

Recommendation Report for Planning Permission

REF NO: AL/101/18/PL

LOCATION: Land adjacent to Sussex Recovery Company
Fontwell Avenue
Eastergate
PO20 3RU

PROPOSAL: Retention of earth bund.

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	Retention of earth bund.
SITE AREA	2000 square metres
TOPOGRAPHY	Predominantly flat.
TREES	None of any significance affected by the development.
BOUNDARY TREATMENT	A short line of hedgerow along Fontwell Avenue
SITE CHARACTERISTICS	On the western side of Fontwell Avenue and comprises the main entrance to the Sussex Recovery Company with an adjacent 'Land at Nyton Road and Northfield Lane and Land off of Fontwell Avenue' for 268 homes (AL/61/13) to the south and a residential property (Oaktrees) to the north.
CHARACTER OF LOCALITY	Site is located outside of built up area boundaries. Rural with ribbon development along A29.
None.	

REPRESENTATIONS

REPRESENTATIONS RECEIVED:

Three objections received from the same address as follows:

The application has not been properly prepared, submitted, validated and investigated. The unauthorised bund in question constructed on Palm Sunday 2018, was reported to the Council on 23rd May 2018 and a letter from that department on 24th July 2018 stated retrospective permission would be requested.

It was not until September 2018 that the applicant make an application (for retention of the bund rather than full application) and not until 15th October 2018 that the application went live on your web site. The application has rested on the site for six months now, although it is over one year since the offence itself was committed.

This is a violation of your own policy of determining applications within 21 days and shows a clear prejudice towards the applicant. The application is not valid for the reasons described in the report from WSCC.

The application has no clear purpose and is missing the detail required. The applicant has no desire to construct a regular bund and has shown no interest in conforming to planning regulations. The applicant is ignoring approaches which must have been made by the Council and being allowed to waste time. Any other application would have been refused due to the lack of co-operation on the part of the applicant and the illegal bund required to be removed.

The application is not valid since the bund has been placed on land which is not in the ownership of the applicant. The application has been made by Sussex Recovery (Mr. David Parker.) The bund is shown on the plan submitted as being, outside the land occupied by Sussex Recovery which is leased from the Landowner - not Mr. Parker.

If this was a real application, Article 13 and 14 notices would apply. The response from Mr. Parkers' agent, suggests there is a mistake in the WSCC report. We agree with this. The report assumed the soil within the bund, came from the Taylor Wimpey site next door to Sussex Recovery. A small amount of soil was scraped up into the beginning of a bund, but the bulk of the soil, was brought to the site from the land known as, 'Land West of Fontwell Avenue', which is adjacent to our house on the other side of Sussex Recovery. It was moved by three dumpers, loaded by two digging machines, through the back of the site, across the road into the scrapyard behind 'Oaktrees' and piled up into the bund by another digging machine from Sussex Recovery.

We were eyewitnesses to this event, which occurred on Palm Sunday 2018. Also eyewitness to this event, was the Emergency Environmental Health Inspector who visited our house that day, took photographs and wrote a report of the activity. This visit, formed the basis of twelve Enforcement notices issued by Mr. Christopher Davis from your own Environmental Health Department. You will have access to both the report and the photographs. Three of the Enforcement Notices were issued to Mr. Parker who is one of the four owners of the site known as 'Land West of Fontwell Avenue.'

Where the soil came from, is not the point! The soil is still waste from a building site, just not the one assumed by the WSCC report. The Planning Department have been completely inefficient when determining this case. The Planning Department have shown bias and prejudice towards the applicant (not for the first time) by allowing this application to rest for so long.

It is past time for this matter to be concluded, - for the application to be refused as concluded by WSCC, and for the applicant to be required to remove the bund.

1 Letter of Support:

I live adjacent to the land and support this application because the earth bund helps shield our property from dust and noise created from the building work and transport while the construction of nearly 300 houses and a Care home take place over the next 3years.

Once the building work has finished the bund will act as a screen against any traffic noise from the new housing estate and once matured give us a better more rural outlook than would have had looking directly over the new houses ect.

COMMENTS ON REPRESENTATIONS RECEIVED:

All comments above are noted, the issues raised are discussed in detail below.

CONSULTATION RESPONSES RECEIVED:

Comments from WSCC:

Although the applicant states the bund is to comprise topsoil from the adjacent site, we'd class this as 'inert waste' and should be appraised using Waste Local Plan policies. I'm guessing they are taking soils from the adjacent housing site and placing it in a bund and is therefore development in its own right.

I would suggest the need for the application to be considered against Policy W8 of the West Sussex Waste Local Plan as it relates to the deposit of inert waste to land.

The policy is supportive of such developments provided the following criteria are met:

- (a) the proposal results in clear benefits for the site and, where possible, the wider area;
- (b) the material to be used is only residual waste following recycling and/or recovery or it is a waste that cannot be recycled or treated;
- (c) there is a genuine need to use the waste material as a substitute for a non-waste material that would otherwise have to be used;
- (d) the material to be reused is suitable for its intended use;
- (e) the amount of waste material to be used is no more than is necessary to deliver the benefits identified under (a);
- (f) there would be no unacceptable impact on natural resources and other environmental constraints;
- (g) the proposal accords with Policy W13 (Protected Landscapes);
- (h) any important mineral reserves would not be sterilised; and
- (i) restoration of the site to a high quality standard would take place in accordance with Policy W20."

There is a need to be assured the proposal would result in 'clear benefits' (clause (a)) for the site and wider area. I can't see anywhere in the documents which explains any clear benefits. Although one of the representation letters says the bund will shield their property from dust and noise and will give them a more rural outlook, these reasons aren't considered in the applicants submission at all.

Clause (b) asks whether the material is residual following recycling and/or recovery, but nothing has been included in the submission to discuss this point. The applicant has not demonstrated a 'genuine need' for the development (clause (c)), such that it would be undertaken without waste - i.e. if 'virgin' material (aggregate) was to be used.

Clause (e) is more complicated; it is impossible to establish whether the amount of material to be used is the minimum necessary to deliver the benefits identified, as no benefits have been identified. The applicant should be asked to justify the amount of waste they are proposing to import and the scale of the landform.

You'll need to reassure yourself there would be no unacceptable impact on natural resources (clause (f)), and the restoration/aftercare of the site would be of high quality (clause (i)). No information is provided for restoration/aftercare, not even stating that the bund would be seeded with grass and no timescales or maintenance details have been provided.

The proposal doesn't accord with Policy W8 of the West Sussex Waste Local Plan (2014) in that it has not been shown to provide clear benefits for either the site or wider area and would thereby be considered 'waste disposal' which has to be considered against Policy W9. It is considered that the waste could be practicably recovered or recycled, so its disposal would be contrary to Policy W9.

COMMENTS ON CONSULTATION RESPONSES:

The comments from WSCC, especially those on the origin of material used for the proposed bund are based on assumptions which differ from those provided by the applicant. The material which the bund consists of is classified as 'inert waste' therefore application is suggested to be considered against Policy W8 of the West Sussex Waste Local Plan.

The LPA treat the applicant's information as truthful as it forms part of the application.

The requirement of clause (e) as mentioned above is 'impossible to establish', however, it is suggested that applicant should be asked to justify the amount of waste.

The amount of waste is possible to calculate given the drawings provided.

Given the nature of activities on adjacent sites, and the nature of the earth bund the proposal would be unlikely to have an unacceptable impact on natural resources.

In the conclusion of the comment it is considered that the proposed earth bund doesn't accord with Policy W8 of the West Sussex Waste Local Plan and treated as 'waste disposal'.

Chapter 1. Waste (WSWLP) requires reduction in the amount of waste produced and to reduce the amount of waste materials wherever possible or find other beneficial use for the material to reduce the heavy dependence on landfill and carries on by stating: 'The Waste Local Plan provides the basis for making consistent land-use planning decisions about such proposals. However, the Plan does not cover all the details that may be relevant when it comes to determining a planning application.

Chapter 2; paragraph 2.7.4 Reuse of Inert Waste affirms that much inert material is currently being reused for beneficial purposes, such as in engineering projects (such as golf courses), for landfill cover/engineering, for the restoration of mineral sites, and for agricultural improvement. This is preferable to sending it for disposal to land.

Paragraph 2.9.1 (Import and Exports of Waste) suggests that 'Self-sufficiency' has been a feature of recent guidance, that is, that WPAs should plan for waste management sufficient capacity to deal with the waste arisings in their areas. 'Genuine proposals for the beneficial reuse of inert material would, in principle, be considered favourably'.

Paragraph 6.9.6 suggests ' There should be a genuine need to use the proposed waste material e.g.bunds for visual screening; that is, it should be a suitable alternative for non-waste materials that could meet that need. In addition, the waste material to be reused should have the right properties for the intended purpose and it should only be the minimum amount required to deliver the intended outcome of the project or proposal.'

Taking into account the statements from the West Sussex Waste Local Plan it is considered that the earth bund as proposed would be an acceptable development and would accord with Policy W8 of WSWLP.

POLICY CONTEXT

Designation applicable to site:

Class A Road

Outside the Built-up area boundary

Area of special control on adverts

DEVELOPMENT PLAN POLICES

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

CSP1

C SP1 Countryside

DDM1

D DM1 Aspects of form and design quality

[Joint Minerals Local Plan 2018:](#)

[Aldingbourne Neighbourhood Plan 2016 POLICY EH1](#)

Joint West Sussex M9 Safeguarding Minerals
Resist development outside

POLICY COMMENTARY

The Development Plan consists of the Arun Local Plan 2011 - 2031, West Sussex County Council's Waste and Minerals Plans 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 Neighbourhood Development Plan

Where applicable, Neighbourhood Development Plan's (more commonly known as a neighbourhood plan or NDP), once made by Arun District Council, will form part of the statutory local development plan for the relevant designated neighbourhood area.

Arun District Council will make reference to an NDP when it has, by the close of planning application consultation, been publicised for pre-submission consultation(Reg.14).

Aldingbourne Neighbourhood Plan 2016 is made and the relevant policy EH1 and will be considered.

Western Sussex Waste Local Plan and relevant policies W8 and W9 will be considered.

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 is considered to comply with relevant Development Plan policies in that the development does not involve any structure inappropriate within countryside, does not have an unacceptable impact on nature, and there is expressed a genuine need to use the waste material for an earth bund for a visual screening and would not cause demonstrable harm to the character of the area.

OTHER MATERIAL CONSIDERATIONS

It is considered that there are no other material considerations to warrant a decision otherwise than in accordance with the Development Plan and/or legislative background.

CONCLUSIONS

PRINCIPLE

The proposed development is outside the built-up boundary where the principle of development is acceptable referring to a specific use or type of development. Policy C SP1 of the Arun Local Plan sets out criteria for what kind of development would be permitted in the countryside and Policy EH1 of the Neighbourhood Plan states that visual separation and important views would retain.

DESIGN AND VISUAL AMENITY

The application seeks permission for the retention of an earth bund to provide screening from the new development to the south-west from the site.

The proposed bund abuts the shared boundary with site 'Land at Nyton Road and Northfield Lane and Land off of Fontwell Avenue' for 268 homes, is approximately 60m long, 4m wide on the base and 1m on the top and is 1.8m high. Since the bund was constructed more than one year ago vegetation has grown over it.

The earth bund replaced a hedge which bounded the site and has been damaged by the developers of the adjacent site, and serves as a means of enclosure and the provision of screening from the new development and vice versa.

Given its position behind a hedgerow on the boundary along the highway and rather flat terrain, the development would not have an adverse impact on the streetscape and landscape.

The bund is built from the soil scrapped from the adjacent site owned by the applicant to depth approximately 0.75m. Given the current appearance of the proposed bund and an existing boundary treatment the development does not have an unacceptable impact on existing landscape which is already disturbed by existing activities on the adjacent site (Sussex Recovery Company) and the ongoing development on the site to the south-west.

The bund is an appropriate development for the countryside and would not result in an unacceptable adverse impact on the surrounding area, would not cause a degradation in biodiversity value therefore would accord with policies C SP1, D DM1 and SD SP3 of the Arun Local Plan and Policy EH1 of the Aldingbourne Neighbourhood Plan 2014. In addition, proposal results in clear benefits for the site and the wider area; requirement of policy W8 of the Western Sussex Waste Local Plan. The bund is a relatively modest development and whilst WSCC consider there is a policy conflict the small scale of the scheme does not result in harm to the character of the area or residential amenity. As the development has already taken place it is not considered necessary to impose conditions.

With regards to the representations, the agent on behalf of applicant signed the Ownership Certificate - Certificate A confirming ownership.

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) and Article 1 of the First Protocol (protection of property). It is not considered that the recommendation for approval of the grant of permission in this case interferes unreasonably with any local residents' right to respect for their private and family life and home, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of

property in accordance with the general interest and the recommendation for approval 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.

RECOMMENDATION

APPROVE

- 1 **INFORMATIVE:** Statement pursuant to Article 35 of the Town and Country Planning (Development Management Procedure)(England) Order 2015. The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.