

Recommendation Report for Planning Permission

REF NO: BE/67/26/PL

LOCATION: Land East Of
Heath Place
Bersted
PO22 9SL

PROPOSAL: Change of use of land to open storage and parking, raising of land levels (retrospective) and laying of hardstanding, associated landscape works. Is in CIL Zone 4 (Zero Rated) as all other development.

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	The application seeks to regularise the previous existing change of use of land to open storage, the unauthorised hardstanding and raised levels. It also proposes new landscaping and 16 parking spaces to serve the existing Ash Grove industrial estate. New floodplain-restoration measures are proposed along the northern and eastern margins to comprise of an approximately 102m long/3m wide/0.6m deep area giving an area of approximately 306sqm to create new flood-storage volume.
SITE AREA	0.32 hectares.
TOPOGRAPHY	Appears predominantly flat but the land is known to have been raised in places from its original condition.
TREES	None affected by the development.
BOUNDARY TREATMENT	The land is enclosed along the northern boundary by a fence and hedge and then in part along the southern boundary by a fence. It is open to the east whilst to the west the rear elevations of industrial buildings provide a natural edge.
SITE CHARACTERISTICS	The land in question is part of a larger square shaped area of land behind three adjoining industrial buildings which are within the Ash Grove Industrial Estate. The site is currently being used for waste disposal, and open storage including parking. Prior to this unauthorised use, the land was an open amenity area, with tree and shrub planting and no defined boundaries. The land is accessed through the adjacent industrial site.
CHARACTER OF LOCALITY	The site is in the Built-Up Area Boundary but part of a 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/20/26/CLE	Lawful development certificate to confirm the existing mixed (sui generis) parking and B8 general open storage use for the parking and storage of vehicles, trailers and lorry bodies and the siting of storage containers.	Approve 05-05-26
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.	Refused 04-12-25
BE/112/25/OUT	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.	Refused 24-12-25
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
BE/7/00/	Storage of materials - sand, ballast, pipe fittings etc.	Refused 18-02-00
BE/56/95	Renewal of unimplemented planning permission BE/139/90 for erection of 3701.00 sq.m. B1 Class Units,together with parking for 149 cars.	ApproveConditionally 10-01-97
BE/139/90	Erection of 3701.0 sq.m B1 class units,together with parking for 149 cars.	Approved Cond 13-12-90

Planning permission was granted in 1990 for industrial buildings on a larger site (including this).

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 wider site area (BE/7/00) was also 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 on the wider site area for 3 No. light industrial/workshop units. This was refused for flood risk, drainage, and biodiversity issues. A resubmission application was made and has also been refused, also for these reasons. A resubmission was made in 2005 but also refused on grounds of flooding, drainage, and biodiversity. More recently a Lawful Development Certificate was granted on a small portion of the land behind unit E for parking/storage of vehicles and the siting of a storage container.

The wider land area was 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." Subsequently, two Enforcement Notices were served in December 2022 and November 2023 for two parts of the wider site area.

The proposed application site falls within the area of both Notices (refs ENF/159/22 and ENF/159/22 (B)). Both Notices refer to the use of the land for the parking and storage of vehicles, trailers, caravans and lorry bodies, the siting of storage containers and portable buildings, the storage of imported waste and the associated operational development of the laying of hardstanding.

REPRESENTATIONS

N/A.

COMMENTS ON REPRESENTATIONS RECEIVED:

N/A.

CONSULTATIONS**CONSULTATION RESPONSES RECEIVED:**

N/A

COMMENTS ON CONSULTATION RESPONSES:

N/A

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

PLANNING POLICY GUIDANCE:

NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance

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. The Bersted Neighbourhood Development Plan is relevant to this application.

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."

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

INTRODUCTION:

Arun District Council served two Enforcement Notices (EN) on the land subject of this application in December 2022 and November 2023 (ENF/159/22) which together encompass the whole of the wider land area to the east of Ash Grove Industrial Estate (with the exception of the small area of land subject to BE/20/26/CLE).

The site area subject of this new application is predominantly covered by the second EN but a small part along its southern edge is covered by the first EN. The first Notice requires the following actions:

- cease the material change of use of the land shaded in red on the attached plan for the parking and storage of vehicles, trailers, and lorry bodies.
- cease the use of the land shaded in red on the attached plan for the siting of shipping containers
- cease the use of the land shaded in red on the attached plan for the siting of portable buildings.
- cease the importation of waste material, soil, and hardstanding to the site shaded in red on the attached plan.
- cease the laying of hardstanding on the site shaded in red on the attached plan.

The second notice requires the following actions:

- cease the material change of use of the land shaded in red for the parking and storage of vehicles.
- remove all of the vehicles, trailers and lorry bodies parked on the land shaded in red from the site.
- cease the use of the land for the siting of shipping containers and remove all shipping containers from the land shaded in red.
- cease the use of the land for the siting of portable building and remove all portable building from the land shaded in red.
- remove all hardstanding from the land shaded in red and reinstate the land to its former condition.
- remove all imported waste, rubble and material from the site shaded in red and reinstate the land to its former condition; and
- remove the fencing and gates along the north-eastern and western boundaries of the site shaded in red on the attached plan.

No appeals were lodged against the EN's and so they came into force on 07/12/22 and then 07/11/23. However, no action has yet been taken to comply with the Notices.

This new application has been submitted and seeks to retain/regularise items subject of the EN's including the change of use of the land to storage, the unauthorised hardstanding, and the levels changes.

RELEVANT POLICY AND GUIDANCE:

Policy DM8 of the NPPF states "in cases of unauthorised development where consideration is being given to an application for retrospective planning permission, if it is concluded based on evidence that the unauthorised development was intentional, that fact should be given substantial weight in considering whether to grant planning permission."

Paragraph 005 (Reference ID: 17b-005-20140306) of the NPPG states that effective enforcement is important to tackle breaches of planning control which would otherwise have unacceptable impact on the amenity of the area, maintain the integrity of the decision-making process, and help ensure that public acceptance of the decision-making process is maintained.

The Arun Planning Compliance Strategy (June 2025) states retrospective applications may be invited to regularise the development in advance of formal action. It does not advise similarly in cases where an EN has already been served.

RELEVANT LEGISLATION AND CASE LAW:

Section 70C of The Town and Country Planning Act 1990 (as amended) gives a power to Local Planning Authorities to decline to determine a retrospective application for planning permission where the proposal relates to those matters specified as the breach in an enforcement notice. It states:

"A local planning authority may decline to determine an application for planning permission or permission

in principle for the development of any land if granting planning permission for the development would involve granting, whether in relation to the whole or any part of the land to which a pre-existing enforcement notice relates, planning permission in respect of the whole or any part of the matters specified in the enforcement notice as constituting a breach of planning control.

For the purposes of the operation of this section in relation to any particular application for planning permission or permission in principle, a "pre-existing enforcement notice" is an enforcement notice issued before the application was received by the local planning authority."

The scope of S70C has been clarified in recent times following three important 2026 cases: R (Moran) v Medway Council, R (Connors) v Bromley London Borough Council and R (Baker) v Reigate and Banstead Borough Council.

The Moran case argument was that the provision under S70C should be confined to retrospective applications because that was how it had historically been described. The Court of Appeal disagreed and stated it also applied to prospective applications where granting such an application would involve granting permission for new development but including matters caught by the pre-existing enforcement notice. This is relevant to the current proposal as new development is proposed alongside the regularising aspects. The Court also rejected the idea that S70C is only available where the application is abusive in nature or is being used to delay enforcement.

The Connors case found that a change in policy does not automatically create a duty to reopen the planning merits. The Baker case further reinforced the Connors and Moran cases. It is also important to note that the Moran case will be subject to a Supreme Court appeal and so should be regarded as a 'live law' rather than a settled point.

S70C says the authority may decline to determine but it does not say it must. Relevant circumstances can include the history of the site, the nature and extent of the overlap, the status of the enforcement notice, whether the notice has been complied with, whether the new proposal is genuinely different, and whether there have been material changes since the earlier enforcement history. There is no single checklist which automatically converts those matters into a right to a merit determination. Connors is particularly useful on this point in that the exercise remains fact sensitive.

ASSESSMENT:

Section 70C is one measure to speed up the planning system and avoid delaying tactics caused by repeat applications. It gives a Local Planning Authority the power to decline to determine a retrospective planning application in cases where the works are specified in a valid enforcement notice, which is the case here.

It is noted the application seeks some aspects of new development alongside the regularising aspects. However, the proposed parking spaces are not new development per se in that the EN requests the removal of vehicle parking. The proposed landscaping is not development as permission is not required to plant trees and shrubs. This just leaves the proposed flood restoration scheme but whilst this is a new proposal it has only been proposed due to the previous infilling of the former depression on the site (as helpfully illustrated by the "Pre-Existing Block Plan with Levels" drawing no. 2609HE_002). Therefore, it can be argued that in actual fact the proposal does not include any genuinely new prospective elements.

It is relevant that aside from the new NPPF in August this year (which is of limited value due to the flood risk associated with the site and the application of the relevant NPPD policy), there have been no other material changes that could potentially require the unauthorised uses to be re-assessed. The site remains part of the floodplain of the Rife and there has been no change in policy which would warrant a

different view to be taken other than that the changes to the site are harmful to character of the area and potentially increase the risk of flooding on land adjacent to the Rife.

It is also important to note the recent refusals for industrial buildings on the site which were on the grounds of flooding, drainage, and biodiversity. Officers consider that the applicants would therefore not be disadvantaged by taking this action to decline to determine the new application.

Whilst enforcement action is discretionary there were strong grounds in 2022/23 to pursue action to remove the harm in order to maintain the character of a formerly unbroken natural strip of land extending south from the Bersted Brooks Nature Reserve alongside the Rife. The current application therefore represents a further delaying tactic which frustrates the effective enforcement of planning control. It is therefore both reasonable and necessary that S70C is utilised. The landowner must comply with the enforcement notice. If this does not take place, then the Local Planning Authority can consider appropriate action to secure compliance with the enforcement notices.

RECOMMENDATION:

That the application be declined for determination for the following reasons:

- The application relates to the development of land to which existing enforcement notices relate and seeks permission for the retention of matters specified in the enforcement notices as constituting a breach of planning control; and
- There has been no material change in circumstances to warrant consideration of this new application.

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 to decline to determine 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