

**Recommendation Report for Application under Section 73 for the Removal or Variation of Conditions
Under a Previously Approved Permission**

REF NO: BN/72/26/S73

LOCATION: Century Gardens
Tars Farm
South of Barnham Station

PROPOSAL: Variation of condition 28 following the grant of BN/149/22/PL relating to wording of condition concerning railway crossing (extinguishment or diversion).

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION

The applicant wishes to vary the wording of condition 28 of BN/149/22/PL relating to wording of condition concerning railway crossing (extinguishment or diversion). Ref: BN/149/22/PL was approved following the variation of conditions 6, 9, 20 and 27 originally imposed under Ref:BN/142/20/OUT which was allowed at appeal (Ref: 3273087).

Condition 28 reads:

The Development shall not be occupied until a rail crossing (extinguishment or diversion) order has been made and confirmed in respect of a section of footpath 323, to include where footpath 323 crosses operational railway land at the site of both Birch level crossing and West Barnham level crossing, and the section(s) of footpath 323 has been lawfully extinguished or diverted. This condition shall apply unless either the relevant local authority or the Secretary of State, whoever is the person lawfully seized of the decision whether to confirm the order, refuses to confirm.

Reason: As previously imposed by the appeal decision concerning application BN/142/20/OUT and to ensure that a safe rail crossing is in place to serve footpath 323 in accordance with policy INF SP1 of the Arun Local Plan.

However, for the reasons set out in this report, the condition is now proposed to read as follows:

No more than 20 dwellings, or an alternative number to be agreed in writing by the Local Planning Authority, shall be occupied until a rail crossing (extinguishment or diversion) order has been made and confirmed in respect of a section of footpath 323, to include where footpath 323 crosses operational railway land at the site of both Birch level crossing

and West Barnham level crossing, and the section(s) of footpath 323 has been lawfully extinguished or diverted. This condition shall apply unless either the relevant local authority or the Secretary of State, whoever is the person lawfully seized of the decision whether to confirm the order, refuses to confirm.

Planning permission was refused for an almost identical S73 application in May 2026 (Ref: BN/29/26/S73). The key difference between this application and the previously refused proposal is the increase in the number of dwellings permitted to be occupied before confirmation of the rail crossing order, from 10 to 20 dwellings.

TOPOGRAPHY

The area is semi-rural in character with a network of large agricultural fields to the northwest of the site beyond the railway line. There is dense built form between Barnham and Eastergate comprised mostly of dwellings, shops and services in the centre of the village.

Barnham village centre is situated to the north of the application site and comprises a range of shops and services including Barnham Trading Post, Tesco Express, Coop Food, St Phillip Howard Catholic School and Barnham train station.

Development to south and east of the application site is of lower density comprising larger detached dwellings and visitor accommodation, alongside some services and community facilities including Saint Mary the Virgin church to the south and Barnham Community Hall to the east of the site.

Dwellings in the area are a mix of terraced, semi-detached and detached with some apartment buildings. The most common materials are red and brown bricks for walls and red, brown and grey plain and brick roof tiles. Roof form is a combination of pitched, hipped and gabled.

BOUNDARY TREATMENT

The application site is boarded to the north by a line of trees and hedgerow and a parcel of undeveloped land, beyond which is Branham train station. To the east is a line of trees and hedgerow and a ditch, beyond which is the curtilages of a number of properties, and Church Lane. To the south and southwest is a line of trees and hedgerow, beyond which is a track to the rear of several dwellings. To the northwest is the railway line.

SITE CHARACTERISTICS

The site is being developed for 200 residential units associated with outline planning permission (Ref: BN/142/20/OUT). There is also a footpath (path number 323) that cuts through the south western portion of the site.

RELEVANT SITE HISTORY

BN/102/20/ESO	Screening opinion for development of approximately 200 dwellings, associated green infrastructure provision and access from Marshall Close.	ES Not Required 22-02-21
BN/142/20/OUT	Outline planning application with all matters reserved, other than principal means of access, for up to 200 No. dwellings, with access taken from Marshall Close, associated infrastructure & landscaping & demolition of existing buildings. This application is a Departure from the Development Plan, may affect the setting of listed buildings, may affect the Church Lane, Barnham Conservation Area & affects a Public Right of Way.	Refused 23-02-21 Appeal: Allowed+Conditions 05-01-22
BN/147/22/RES	Approval of reserved matters following BN/149/22/PL for 200 dwellings respect of appearance, landscaping, layout and scale. This application may affect the setting of listed buildings, may affect the Church Lane, Barnham Conservation Area & affects a Public Right of Way.	ApproveConditionally 10-01-24
BN/149/22/PL	Variation of condition imposed under BN/142/20/OUT relating to the re-wording of conditions 6, 9, 20 and 27.	ApproveConditionally 31-05-23
BN/29/26/S73	Variation of condition 28 following the grant of BN/149/22/PL relating to rewording of condition.	Refused 28-05-26

Relevant planning history noted.

REPRESENTATIONS

On the 8th July 2026, Barnham and Eastergate Parish Council objected to the proposed variation of Condition 28 stating that the original condition should remain on safety grounds.

COMMENTS ON REPRESENTATIONS RECEIVED:

The matters raised have been addressed in the assessment section below.

CONSULTATION RESPONSES RECEIVED:

None.

POLICY CONTEXT

The Development Plan consists of the recently revised National Planning Policy Framework (NPPF) (August 2026), 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.

DEVELOPMENT PLAN POLICIES

Arun Local Plan 2011 - 2031:

AHSP2	AH SP2 Affordable Housing
CSP1	C SP1 Countryside
DDM1	D DM1 Aspects of form and design quality
DSP1	D SP1 Design
ENVDM4	ENV DM4 Protection of trees
ENVDM5	ENV DM5 Development and biodiversity
ENVSP1	ENV SP1 Natural Environment
EQUDM1	EQU DM1 Equine Development
GISP1	GI SP1 Green Infrastructure and Development
HDM1	H DM1 Housing mix
HERDM1	HER DM1 Listed Buildings
HERDM2	HER DM2 Locally Listed Buildings or Structures of Character
HERDM3	HER DM3 Conservation Areas
HERSP1	HER SP1 The Historic Environment
HWBSP1	HWB SP1 Health and Wellbeing
INFSP1	INF SP1 Infrastructure provision and implementation
OSRSP1	OSR SP1 Allotments
QEDM1	QE DM1 Noise Pollution
QEDM2	QE DM2 Light pollution
QEDM3	QE DM3 Air Pollution
QEDM4	QE DM4 Contaminated Land
QESP1	QE SP1 Quality of the Environment
SDSP1	SD SP1 Sustainable Development
SDSP1A	SD SP1a Strategic Approach
SDSP2	SD SP2 Built-up Area Boundary
SODM1	SO DM1 Soils
TDM1	T DM1 Sustainable Travel and Public Rights of Way
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
WSP1	W SP1 Water

Barnham & Eastergate Neighbourhood Plan 2014 Provision of allotments
POLICY CLW4

Barnham & Eastergate Neighbourhood Plan 2014 Protection of open spaces

POLICY CLW7

Barnham & Eastergate Neighbourhood Plan 2014 Provision and improvement of school facilities
POLICY CLW8

Barnham & Eastergate Neighbourhood Plan 2014 Applications for new development must meet the
POLICY ES1 local drainage requirements

Barnham & Eastergate Neighbourhood Plan 2014 Trees and hedgerows
POLICY ES10

Barnham & Eastergate Neighbourhood Plan 2014 Energy efficiency of new development
POLICY ES11

Barnham & Eastergate Neighbourhood Plan 2014 Water courses
POLICY ES2

Barnham & Eastergate Neighbourhood Plan 2014 Protection of open views
POLICY ES4

Barnham & Eastergate Neighbourhood Plan 2014 Quality of design
POLICY ES5

Barnham & Eastergate Neighbourhood Plan 2014 Development affecting heritage assets
POLICY ES7

Barnham & Eastergate Neighbourhood Plan 2014 Connection to sustainable transport
POLICY GA1

Barnham & Eastergate Neighbourhood Plan 2014 Footpath and cycle path network
POLICY GA2

Barnham & Eastergate Neighbourhood Plan 2014 Contributions to maintain and improve the network
POLICY GA3

Barnham & Eastergate Neighbourhood Plan 2014 Parking and new development
POLICY GA4

Barnham & Eastergate Neighbourhood Plan 2014 Windfall sites
POLICY H2

Barnham & Eastergate Neighbourhood Plan 2014 Integration of new housing into surroundings
POLICY H4

Barnham & Eastergate Neighbourhood Plan 2014 Outdoor space
POLICY H5

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
SPD12	Open Space, Playing Pitches & Indoor & Built Sports Facilities

DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND

Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that

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(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.

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."

OTHER MATERIAL CONSIDERATIONS

There are no other material considerations to be weighed in the balance with the Development Plan.

CONCLUSIONS

Planning permission was refused for an almost identical S73 application in May 2026 (Ref: BN/29/26/S73). The key difference between the current application and the previously refused proposal is the increase in the number of dwellings that could be occupied before confirmation of the rail crossing order, from 10 to 20 dwellings. The current application is also supported by additional information regarding the delivery of the footbridge, including an indicative programme of works, evidence relating to land access constraints and updated anticipated timescales for implementation. However, whilst this information seeks to address the concerns raised in the previous refusal, it does not materially alter the assessment of whether there is sufficient certainty that the bridge and associated diversion order will be delivered within the required timeframe.

Condition 28 requires that the development should not be occupied until a rail crossing order has been made over the railway line to the north to ensure direct access to the station, community uses and education facilities. The lack of connectivity between the site and Barnham to the north of the railway line was one of the principal reasons for refusal of the outline planning application. As set out in the appeal decision, during the course of the appeal the appellant agreed to a condition preventing occupation of any dwelling until the necessary order for the extinguishment or diversion of Footpath FP323 had been secured.

Since the previous Section 73 application was determined, a revised National Planning Policy Framework (NPPF) has been adopted. Policy TR4 places greater emphasis on supporting higher-density development in locations that promote walking, cycling and the use of public transport. It also gives increased weight to the provision of safe, accessible and inclusive routes for pedestrians, reflecting a stronger focus on active travel, connectivity and public safety.

In appeal decision Ref: 3273087, the Planning Inspector attached significant weight to the imposition of the Grampian-style condition requiring the delivery of a bridge to address the public safety risks associated with the railway crossings. The Inspector concluded that this measure would ensure future residents were appropriately and safely connected by foot and cycle to Barnham village centre and afforded moderate weight to this benefit in favour of the appeal proposal. Consequently, the requirement is not merely procedural in nature but formed a fundamental component of the planning balance that led to the appeal being allowed. Against this background, the increased emphasis within the revised NPPF on pedestrian safety, accessibility and sustainable movement further reinforces the importance of ensuring that the footbridge is delivered prior to occupation, and is a significant material consideration weighing in favour of refusing the current application.

Whilst the current application is supported by additional information relating to the proposed bridge delivery programme, no evidence has been provided to demonstrate that the necessary licence has been secured from the Church Commissioners, as the adjoining landowners, to enable the bridge works to commence. Officers requested evidence of such a licence on two separate occasions during the determination of the application and made it clear that, in its absence, there would be insufficient certainty that the applicant would be in a position to commence, let alone complete, the bridge works within the stated 8 to 10-week programme.

In the absence of this evidence, officers remain unconvinced that there is a reasonable prospect of the bridge works commencing and being completed within the timescales indicated. Consequently, the additional information submitted does not overcome the concerns that led to the refusal of application BN/29/26/S73, nor does it provide sufficient confidence that the footbridge can be delivered in a timely manner to ensure safe and sustainable pedestrian and cycle connectivity for future residents.

Furthermore, the current proposal seeks to increase the number of dwellings that could be occupied prior to compliance with Condition 28 from 10 to 20 dwellings. Given the continued uncertainty surrounding delivery of the bridge and diversion order, permitting any occupations, let alone a greater number, before the required pedestrian and cycle connection is secured would further undermine the purpose and effectiveness of the condition.

Although the Planning Inspector previously accepted that a period of up to two years may be required to construct the footbridge, officers consider that there remains insufficient certainty that the bridge and associated legal processes will be completed in a timely manner. Given the substantial weight attached by the Inspector to Condition 28 in allowing the appeal, and the potential harm to the health, safety and wellbeing of future residents arising from inadequate pedestrian and cycle connectivity to local facilities and services, the proposed variation is considered unacceptable. Officers therefore recommend that planning permission be refused.

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.

RECOMMENDATION

REFUSE

- 1 Due to the footbridge not having the required licence, construction having not yet commenced and a lack of certainty for the timeframe for completion of these works, there is insufficient certainty that the bridge will be delivered in a timely manner to ensure protection of the health, safety and wellbeing of future residents of this development, contrary to policy T DM1 of the Arun Local Plan and the NPPF (Aug 2026).
- 2 If you intend to submit an appeal that you would like examined by inquiry then you must notify the Local Planning Authority and Planning Inspectorate (inquiryappeals@planninginspectorate.gov.uk) at least 10 days before submitting the appeal. Further details are on GOV.UK.
- 3 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.