A/44/06

PLANNING APPLICATION REPORT

DESCRIPTION/ ADDRESS	-	Variation of Condition 3 of planning permission A/148/05 to relate to occupancy set out in unilateral agreement Land South of A259, Littlehampton Road, Rustington

THE SITE AND ITS SURROUNDINGS

DESCRIPTION OF APPLICATION	The Condition 3 of A/148/05 states: *"The development which lies outside the built up area boundary, is permitted solely in recognition of the terms of Arun District Local Plan Policy DEV8 and as such, is subject to a restriction that the premises be occupied by:* *(1) Richmond Cars;* *(2) Frosts; and* *(3) Harwoods:* *or such other local firm as may be agreed in writing with the Local Planning Authority prior to the first of any subsequent occupation of either the whole or part of any of the buildings that may be approved subsequently as details pursuant to this outline application."*
SITE AREA	6 hectares
RESIDENTIAL DEVELOPMENT DENSITY (NET)	N/A
TOPOGRAPHY	Land lies lower than the main A259 road but of an approximate level with land to the south.
TREES	Trees to the site are mainly to the verge between the main site and the A259.
BOUNDARY TREATMENT	Main boundary to the A259 is formed of timber open fencing together with trees and shrub planting on the majority of the boundaries.
SITE CHARACTERISTICS	Land formerly agricultural with the majority of the site being in the flood plain. The site is lower than the A259 road and thereby affords clear views over it from the road network and pedestrian areas off Mill Lane to the east.
CHARACTER OF LOCALITY	The site is situated between the railway line to the south and 3no. roads. To the north the A259, the east Mill Lane and west, Brook Lane. To the south of railway line there is an industrial estate and to the north of the A259 is the Rustington Golf Centre.

RELEVANT PLANNING HISTORY

REFERENCE	DESCRIPTION	DECISION
A/148/05	Outline application for car showrooms and associated access, parking and landscaping.	Approved Conditionally 15 March 2006

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REPRESENTATIONS RECEIVED

SOURCE	SUMMARY OF CONTENT
Angmering Parish Council	Objection: The Parish Council fully support Arun District Council.
Local Groups	None
1 letter of objection	The application runs counter to Arun District Council Local Plan and involves major development on agricultural land for industrial use. The Environmental Impact will be considerable destroying flooding wetland supporting a diversity of flora and fauna including invertebrates essential in the food chain. Both Angmering and Rustington Parish Council have registered an objection. The vehicular problems caused by the access road will increase pollution and RTA particularly as it is in close proximity to a public footpath used by school children. Should this application be given consent, I shall be exploring appeal to higher authority and establish a physical presence in objection.

CONSULTATION RESPONSES

CONSULTEE	SUMMARY OF RESPONSE
None	

POLICY CONTEXT

DESIGNATION APPLICABLE TO SITE
Outside Built-up Area Boundary Class A and B Roads Agricultural Land Value Grade I Land Liable to Flood

DEVELOPMENT PLAN POLICIES

West Sussex Structure Plan : DEV1
Arun District Local Plan : GEN7

PLANNING POLICY GUIDANCE

PPS1 - Delivering Sustainable Development

POLICY COMMENTARY

The above policies combine to describe the relevant development control criteria against which this application will be considered in particular in relation to the character and amenity of the locality.

COMMENT ON CONSULTATION RESPONSES

None

COMMENT ON REPRESENTATIONS RECEIVED

Noted. The application has previously been approved (A/148/05 refers). This application relates purely to the removal of one of the conditions of that approval.

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ASSESSMENT OF PROPOSAL

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 condition is not required as a unilateral obligation was submitted and is part of the approval.

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

Condition 3 was attached to the permission to clearly indicate that the use was for local firms only.

However, Circular 11/95, 'Use of Conditions in Planning Permissions', paragraph 93 states that unless the permission otherwise provides, planning permissions run with the land and it is seldom desirable to provide otherwise.

It goes on to say a permission personal to a company is inappropriate because its shares can be transferred to other persons without affecting the legal personality of the company. This condition was scarcely ever be justified in the case of a permission for the erection of a permanent building.

Clearly therefore Condition 3 does not stand the test of Circular 11/95.

Whilst it is understandable that the condition was put on as the use is one which would not normally be permitted in this location. The overriding reason of its approval was based on the companies being local firms and therefore an exception to the policy.

However, a unilateral undertaking was submitted on the day of Committee which states within it that the occupiers will be Frosts Cars Limited, Richmond Cars Bognor Regis Limited and Harwoods Limited. Under the heading "Occupation" within the unilateral undertaking it states for the first five years after the commencement of the development:

(a) the land shall not be occupied by any person other than one or more of the companies which comprise the applicant and/or local firm or local firms;

(b) the owner shall not dispose of the whole or any part of the land otherwise than to the applicant or local firm or local firms.

Clearly therefore Condition 3 of permission A/148/05 is unnecessary, does not conform with Circular 11/95 and in any case, is covered by the agreed unilateral undertaking.

It is therefore recommended that the application be approved subject to the conditions set out overleaf.

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Variation of condition 3 of planning permission A/148/05 to relate to occupancy set out in unilateral agreement.

Land south of A259
Littlehampton Road
Rustington

RECOMMENDATION

Approve Conditions

1 The permission hereby granted is an outline permission under Article 3(1) of the Town and Country Planning (General Development Procedure) Order 1995 and an application for the approval of the Local Planning Authority to the following matters must be made not later than the expiration of 3 years beginning with the date of this permission:-

(a) the layout of the site;
(b) the number, siting, design and external appearance of the buildings;

Reason: To enable the Local Planning Authority to control the development in detail and to comply with Section 92 of the Town and Country Planning Act 1990 (as amended).

2 The development hereby permitted shall be begun either before the expiration of 5 years from the date of this permission, or before expiration of 2 years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

Reason: To enable the Local Planning Authority to control the development in detail and to comply with Section 92 of the Town and Country Planning Act 1990 (as amended).

3 The total floor area of the buildings relating to the use hereby permitted shall not exceed 5000 sq m.

Reason: In order to maintain an acceptable balance of development in the interests of the character and appearance of the building group which is outside the built-up are as defined, where normally only that development essential in the interests of agriculture/forestry is permitted in accordance with policies DEV1 of the West Sussex Structure Plan and GEN7 of the Arun District Local Plan.

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4 The access from the site to the public highway shall be designed, laid out and constructed with/kerb radii/visibility splays/and sight lines in all respects in accordance with plans and details to be submitted to and approved by the Local Planning Authority before any other operation or use authorised by this permission is commenced.

Reason: In the interests of road safety in accordance with policies DEV1, NE17 of the West Sussex Structure Plan and GEN7 of the Arun District Local Plan.

5 The access to the proposed site shall be laid out to provide visibility splays on each side of the access in accordance with plans and details to be submitted to and approved by the Local Planning Authority.

These splays shall be:-

2) (a) A line 4.5 metres long measured along the centre line of the proposed access from the line of the nearer edge of the carriageway of Mill Lane.

(b) A line 70 metres long to the south measured along the nearer edge of the carriageway of Mill Lane from the intersection with the centre line of the proposed access.

(c) The straight lines joining the termination of the above lines.

No other work shall be carried out on the site until the above-mentioned sight lines and splay lines have been provided and thereafter the said sight lines and splay areas shall be kept free from any obstruction to visibility in excess of 0.6 metres above the level of the adjoining carriageway.

Reason: In the interests of road safety in accordance with policies DEV1, NE17 of the West Sussex Structure Plan and GEN7 of the Arun District Local Plan.

6 Clean, uncontaminated rock, subsoil, brick rubble, crushed concrete and ceramic only shall be permitted as infill material.

Reason: To prevent pollution of controlled waters in accordance with policy GEN9 of the Arun District Local Plan.

7 All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner, and 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 gives written consent to any variation.

Reason: In the interests of amenity and of the environment of the development in accordance with policies DEV1 of the West Sussex Structure Plan and GEN7 of the Arun District Local Plan.

8 Other than the trees identified on plan 605 005 as being felled all other existing trees, bushes. hedges shall be retained and protected in a manner to be agreed with the Local Planning Authority before the development commences for the duration of the development and shall not be damaged, destroyed, uprooted, felled, lopped or topped during that period without the previous written consent of the Local Planning Authority. Any trees removed without such consent or dying or being seriously damaged or becoming seriously diseased during that period shall be replaced in the following planting season with trees of such size and species as may be agreed with the Local Planning Authority.

Reason: To ensure the retention of vegetation important to the visual amenity, the ecological quality and for the environment of the area in accordance with policies DEV1 of the West Sussex Structure Plan and GEN7 of the Arun District Local Plan.

9 No trees or bushes growing and to be retained on the site shall be damaged, uprooted, felled, topped or lopped without the prior written consent of the Local Planning Authority until 2 years after completion of the development hereby permitted. Any trees removed without such consent or being severely damaged or becoming seriously diseased or dying before the end of that period shall be replaced with trees of such size and species as may be agreed with the Local Planning Authority.

Reason: To ensure the retention of vegetation important to the visual amenity, the ecological quality and for the environment of the development in accordance with policies DEV1 of the West Sussex Structure Plan and GEN7 of the Arun District Local Plan.

10 No trenches or pipe runs for services and drains shall be cut or laid within 5 metres of the bole of any existing tree to be retained on this or adjoining sites.

Reason: To protect tree roots from damage likely to lead to the loss of the tree in the interests of the visual amenities of the locality in accordance with policies DEV1 of the West Sussex Structure Plan and GEN7 of the Arun District Local Plan.

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11 The burning of materials obtained by site clearance or from any other source shall not take place within 6 metres of the furthest extent of the canopy of any tree or group of trees to be retained on the site or on land adjoining.

Reason: To protect trees and vegetation from fire damage in the interests of the visual amenities of the locality in accordance with policies DEV1 of the West Sussex Structure Plan and GEN7 of the Arun District Local Plan.

12 Before any development takes place a nature management scheme for the area shown on the attached plan shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To conserve the wildlife interest of an important natural habitat in accordance with policies ERA2 of the West Sussex Structure Plan and GEN29 of the Arun District Local Plan.

13 No development shall take place on the site until the Applicants have secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the Local Planning Authority.

Reason: The site is of archaeological significance and it is important that it is recorded by excavation before it is destroyed by development in accordance with policies CH7 of the West Sussex Structure Plan and AREA 17 of the Arun District Local Plan.

14 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, no building shall be extended or altered in any way unless permission is granted by the Local Planning Authority on an application in that behalf.

Reason: In order to control the development in the interests of the character and appearance of the building group which is outside the built-up area, as defined, where normally only that development essential in the interests of agriculture/forestry is permitted in accordance with policies DEV1 of the West Sussex Structure Plan and GEN7 of the Arun District Local Plan.

15 The buildings shall not be occupied until the parking spaces, turning facilities shown on the submitted plans have been provided and constructed. The areas of land so provided shall not thereafter be used for any purpose other than the parking and turning of vehicles.

Reason: To ensure that adequate and satisfactory provision is made for the accommodation of vehicles clear of the highways in accordance with policies DEV1, DEV5 of the West Sussex Structure Plan and GEN7 of the Arun District Local Plan.

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16 The building hereby permitted shall not be occupied until space has been laid out within the site in accordance with details approved by the Local Planning Authority for the turning of vehicles clear of the public highway and such space shall not thereafter be used other than as a turning area.

Reason: In the interests of road safety in accordance with policies DEV1, NE17 of the West Sussex Structure Plan and GEN7 of the Arun District Local Plan.

17 No development approved by this permission shall be commenced until a scheme for the provision and implementation of a surface water drainage system has been approved by and implemented to the reasonable satisfaction of the Local Planning Authority.

Reason: To prevent the increased risk of flooding and to prevent pollution of controlled waters by ensuring the provision of a satisfactory means of surface water disposal in accordance with policy GEN9 of the Arun District Local Plan.

18 A buffer strip of at least 8m either side of the waterbody is maintained between any watercourse or pond on site and any development.

Reason: To enable a strip of undisturbed, functioning riparian habitat to be retained, as a valuable habitat for wildlife, and for aesthetic benefits in accordance with policy GEN11 of the Arun District Local Plan.

19 If during development, any visibly contaminated or odorous material not previously identified is found to be present at the site, must be investigated. The Local Planning Authority must be informed immediately of the nature and degree of contamination present. The developer shall submit a Method Statement which must detail how this unsuspected contamination shall be dealt with.

Reason: To ensure that the development complies with approved details in the interests of protection of controlled waters in accordance with policy GEN31 of the Arun District Local Plan.

20 INFORMATIVE - In the submission of any Reserved Matter application or detailed planning application, the Local Planning Authority will require and expect a level of quality of design equivalent or better that indicated in the illustrative material submitted with is outline application.

21 INFORMATIVE - The final design and construction of the new acces junction on to Mill Lane will be the subject of a further Stage 2 Audit and Legal Agreement between the Applicants and the Highway Authority.

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22 INFORMATIVE: The West Sussex County Council as Highway Authority would remind applicants that they may have to provide on the application site, areas for the parking and unloading of vehicles, temporary contractor buildings, plant and stacks of materials as the use of the adjacent public highway for these purposes may not be acceptable under the terms of the Highways Act.

23 INFORMATIVE - Southern Water advise that no development or new tree planting should be located within 3m either side of the cetreline of the public sewer and all existing infrastructure should be protected during the course of construction works. Further, a formal application for connection to the public sewerage system is required in order to service the development. To initiate a sewer capacity check to identify the appropriate connection point for the development, please contact Souther Water's Network Development Team (Wastewater) based in Otterbourne, Hampshire.

24 INFORMATIVE - Any scaffold which is to be constructed adjacent to the railway must be erected in such a manner that at no time will any poles or cranes over-sail or fall onto the railway. All plant and scaffolding must be positioned that, in the event of failure, it will not fall on to Network Rail land.

25 INFORMATIVE - Network Rail will need to be consulted on any alterations to ground levels. Excavations including soakaways within 10m of the boundary with the operational railway Network Rail will need to be assured that the construction of foundations and footings will not impact on the stability of the railway. No surface water must be discharged onto Network Rail land without their prior permission.