

Recommendation Report for Planning Permission

REF NO: BN/108/21/PL

LOCATION: Saxons
33 Hill Lane
Barnham
PO22 0BL

PROPOSAL: Removal of Condition No 3 following grant of BN/56/20/PL relating to the occupation of dwelling limited to a person solely or mainly employed or last employed in the locality in agriculture, forestry or the equestrian industry, including any dependents residing, or a widow or widower of such person. This application affects a Right of Way.

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION

As above. The application seeks permission to remove condition 3 (agricultural/forestry/equine worker occupancy restriction) imposed on BN/56/20/PL (which approved the construction of 1 new dwelling). Condition 3 of BN/56/20/PL is worded as follows:

The occupation of the dwelling shall be limited to a person solely or mainly employed or last employed in the locality in agriculture (as defined in Section 336 (1) of the Town and Country Planning Act 1990), forestry or the equestrian industry, including any dependents of such a person residing with him or her, or a widow or widower of such a person.

Reason: The site lies in a rural area where, in accordance with Arun District Local Plan policy C SP1, development unrelated to the essential needs of agricultural and/or forestry and/or equine would not normally be permitted.

SITE AREA

0.07 hectares.

RESIDENTIAL DEVELOPMENT 14 dph.

DENSITY (NET)

TOPOGRAPHY

Predominantly flat.

TREES

There appear to be significant on and off-site trees/hedges.

BOUNDARY TREATMENT

2m (approx.) hedge along eastern boundary of site adjacent to existing footpath. Timber fence panelling to western boundary adjacent to no.33 'Saxons'. Hedging, trees, shrubs to rear/southern boundary of site. Hedging and double wooden vehicular gates to front/northern boundary of site adjoining Hill Lane

SITE CHARACTERISTICS

The wider site (blue line boundary) includes a medium-sized detached dwelling (no.33 'Saxons') with hipped roof and a

driveway, gardens and outbuildings to the side. The site (red line boundary) consists garden land to the side of Saxons, which contains a large single storey timber garage/storage outbuilding. An agricultural barn was recently constructed on land to the west of the site (approved under BN/32/13/PL).

CHARACTER OF LOCALITY

Rural location. On the southern side is open farmland which includes ad-hoc agricultural holdings and buildings. On the northern side along Hill Lane there are some sporadic residential dwellings of various styles and designs. Farm to east of site.

RELEVANT SITE HISTORY

BN/56/20/PL	Demolition of existing shed/garage & erection of 1 No detached dwelling. This application affects a Right of Way.	ApproveConditionally 10-08-20
BN/31/16/PL	Demolition of existing shed/garage & erection of 1no detached dwelling. Resubmission of BN/13/15/PL.	ApproveConditionally 22-07-16

BN/31/16/PL - Approval of new dwelling on the site, with planning condition restricting its occupation to somebody working in agriculture, forestry or equestrian industry.

BN/13/15/PL - Refusal based on being in a countryside location and use not being related to agriculture/forestry/equine/minerals or waste, visual impact, and lack of affordable housing contribution.

REPRESENTATIONS

Barnham & Eastergate Parish Council -
No comments received.

No other representations have been received.

COMMENTS ON REPRESENTATIONS RECEIVED:

Noted.

CONSULTATION RESPONSES RECEIVED:

No other consultees consulted.

COMMENTS ON CONSULTATION RESPONSES:

Noted.

POLICY CONTEXT

Designation applicable to site:

Countryside

Lidsey Waste Water Treatment Catchment Area

Barnham & Eastergate Neighbourhood Plan Area

CIL Zone 3

DEVELOPMENT PLAN POLICIES

Arun Local Plan 2011 - 2031:

CSP1	C SP1 Countryside
SDSP2	SD SP2 Built-up Area Boundary
HDM3	H DM3Agricultural forestry and horticultural Rural dwellings

PLANNING POLICY GUIDANCE:

NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance

SUPPLEMENTARY POLICY GUIDANCE:

SPD13	Arun District Design Guide (SPD) January 2021
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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 adopted policies contained within the Barnham & Eastergate Neighbourhood Plan 1 (made 2014) are relevant in the determination of this planning application. The draft policies contained within the emerging Barnham & Eastergate Neighbourhood Plan 2 (now at Reg. 17 stage) now hold substantial weight in the determination of 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."

The proposal is considered to conflict with relevant Development Plan policies in that (with the proposed removal of this planning condition) it would result in a new dwelling in the countryside which is not justified by any of the exception tests set out in countryside policy C SP1 nor rural workers dwelling policy H DM3 of the Arun Local Plan.

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

It is considered that there are other material considerations to be weighed in the balance with the Development Plan. This material consideration is a recent appeal decision (appeal ref. W/4001228) allowing a new dwelling (not related to agricultural, horticulture, forestry, equestrian) in the countryside at a nearby site Tile Barn Farm, 32 Hill Lane.

CONCLUSIONS

INTRODUCTION:

The 2020 planning permission BN/56/20/PL remains extant/live. The policies (including countryside policy C SP1 and rural workers dwellings policy H DM3) contained in the Arun Local Plan (2018) remain in force now as at the time of the original decision. The adopted policies contained within the Barnham & Eastergate Neighbourhood Plan 1 (made 2014) still remain in force now as at the time of the original decision, although the draft policies in the emerging Barnham and Eastergate Neighbourhood Plan 2 (Reg.17 stage) now hold increasing weight. Notwithstanding this, it is not necessary to reconsider the whole application scheme afresh, since it remains extant. The only aspect for the LPA to consider under this current S73 application is whether the proposal to omit a restricted occupancy condition for this new dwelling in the countryside can now be concluded as being acceptable, including on the basis of any other material considerations (in this case appeal decisions) which have come to light since the time of the original decision.

ASSESSMENT - COUNTRYSIDE DEVELOPMENT AND PRESUMPTION IN FAVOUR:

Policy C SP1 of the Arun Local Plan states that development in the countryside is not permissible, unless it meets one of a number of exception tests which include '(a) for the operational needs of agriculture, horticulture, forestry' or (f) in accordance with other policies in the Plan which refer to a specific use or type of development.

Policy H DM3 of the ALP is one such policy (as per C SP1, f) since it refers to a specific use/type of development in this case rural workers dwellings outside the BUAB. This policy supports permanent rural workers dwellings, outside the BUAB providing proposals meet certain tests. This includes that there is a clearly established existing functional need for workers to be on-site and readily available, the needs relate to a full-time worker, that there is no alternative unit on site, the rural activity/enterprise has been established for at least three years, the dwelling is of a size commensurate with the established functional requirement, and is well-sited and related to existing farm buildings or other on-site farm dwellings. It also includes that "(g) Any planning permission granted will be subject to an occupancy condition, limiting occupation to a person solely or mainly employed in the locality in agriculture or forestry...".

Under the previous application it was concluded by the LPA that the proposal for a new dwelling in the countryside would only be acceptable, subject to a planning condition being applied restricting occupancy to those employed in the local area in the agriculture, forestry or equestrian industry, to ensure compliance with ALP policies C SP1 and H DM3 and to justify the countryside development.

When assessed against the NPPF's 'presumption in favour of sustainable development', the LPA concluded that whilst the proposals would broadly represent 'sustainable development', since the visual adverse effects of the new dwelling on the countryside of the new dwelling would significantly and

demonstrably outweigh any benefits of the scheme the 'presumption in favour' would be outweighed by this harm. As such, a conflict with the Development Plan ALP policies C SP1 and H DM3 (i.e. by the application not according with any of the exception tests such as being restricted to rural worker occupancy only and the imposition of an occupancy condition) would not be justified by being outweighed by the NPPF's presumption in favour of sustainable development.

And thus the scheme was concluded as only being acceptable, subject to the imposition of a rural workers occupancy condition to ensure compliance with the Development Plan.

Since the time of the original decision, a material consideration has arisen in the form of a recent appeal decision (appeal ref. W/4001228) allowing a new dwelling (not related to agricultural, horticulture or forestry) in the countryside at a nearby site Tile Barn Farm, 32 Hill Lane. That appeal was allowed on the basis that the Inspector concluded the new dwelling would not have a significant and demonstrable visual adverse effect on the countryside which would outweigh the benefits of the scheme. Therefore, in the tilted balance, the NPPF's 'presumption in favour of sustainable development' outweighed the conflict with the Development Plan and was duly allowed.

Under that appeal, the Inspector considered that the proposed new dwelling at Tile Barn Farm 32 Hill Lane would not comply with Development Plan policy C SP1 but that "the development would not impede or harm open views of the countryside or harm the landscape character of the area because of the proposed development's proximity to other buildings on Tile Barn Farm, the hedgerows along Hill Lane and the existing mature landscaping on the site." They did identify some harm as follows "I have found that the proposed development would result in an encroachment into the countryside from additional built development. This would conflict with the policies in the Framework and the development plan. Nonetheless, the effect of this would be localised to the near vicinity of the appeal site and would only affect an area that is currently perceived as being within the curtilage of Tile Barn Farm. Consequently, the resulting harm would be small in scale and limited in extent." They concluded that "Given the small scale and limited extent of the harm that would be caused by the proposal, I cannot conclude that the adverse impacts of the development would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole. Therefore, the presumption in favour of sustainable development set out in Paragraph 11 of the Framework applies which points towards the grant of planning permission." The appeal was duly allowed.

It is recognised by the LPA that, in the case of this current application site, the piece of land in question is domestic garden land (to the side of 'Saxons') which contains existing structures/sheds, that the site is separated and differentiated from the adjacent open countryside by mature hedgerows on its boundaries making it quite visually contained, and that it is located between and in close proximity to other dwellings/agricultural buildings at Saxons (no.33) and Tile Barn Farm (no.32). The LPA therefore acknowledges that, in this way, the site shares similarities with the appeal site at Tile Barn Farm 32 Hill Lane, and if anything that appeal site was actually on the outer edge of any built development and directly adjacent to fields and open countryside, whereas the application site is located between two dwellings/farm, lessening its impact.

As such, taking into account the material consideration of the recent appeal decision at the adjacent site, the LPA accepts that the circumstances of the current application site are similar to that of the appeal site, and that it can also be reasonably concluded in this case then that the proposed development would not result in a significant and demonstrable visual adverse impact on the character and appearance of the countryside that would outweigh the benefits of the scheme and that any visual harm would be limited. The conflict with the Development Plan, policies C SP1 and H DM3, resulting from the removal of the rural workers occupancy condition would therefore, in the titled balance, be outweighed by the NPPF's presumption in favour. Therefore the imposition of this condition, to comply with the policies in the Development Plan, is deemed no longer necessary, and it no longer meets the NPPF's tests for

planning conditions. The LPA can therefore accept the proposed removal of the occupancy condition on this basis.

SUMMARY:

At the time of the 2020 planning permission being granted the rural workers occupancy condition was considered necessary, to ensure compliance with the Development Plan policies C SP1 and H DM3 for a new dwelling in the countryside, since it was deemed at that time that the NPPF's presumption in favour would not outweigh a conflict with the Development Plan.

However, it is acknowledged by the LPA that the recent appeal decision at Tile Barn Farm 32 Hill Lane forms a material consideration of substantial weight in the determination of this current application to remove the agricultural/equine occupancy restriction for this new dwelling in the countryside at Saxons 33 Hill Lane. It is accepted by the LPA that these two sites share similarities and that the Inspectors conclusion on that site; that the new dwelling would not result in significant and demonstrable visual harm which would outweigh the benefits of the scheme and that the NPPF's 'presumption in favour of sustainable development' would outweigh any Development Plan conflict with policies C SP1 and H DM3 of the Arun Local Plan; can also be drawn in respect of this site.

Therefore, the imposition of this rural worker occupancy condition, to comply with the policies C SP1 and H DM3 in the Development Plan, is deemed no longer necessary, and it no longer meets the NPPF's tests for planning conditions. The LPA can therefore accept the proposed removal of the occupancy condition on this basis.

As such, the application can therefore be granted on this basis subject to the following condition and informatives;

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.

CIL DETAILS

This application is CIL Liable therefore developer contributions towards infrastructure will be required (dependant on any exemptions or relief that may apply). A Self-Build Exemption Form was submitted with application BN/56/20/PL.

RECOMMENDATION

APPROVE CONDITIONALLY

- 1 INFORMATIVE: All of the conditions imposed on BN/56/20/PL shall remain in force with the exception of Condition 3 which is now deleted.
- 2 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.