 3m<sup>2</sup> standard. However, the flatted building has no private amenity space provision, and the communal space appears (the application is silent on this requirement) to be limited to the grass strip to the immediate south-east which is approximately 69m<sup>2</sup> in area versus the requirement of 150m<sup>2</sup>. There are also areas of shrub planting around the building, but these have not been assessed.

As per ALP policy D DM2, it is necessary to assess the proposal against internal space standards set out in the Governments Technical Housing Standards (Nationally Described Space Standard or NDSS) to determine if the buildings will be suitable for future residential occupiers. The floorplans of each house have been cross referenced with the NDSS and the minimum gross internal floor areas of the houses clearly meet the standards.

The proposed scheme is in conflict with the ADG in respect of interface distances and garden sizes. There is thus conflict with ALP policies D DM1 and QE SP1.

#### (C) Parking, Roads, and Public Footpaths:

ALP policy T SP1 seeks to ensure development provides safe access on to the highway network; contributes to highway improvements (where appropriate) and promotes sustainable transport. Schemes should accommodate the efficient delivery of goods and supplies; give priority to pedestrian and cycle movements, be accessed by high quality public transport facilities, create safe and secure layouts for traffic, cyclists and pedestrians and provide appropriate levels of parking. Policy T DM1 requires new development ensure ease of movement and prioritise safe pedestrian and cycle access. ANDP policy GA1 promotes cycling and walking whilst GA3 requires sufficient parking provision. Both the Arun Parking Standards SPD and the ADG contain guidance relevant to highway layout and parking.

As per the outline permission, there is a vehicular access at the eastern end of the site and a pedestrian footpath onto Hook Lane at the western end. A link to the Public Right of Way (PRoW) running alongside the southern boundary is also provided at the eastern end. It is noted that WSCC Highways state that additional links onto the PRoW would improve permeability however, it is clear that there would be significant opposition to this from local residents.

According to the Parking Standards SPD, the development requires 188 allocated and 18 visitor parking spaces (206). The proposed provision is 213 allocated and 18 visitor spaces. Fifty of the allocated spaces are in garages of at least 3m by 6m and as per the SPD, these only count as 0.5 of a space each. However, with 25 spaces deducted, the total is 188 which meets the requirement.



However, it is material that the Parking SPD requires that layouts include spaces for disabled people and that this should be consistent with guidance in "Manual for Streets" (which requires that 5% of all spaces are suitable). The layout provides 5 disabled parking spaces to serve the M4(3) dwellings but 5% of the total is 12 therefore the scheme is deficient by 7. There needs to be a greater number of disabled suitable spaces in the layout spread throughout the site such as via visitor spaces.

In addition, the ADG states that standard parking spaces should be 2.5m by 5m rather than the previous 2.4 by 4.8m standard. The layout only achieves this standard in respect of spaces in front of garages and so the vast majority of parking spaces do not meet this requirement.

It is also relevant that the Highway Authority have several concerns with the proposed layout in respect of the permeability of the layout for cyclists and pedestrians.

Currently, the proposal fails to comply with council policy on parking, and pedestrian/cycle facilities.

#### (D) Surface Water Drainage

This is strictly a separate matter as drainage is covered by conditions on the outline planning permission and will be agreed through the discharge of such conditions. However, WSCC have assessed the proposed drainage scheme in order to assess whether the amount and location of development is realistic having regard to the drainage requirements.

ALP policy W DM3 states all development must identify opportunities to incorporate a range of Sustainable Urban Drainage Systems (SuDS) as appropriate to the size of development. ANDP policy EH5 requires new development make appropriate provision for accommodating the surface water arising from the development.

The application includes a Drainage Strategy report and associated drawings, but this has been assessed as inadequate by WSCC given a lack of supporting data, and a failure to include certain requirements in the calculations. In addition, WSCC note that easements have not been provided to the existing boundary watercourses. On this basis, it is not currently possible to determine compliance with the relevant policies.

#### (E) Biodiversity & Net Gain:

ALP policy ENV SP1 states ADC will encourage and promote the preservation, restoration and enhancement of biodiversity and the natural environment. Where possible it shall promote the creation of new areas for habitats and species. ALP policy ENV DM5 states development schemes shall seek to achieve a net gain in biodiversity and protect habitats on site. ANDP policy EH6 requires that developments retain hedgerows, incorporate biodiversity in layouts and demonstrate biodiversity net gain.

It should be noted that the corresponding outline application was received prior to the introduction of statutory BNG and so there is no requirement for 10% BNG and instead the applicant needs only to demonstrate a net gain. However, the Inspector imposed a condition (4) on the outline permission that required a Biodiversity Gain Plan to ensure that there is a minimum 10% net gain in biodiversity within a 30-year period. The same condition also required submission of a Reptile Mitigation Strategy, a Biodiversity Enhancement Strategy, and a lighting scheme sensitive to bats.

The RM submission achieves most of these items, but the council's ecologist has highlighted that the lighting scheme does not set out that the areas used by bats will not be illuminated. It is also noted that

the Biodiversity Gain Plan does not clearly set out the management of habitats for 30 years. There are also concerns with the amount of universal bird bricks (insufficient) and whether the proposed landscaping is suitable for the ground conditions.

The council's ecologist has assessed the details and raises no concerns subject to conditions plus future compliance with condition 23 on the outline. It is noted that 14 trees and 5 tree groups are to be felled across the site area (no hedges are proposed for removal). The proposed landscaping scheme shows the planting of a significantly greater number of new trees than the number to be lost (predominantly native species) so the proposals will also achieve an initial net gain in tree units on the site. The application demonstrates biodiversity enhancement and there is no conflict with ALP policy ENV DM5.

On this basis it is not currently possible to determine compliance with the relevant development plan policies.

**(F) Impact on the Singleton & Cocking Tunnels Special Area of Conservation (SAC)**

The site lies in the 12km buffer area of the SAC. Depending on the level of the likely impact, developments within the buffer area may require an appropriate assessment as per the requirements of the Conservation of Habitats and Species Regulations 2017 (as amended) and consultation on this with Natural England.

The outline appeal decision includes an assessment of the likely impacts on the SAC and stated "35. The development would avoid any potential significant adverse effects on the integrity of the SAC, when considered alone or in combination with other plans or projects. Therefore, it is not necessary for me to undertake any further consultation with Natural England on this matter or to undertake an Appropriate Assessment under the Habitats Regulations."

Recent case law from the High Court (2023) determined it may be necessary to apply the Habitat Regulations at each stage of a decision (such as at reserved matters stage as well as at the outline). However, it is clear from the RM submission that there are no new impacts that had not previously been accounted for (i.e. no new loss of vegetation or habitat) and that there has been no change in policy relating to the SAC. A further appropriate assessment is, therefore, considered unnecessary.

**SUMMARY**

There are several issues with the layout, design and scale of the RM submission which together suggest that a scheme of 89 homes in total may not be appropriate (noting that the outline permission was for "up to 89"). In addition, there are issues with the application submission which have not been resolved and which prevent certain aspects from being properly assessed. Despite the significant benefits of this development, the adverse impacts of granting permission would currently significantly and demonstrably outweigh the benefits. It is therefore recommended that a resubmission and that the applicant undertake pre-application advice with the LPA prior to submission.

**HUMAN RIGHTS ACT**

The Council in making a decision, should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as Arun District Council to act in a manner, which is incompatible with the European Convention on Human Rights.

Consideration has been specifically given to Article 8 (Right to respect private and family life), Article 1 of the First Protocol (protection of property). It is not considered that the recommendation for refusal of

permission in this case interferes with applicant's right to respect for their private and family life and their home, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of neighbours). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation for refusal is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

### **DUTY UNDER THE EQUALITIES ACT 2010**

Duty under the Equalities Act 2010

In assessing this proposal the following impacts have been identified upon those people with the following protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation).

The proposal would have a neutral impact on the protected characteristics.

### **COMPLIANCE WITH SECTION 106 DETAILS**

The submitted Planning Statement includes a "Statement of Conformity with S106" which sets out that there are no conflicts between the reserved matters submission and the s106 agreement. However, on careful review of the s106 agreement it is noted that section 1.3 of the Second Schedule, Part 1, states "To ensure that all the Affordable Housing Units are built "tenure blind" in respect of external design and features so that they are broadly materially indistinguishable from the Market Housing". Given the flatted building is entirely within the affordable housing tenure and that all of the affordable dwellings are house types not found in the market tenure, it is clear that there is conflict with this stipulation.

### **CIL DETAILS**

The site is in CIL Zone 3 and is liable for CIL. The amount has not yet been calculated but 25% of the total will be allocated to the Parish Council.

### **RECOMMENDATION**

REFUSE

- 1 By reference to the clustering of affordable housing along the southern edge of the site, the failure to ensure a sufficient off-set distance between important offsite trees and plots 38 & 46-48, the failure to provide an appropriate location/amount/detail of play areas and useable Public Open Spaces, the failure to properly accommodate tree planting within the layout, the failure to provide sufficient accessible parking provision, the failure to provide sufficiently sized parking spaces, the failure to ensure all dwellings have a sufficient depth of rear garden, the failure to provide the flatted building with sufficient communal space, the failure to ensure sufficient interface distances between new dwellings, the failure to create distinctive character areas within the development; the location of the substation in the main streetscene and having regard to the inappropriate scale of the flatted building in relation to the streetscene & the character of the area, the proposal does not achieve a high standard of design quality and represents an overdevelopment of the site in conflict with Arun Local Plan policies OSR DM1, D SP1, D DM1, ENV DM4, T DM1, QE SP1; Aldingbourne Neighbourhood Development Plan policies H3, H4, H8, EH6, GA3, Arun's "Open Space, Playing Pitches, Indoor and Built Sports Facilities" SPD, the Arun Design Guide SPD, the Arun Parking Standards SPD, and the NPPF.
- 2 Insufficient information has been provided to adequately demonstrate that the proposed layout

is appropriate for the requirements of pedestrians and cyclists which may result in conflicts with vehicles. The proposal is in conflict with Arun Local Plan policies T SP1 & T DM1, Aldingbourne Neighbourhood Development Plan policy GA1 and the NPPF.

- 3 Insufficient information has been submitted to show that the proposed number of units, the landscaping, and the layout are implementable without detrimentally impacting surface water drainage on and off the site. The submitted Drainage Statement does not meet the stated design requirements. The proposal conflicts with Arun Local Plan policy W DM3, ANDP policy EH5, West Sussex Surface Water Design Guidance, the NPPF and the associated PPG on Flood Risk.
- 4 Insufficient information has been provided to comply with the requirements of outline condition numbers 4 (lighting on homes, lighting in relation to bats, biodiversity gain, hedgehog holes in fences, amount & distribution of Public Open Space), and 5 (proposed Electric Vehicle Charging Point specifications) and the proposal is therefore in conflict with Arun Local Plan policies ENV DM5, OSR DM1, QE DM3, Arun's "Open Space, Playing Pitches, Indoor and Built Sports Facilities" SPD, and the NPPF.
- 5 **INFORMATIVE:** Section 1.3 of the Second Schedule, Part 1, states "To ensure that all the Affordable Housing Units are built "tenure blind" in respect of external design and features so that they are broadly materially indistinguishable from the Market Housing". Given the flatted building is entirely within the affordable housing tenure and that all of the affordable dwellings are house types not found in the market tenure, there is conflict with this stipulation and it may therefore, be necessary to seek a Deed of Variation Agreement if the current scheme is pursued.
- 6 **INFORMATIVE:** Statement pursuant to Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended). The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and discussing those with the Applicant. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory way forward and due to the harm, which has been clearly identified within the reason(s) for the refusal, approval has not been possible.