

Recommendation Report for Outline Consent

REF NO: BE/112/25/OUT

LOCATION: Land at Heath Place
Bersted
PO22 9SL

PROPOSAL: Outline application with some matters reserved (except access, layout and scale) for 3 No class E light industrial units and associated landscaping. This application is in CIL Zone 4 (Zero Rated) as other development.

SITE AND SURROUNDINGS**DESCRIPTION OF APPLICATION**

The application seeks approval of matters of principle, access, layout, and scale. Landscaping and external appearance would be reserved to a subsequent application.

The proposal is for three large light industrial buildings, each to be set on stilts/columns with under-croft parking and ramp/stair access to the 'ground floor'. The three buildings have footprints of 1440sqm, 1051sqm and 1051sqm. They are all shown to be 5.6m to the eaves and 8.8m to the ridge line including the 2.1m high under-croft space. Each of the buildings will be split into three units each with a single toilet.

The site plan shows the three buildings facing inwards creating a courtyard area with an area of landscaping and further car parking spaces. The layout shows periphery landscaping, bin, and cycle stores. In total, 134 car parking spaces are shown. Buildings 1 and 2 are within approximately 6m of the Rife on the eastern side of the site.

SITE AREA

0.99 Hectares.

TOPOGRAPHY

Appears predominantly flat save for a raised bund along the eastern side of the site adjacent to the Rife.

TREES

None affected by the development.

BOUNDARY TREATMENT

The land is enclosed by a mix of earth bunds and fencing. There is no defined boundary to the west. On the northern boundary is a drainage ditch which is classified as a 'Main River'.

SITE CHARACTERISTICS

The land in question is a large square behind three industrial buildings within Heath Place. The site is currently being used for unauthorised uses. Prior to this the land was an open amenity area, with tree and shrub planting and no defined boundaries. The land is accessed through the Heath Place industrial site.

CHARACTER OF LOCALITY

Within the Built Up Area boundary (BUAB) but part of a small

swathe of natural land forming a buffer to the Aldingbourne Rife. Predominantly industrial development to the west but residential dwellings to the immediate north-west. There is a caravan park beyond the Rife to the east.

RELEVANT SITE HISTORY

BE/122/25/CLE	Lawful development certificate for the existing use of the land for the parking and storage of vehicles, trailers and lorry bodies, the siting of storage containers and portable buildings and the storage of imported inert soils for more than 10 years.		
BE/138/23/OUT	Outline application with some matters reserved (except access, layout and scale) for 3 No. light industrial/workshop units. This application is in CIL Zone 4 (Zero Rated) as other development.	Refused	23-02-24
BE/30/00/	Renewal of unimplemented planning permission BE/56/95 for erection of 3701sq.m of B1 class units together with parking	Refused	12-05-00

Planning permission was granted in 1990 for industrial buildings on the site. However, despite this being renewed in 1997, it was never implemented, and a further renewal application was refused in 2000 (BE/30/00). At the same time, an application for storage of materials on the site (BE/7/00) was refused. Both applications were refused due to flood risk issues and there was an additional highway access reason attached to BE/7/00.

No further applications were lodged until 2023 when an outline application was made for one light industrial/workshop building containing 3 units. This was refused for flood risk, drainage, and biodiversity issues.

The site has been subject to enforcement action with a Stop Notice having been served on 8 November 2022. This related to: "The use of the land for the parking and storage of vehicles, trailers and lorry bodies, the siting of storage containers and portable buildings and the storage of imported waste. The creation of earth bunds along the northern and eastern boundaries and the laying of hardstanding."

This Notice concerned only roughly two thirds of the site subject with the northern site edge corresponding with the line of the watercourse shown on the submitted location plan. An Enforcement Notice (EN) was then also issued for the same site area and the same activities. It required compliance within 3 months of 7 December 2022. No appeal was made and therefore the EN became effective on 7 March 2023.

A subsequent EN was served on 7 November 2023, and this included the remaining third of the site area. That Notice took effect on 06/12/23 and required all works to be completed by March 2023. All matters remain outstanding.

A Certificate of Lawfulness application was recently made to seek confirmation from the Council that the parking and storage of vehicles, trailers, and lorry bodies, the siting of storage containers and portable buildings, and the storage of inert soils was lawful having been on the site for 10 years prior to the date that the application was lodged. This was refused on 04/12/25 for the following reasons:

- (a) The evidence solely comprises of aerial photos with no corroborating evidence.
- (b) The aerial photos themselves do not support the asserted 10-year use of all of the land.
- (c) The submitted evidence from interested persons and other sources conflicts with the applicants own evidence.

The current application was subject to a pre-application request made in January 2025. This solely sought advice on the flood risk aspects.

REPRESENTATIONS

Bersted Parish Council object as the development is in Flood Zones 3a and 3b and nothing has changed since the last application except that the application is now for a greater number of units.

One objection from West Sussex Wildlife Protection on the grounds that the site was cleared of natural vegetation and it will not be possible to demonstrate a biodiversity net gain. Also the site is needed for flood plain storage.

COMMENTS ON REPRESENTATIONS RECEIVED:

Comments noted. The previous application proposed only 1 building.

CONSULTATIONS

CONSULTATION RESPONSES RECEIVED:

ENVIRONMENT AGENCY (EA) - object as the development falls in a flood risk vulnerability category that is inappropriate to Flood Zone 3b in which the application site is partially located. Also, state:

- When comparing the topographic survey provided by the applicant with 2014 LiDAR data, it appears much of the site has been raised by 0.5-1m.
- This has likely removed floodplain storage and would displace water during a flood event resulting in increased flood risk elsewhere.
- This is further evidenced by the fact that the 2015 5% flood model levels are lower than the current ground levels. The new ground levels are above the 5% flood level as they were raised after the model was built.
- The land raising appears to include an unpermitted flood bund running adjacent to the Aldingbourne Rife.
- The EA previously served a Notice on the landowner requiring removal of the imported materials. The Notice was not complied with, and the EA successfully prosecuted the however no remediation works have been carried out.
- The flood modelling used to calculate the required compensation volume for the piers and columns used the 2014, pre land raising, ground levels and so the locally available flood modelling is not suitable for use.
- To overcome the objection, the applicant should restore the site ground levels to the original levels or provide adequate level for level floodplain compensation up to the design flood event including climate

change to offset the loss of storage through land raising; and

- Once the above has been rectified, the applicant should recalculate the required floodplain compensation and provide details of how this will be provided.

NATIONAL HIGHWAYS - no objection.

SOUTHERN WATER - no objection and request a standard foul drainage condition.

SUSSEX POLICE - no objection and request the applicant consider the use of CCTV, intruder alarms, and lighting.

WSCC LEAD LOCAL FLOOD AUTHORITY (LLFA) - object as although the submission is sufficient to rule out infiltration as a surface water disposal method, there is insufficient evidence to demonstrate that discharge to the watercourse (which flows into the Rife) has been agreed. Require confirmation from the EA that they agree the discharge and require commentary on compliance with the National Standards for Sustainable Drainage Systems (NSfS).

WSCC HIGHWAYS - no objection subject to a Construction Management Plan condition and a legal agreement to secure a Travel Plan and the associated monitoring fee. Parking provision far exceeds the requirements (84 spaces) but do not object to this.

WSCC FIRE & RESCUE - no objection subject to a fire hydrant condition.

ADC DRAINAGE ENGINEER - object as does not comply with the NSfS standards by reason of:

- no evidence that the connection to the watercourse has been agreed.
- no details of interception features have been proposed.
- the proposals do not properly account for the risks of extreme rainfall and flooding.
- no water quality assessment has been submitted.
- no assessment of amenity benefit has been submitted; and
- no biodiversity benefits have been identified arising from the proposed surface water drainage system.

ADC ECONOMIC DEVELOPMENT - no objection. State are always pleased to support applications for good quality, mid-sized, new business space as there is a shortage in the district.

ADC LANDSCAPE OFFICER - no landscape objection subject to the submission and approval of landscape proposals at reserved matters stage.

ADC ECOLOGIST - no objection with conditions to secure the required Biodiversity Net Gain (BNG), biodiversity enhancements, a suitable lighting scheme and future BNG monitoring. A legal agreement will be required to secure BNG habitats as they have the potential to be significant. Confirms no water voles were found by the surveys but the site will need to be re-surveyed if a period of 18 months pass between the survey and construction. Also comments that:

- The baseline BNG habitat calculations are incorrect as the site habitat was cleared without planning permission in 2022.
- The site habitat has been degraded and the habitat present in January 2020 should be used to form the baseline assessment.
- From aerial photos, the habitats present in 2020 appear to be a ditch (an offshoot of the Aldingbourne Rife), Reeds, Mature scrub and neutral or semi-improved grassland.
- An updated BNG metric is required concurrent with reserved matters prior to commencement; and
- There is a calculated net gain of 0 BU for Watercourse units, equivalent to 0%, and a minimum 10%

gain is required.

ADC ENVIRONMENTAL HEALTH - no objection subject to conditions regarding noise from proposed plant, lighting, and electric vehicle charge points.

COMMENTS ON CONSULTATION RESPONSES:

Comments noted except as indicated below.

ADC ENVIRONMENTAL HEALTH - their response on the previous application requested conditions relating to contamination and construction hours. Given the site's current unauthorised uses and the nearby caravans, these conditions would still seem to be necessary.

POLICY CONTEXT

Designations applicable to site:

Within the Built Up Area Boundary (BUAB).

CIL Zone 4.

Predominantly Flood Zone 3a but with parts in Zone 3b.

Low risk of groundwater flooding; and

Low to medium risk of surface water flooding.

DEVELOPMENT PLAN POLICIES

Arun Local Plan 2011 - 2031:

DDM1	D DM1 Aspects of form and design quality
DSP1	D SP1 Design
ECCSP2	ECC SP2 Energy and climate change mitigation
EMPSP1	EMP SP1 Strategic Economic Growth
ENVDM5	ENV DM5 Development and biodiversity
QEDM1	QE DM1 Noise Pollution
QEDM3	QE DM3 Air Pollution
QEDM4	QE DM4 Contaminated Land
QESP1	QE SP1 Quality of the Environment
SDSP2	SD SP2 Built-up Area Boundary
SKILLSSP	SKILLS SP1 Employment and Skills
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TSP1	T SP1 Transport and Development
WDM1	W DM1 Water supply and quality
WDM2	W DM2 Flood Risk
WDM3	W DM3 Sustainable Urban Drainage Systems
WMDM1	WM DM1 Waste Management

<u>Bersted Neighbourhood Plan 2014 Policy EE1</u>	Business expansion
Bersted Neighbourhood Plan 2014 Policy ES2	Surface water management

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
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.

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. Relevant policies of the Bersted Neighbourhood Development Plan are considered in 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 development of this nature within Flood Zone 3b is inappropriate, the drainage proposals do not comply with the relevant standards and there is concern that the proposal cannot achieve the required BNG.

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:

The site is in the built-up area boundary (BUAB) in the Arun Local Plan (ALP) but not in any other policy designations in the ALP or the Bersted Neighbourhood Development Plan (BNDP). Development in this location is acceptable in principle in accordance with ALP policy SD SP2 albeit provided it also accords

with other policies of the ALP covering such issues as flood risk, drainage, biodiversity, design, highway safety/parking, residential amenity, and pollution.

ALP policy EMP SP1 states support for the provision of land to accommodate employment needs including the expansion of existing employment areas. BNDP policy EE1 states that the extension of existing employment sites will be supported provided that the impact on the amenities of surrounding properties is acceptable. The NPPF states significant weight should be placed on the need to support economic growth and productivity (paragraph 85). There is no conflict with policies regarding the principle of new employment development in the BUAB.

FLOOD RISK:

The site is wholly within Flood Zone 3a (FZ3a), and parts are also noted as within FZ3b which is functional floodplain (land which either stores water during flooding, or which allows such water to flow through in periods of flood). The site is subject to lower risk from surface and groundwater sources. The recent flooding in Bognor Regis associated with rainfall (and water levels in the Aldingbourne Rife) from Storms Ciara and Babel (Oct/Nov 23) resulted in flooding of the application site along with other land adjacent to the Rife.

ALP policy W DM2 requires that proposals in areas at risk of flooding meet the sequential and exceptions tests, provide sustainability benefits to the wider community, demonstrate that the development will be safe and do not increase flood risk elsewhere.

National planning practice guidance (NPPG) states that industrial development in FZ3a is only acceptable provided the sequential test has been met. The purpose of the sequential test (ST) is to ensure land use planning takes due regard of flood risks and to ensure that areas at low or no risk of flooding are developed in preference to areas at higher risk. Per the NPPG, there is no requirement to satisfy the exceptions test for industrial development within zone 3a. It should be noted that recent case law (Mead Realisations Limited v The SoS for DLUHC & Anor, EWHC 279 (Admin)) has determined that the NPPG has the same legal status as the NPPF so it should be treated as policy and not just guidance.

The NPPG also states new industrial development (defined by the NPPF as 'less vulnerable') in FZ3b is not appropriate. The council's FZ3b mapping shows that this is predominantly along the line of the Rife and the offshoot drainage ditch but also extends westwards into the part of the site where the industrial buildings are proposed. It is also clear that land levels on the site have been raised without prior planning permission and that as such, greater parts of the site may be within the floodplain than are currently shown by the updated modelling (see the EA's response). Having regard to the NPPG on flood risk, the proposals on this site are inappropriate in principle and represent a strong reason for refusal.

The applicant has provided a Flood Risk Assessment (FRA) and unlike the previous application, also a Sequential Assessment (SA). This was previously reviewed as part of a pre-application enquiry earlier in 2025 and Officers stated it is positive that a significant number of sites (401) had been identified and assessed, even though ultimately none are found to be suitable as an alternative. No objections were raised with regard to the document. The submitted SA is the same as that one reviewed previously and this requirement of the policy has now been complied with. The FRA proposes mitigation measures relating to the safety of the end users of the site.

The proposal as it stands does not comply with relevant flood risk policy due to development being within Flood Zone 3b and there being the potential for a loss of flood plain storage potentially causing increased flooding elsewhere. In addition, site levels have been raised without planning permission and this impacts upon the availability of flood storage compensation which has not been accounted for by the application.

SURFACE WATER DRAINAGE:

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. BENDP policy ES2 is also relevant in respect of drainage. The new "National Standards for Sustainable Drainage Systems" (NSfS) were published in July 2025.

The application has attracted objections from WSCC (as the Lead Local Flood Authority) and the Council's drainage engineers. In both cases the issues relate to the inadequacy of the proposals with respect to the new NSfS. Crucially, whilst it is accepted that infiltration can be ruled out, the proposal to drain to a nearby watercourse cannot be accepted at this time as there is no evidence that a connection has been agreed with the EA.

The proposal is clearly in conflict with the new National Standards and by association with the relevant policies therefore it is not possible to determine that the proposed drainage solution is appropriate and will not lead to flooding elsewhere (such as for example on land downstream given that the water will ultimately flow into the adjacent Rife).

FOUL DRAINAGE:

ALP policy W DM1 states all major developments must demonstrate, that adequate drainage capacity exists or can be provided as part of the development. Where adequate capacity does not exist, there will be a requirement that facilities are adequately upgraded prior to the completion and occupation of development. The application provides no certainty on foul drainage proposals. However Southern Water raise no objections, and it is clear that the existing residential dwellings to the north-west and the industrial units on the western side are already connected.

As per Ofwat rules, where a development can communicate directly to an existing public sewer system at no more than the existing pipe diameter, there is no requirement to undertake a capacity survey, and the new connection would be subject to standard infrastructure charges. There is no conflict with policy W DM1.

ACCESS AND PARKING:

ALP policy T SP1 seeks to ensure development provides safe access on to the highway network; contribute to highway improvements (where appropriate) and promotes sustainable transport. Schemes should accommodate 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.

The council's Parking Standards SPD states B1 office uses (now class E(g)) should provide 1 car parking space per 30sqm of B1 (now E) business space, 1 staff cycle space per 150sqm and 1 visitor cycle space per 500sqm but that the provision should also be tailored to take account of the land-use, trip rate and the user group of staff/visitors of the site (including shift patterns).

Based on the proposed internal floorspace, this would equate to a provision of 112 car parking spaces, and 29 cycle spaces. This is different to the figure quoted by WSCC Highways and it appears that they assessed the scheme based on the standards for B2 general industrial (1 car space per 30sqm). The proposal is for 134 car parking spaces, and this exceeds the requirements. Cycle storage provision is shown but there are no details of the number of spaces, and this would therefore be resolved through a condition.

WSCC Highways assessed the application, and they raise no concerns. The access arrangements are as existing and there are no issues with its layout or its operation. On this basis, it is determined that there is no conflict with the relevant policies.

LAYOUT, SCALE AND AMENITY:

The application seeks approval of layout and scale but not appearance. 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. The Arun Design Guide (ADG) is focussed on residential development but generally requires development to respond to the distinctiveness & characteristics of its surroundings in terms of scale, massing, and materials. New development must ensure the existing character and sense of place of an area is respected and enhanced. This can allow for new design forms but only where these take cues from well-designed elements of the area.

ALP policy D DM1 requires there be minimal impact to users and occupiers of nearby property and land whilst QE SP1 requires development contribute positively to the quality of the environment and ensure development does not have a significantly negative impact on residential amenity.

The proposal will develop a currently open area; however, the site is not formally designated as being an area of high landscape or character value and is well within the BUAB. It is material that to the east and further to the south, there are caravans right up to the edge of the Rife. The southernmost of the three buildings occupies a similar building line to an existing building to the west and is shown in the same place as the previous application. No objection on layout grounds was raised to it previously.

The westernmost building backs onto the existing industrial units at Heath Place and will be seen in that context. This then leaves the eastern building. This will be only around 6m from the edge of the Rife and some 17m from the caravans on the other side. The building will be prominent in views up and down the Rife, but this is an urban area, and it is appropriate to have industrial buildings in such an area.

The building will harm the views from the caravans opposite however they are holiday caravans and so there will be no impact on the amenities of residential occupiers. The interface distance of 17m coupled with restrictions on windows on the east side (to be agreed at the reserved matters stage when appearance is determined) will ensure there is no loss of privacy/light and it is material that there is no right to a view in planning.

It is noted that on the previous application the proposed building was shown to only have an under-croft space of 1m. This has now been increased to 2.1m. However, the proposed total height including the under-croft is only 5.6m to the eaves and 8.8m to the ridge line compared to 7.2m/9.7m as per the previous application. Therefore, the scale has been reduced from before and the buildings will be similar in scale to the existing building at Heath Place adjacent the western boundary (and indeed is lower than the large three storey industrial building to the south-west).

There are no concerns with layout scale or amenity and no conflicts with the stated policies.

AIR AND NOISE POLLUTION:

ALP Policy QE DM3 requires that major developments such as this are in easy reach of established public transport services, maximise provision for cycling & pedestrian facilities, include electric car charging points and contribute towards the improvement of the highway network.

This is an inherently sustainable location for development. It is within the urban area and employees can

walk to reach local shops for lunchtimes. In addition, the site is within walking distance of nearby residential areas from where employees might come from. The site also benefits from bus links. Therefore, employees would not be reliant on the private car to reach the site. Conditions can be imposed to ensure the provision of electric vehicle charge points and cycle stores. As such, there is no policy conflict.

Policy QE DM1 states new noise generating development must provide a noise report which provides accurate information about the existing noise environment, and the likely impact of the proposed development upon this. No noise report has been submitted however the council's environmental health officer (EHO) does not advise any objection on noise grounds. It is also material that a report was submitted with the previous application which concluded no harmful impact to nearby noise sensitive development. The EHO also stated no objections at that time.

Policy QE DM1 also requires justification for the site location and whilst none has been provided, the location is nonetheless appropriate having regard to the existing industrial development adjacent to the site. On this basis there is no conflict with ALP policy QE DM1.

BIODIVERSITY:

The site borders with the Aldingbourne Rife and is within 90m of the Bersted Brooks Wildlife site (albeit this is on the opposite side of the A259 Rowan Way). ALP policy ENV DM5 states development schemes shall seek to achieve a net gain in biodiversity and protect habitats on site.

The previous application was not accompanied by any supporting ecological information and there was also no information relating to Biodiversity Net Gain. The former resulted in a refusal reason however this has now been resolved by the provision of survey information. The council's Ecologist raises no concerns with the impact on protected species.

The ecologist raises some concerns with the Biodiversity Net Gain (BNG) submission. Essentially, the application has assessed BNG using the baseline of the site as it currently (as hardstanding) whereas the BNG rules states that where on-site habitat has been degraded then the habitat present in January 2020 should be used to form the baseline assessment. The site was cleared of vegetation and levels raised after then. A section of ditch/watercourse (as an offshoot of the Rife) has been lost along with trees, scrub, grassland, and reeds.

Whilst the ecologist does not state objection on these grounds, this is due to the fact that BNG is only formally agreed through a Gain Plan condition. Should that condition not be capable of being discharged then development cannot proceed. The NPPG on Biodiversity Net Gain (paragraph: 019 Reference ID: 74-019-20240214) states that "... it would generally be inappropriate for decision makers, when determining a planning application for a development subject to biodiversity net gain, to refuse an application on the grounds that the biodiversity gain objective will not be met." However, it goes on to say that "... decision makers may need to consider more broadly whether the biodiversity gain condition is capable of being successfully discharged."

It is the Council's view that there is presently insufficient information to determine whether the BNG requirements based on the January 2020 baseline can be achieved and that there is doubt (given the previous unauthorised development on the site) that the the need to discharge the Gain Plan condition prior to implementing any permission will be honoured.

On this basis, it is determined that there is conflict with the Environment Act provisions on BNG and with the associated policy and guidance in the NPPF and NPPG.

SUMMARY:

This application seeks agreement to the principle, siting, scale, and access arrangements of 3370sqm of new light industrial development. This report demonstrates that the proposal is acceptable in principle having regard to being within the BUAB. However, the proposal will be within land that is part of the floodplain to the adjacent Rife and industrial development is not appropriate in such a location. This represents a strong reason for refusal which would disengage the NPPF para 11(d) 'tilted balance'.

In addition, the proposal fails to demonstrate a policy compliant surface water drainage scheme or the required amount of BNG having regard to the January 2020 baseline. The BNG proposals would also need to be secured by a legal agreement having regard to the scale of any on-site BNG that will be required and given the Council's published policy on "Securing Significant On-site Biodiversity Net Gain (BNG) from developments" (January 2025).

The proposal conflicts with the development plan and material considerations do not indicate that the application should be decided other than in accordance with it. It is therefore recommended that this application be refused for the following reasons.

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.

CIL DETAILS

This application is not liable for CIL.

RECOMMENDATION

REFUSE

1 The proposal conflicts with Arun Local Plan policy W DM2, the NPPF and the associated

NPPG in that parts of the site lie in Flood Zone 3b (functional floodplain) and development of this nature is not permitted in this zone as it can result in a loss of floodplain storage, impede water flows, and result in increased flooding elsewhere. In addition, site levels have been raised without planning permission and this impacts upon the availability of flood storage compensation which has not been accounted for by the application.

- 2 Insufficient information has been provided to determine if the proposed development is deliverable on the site without prejudicing surface water drainage for the site and leading to surface water runoff and increased flooding elsewhere. The proposal therefore conflicts with Arun Local Plan policy W DM3, Bersted Neighbourhood Development Plan ES2, the NPPF and the associated NPPG.
- 3 The proposal fails to demonstrate that the required biodiversity net gain (in respect of area habitat and watercourse units) can be achieved on the site having regard to the need to consider the former state of the site in January 2020 as the net gain baseline. It is uncertain that the BNG requirements can be met and there is presently insufficient information to determine that the BNG requirements can be achieved. As such the proposal is in conflict with Arun Local Plan policy ENV DM5, the Environment Act 2021, the NPPF and the associated NPPG.
- 4 In the absence of a signed Section 106 agreement, the development makes no provision for the future monitoring of a Travel Plan contrary to the requirements of Arun Local Plan policies T DM1 and T SP1 and the NPPF.
- 5 **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.