Recommendation Report for

REF NO: BN/78/23/S73

LOCATION: Horseshoe Cottage
33A Hill Lane
Barnham
Bognor Regis
PO22 0BL

PROPOSAL: Application under Section 73 of the Town and Country Planning Act 1990 for the variation of condition 12 - buildings, structures and fences to be kept at least 3m from edge of watercourse - following grant of BN/56/20/PL.

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	This application seeks to vary condition 12 on BN/56/20/PL (which approved the construction of one dwelling). Condition 12 states that buildings, structures and fences are kept at least 3m from edge of watercourse. The proposal seeks to vary the wording of this in order to remove the condition being imposed on the existing fence. This wording is to be changed to 'no buildings, structures or fences - excluding the existing fence shown in drawing MGS - BN/56/20 - rev001 "Culvert & Fence Layout Details" - are to be located within 3m of the edge of the watercourse culvert that crosses the site. Any replacement or repair of the existing fence must be on the same footprint and capable of both partial and full dismantling to enable access to the culvert. No tree planting is to take place that would have a detrimental effect on the culvert on the site'.
SITE AREA	0.07 hectares.
RESIDENTIAL DEVELOPMENT DENSITY (NET)	14 dph.
TOPOGRAPHY	Predominantly flat.
TREES	None of any significance affected by the development since significant trees removed for safety reasons.
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 driveway, gardens with outbuildings to side. The site (red line

	boundary) consists garden land to the side of Saxons, which contains a large single storey timber garage/storage outbuilding. Agricultural barn recently constructed on land to west of site the subject of planning application BN/32/13.
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/28/23/PL	Variation of conditions following grant of BN/56/20/PL relating to Condition No. 1 - approved plans to relocate the bin/cycle store and Condition 5 - amended to the bin/cycle store on plan submitted 02/03/2023 shall be implemented prior to occupation and retained in perpetuity. This application affects a Public Right of Way.	ApproveConditionally 02-05-23
BN/15/23/DOC	Approval of details reserved by condition imposed under reference BN/56/20/PL, relating to condition nos 10 - Surface water drainage scheme and 11 - Discharge flows to water courses.	DOC Approved 04-04-23
BN/14/23/DOC	Approval of details reserved by condition imposed under reference BN/56/20/PL, relating to condition no 6 - Renewable and low carbon energy sources.	DOC Approved 24-03-23
BN/172/22/DOC	Approval of details reserved by condition imposed under ref BN/56/20/PL relating to Condition No 13 - Foul Drainage Assessment.	DOC Approved 06-02-23
BN/121/22/DOC	Approval of details reserved by condition imposed against BN/56/20/PL relating to Condition Nos 4 - materials & finishes, 6 - Energy Statement, 12 - building, structures fences etc to be at least 3m from edge of water culvert, 14 - arboricultural, 16 - buffer strip of 5m and 17 - hedgerows.	DOC Part Approved 02-11-22
BN/29/23/PL	Removal of condition following grant of BN/56/20/PL relating to Condition No 14 - arboricultural information. This application affects a Public Right of Way	ApproveConditionally 02-05-23

BN/108/21/PL	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.	ApproveConditionally 01-10-21
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

Relevant planning history noted.

REPRESENTATIONS

Barnham and Eastergate Parish Council - no objection.

No representations received from nearby occupiers.

COMMENTS ON REPRESENTATIONS RECEIVED:

Noted.

CONSULTATIONS

CONSULTATION RESPONSES RECEIVED:

ADC DRAINAGE ENGINEERS:
No objection. Wording of condition 12 suggested to be changed to: 'no buildings, structures or fences - excluding the existing fence shown in drawing MGS - BN/56/20 - rev001 "Culvert & Fence Layout Details" - are to be located within 3m of the edge of the watercourse culvert that crosses the site. Any replacement or repair of the existing fence must be on the same footprint and capable of both partial and full dismantling to enable access to the culvert. No tree planting is to take place that would have a detrimental effect on the culvert on the site.

COMMENTS ON CONSULTATION RESPONSES:

Suggested wording for varied condition checked and agreed with agent.

DEVELOPMENT PLAN POLICIES

Arun Local Plan 2011 - 2031:

CSP1	C SP1 Countryside
DDM1	D DM1 Aspects of form and design quality
DDM2	D DM2 Internal space standards

DSP1	D SP1 Design
ECCDM1	ECC DM1 Renewable Energy
ECCSP1	ECC SP1 Adapting to Climate Change
ECCSP2	ECC SP2 Energy and climate change mitagation
ENVDM4	ENV DM4 Protection of trees
ENVDM5	ENV DM5 Development and biodiversity
ENVSP1	ENV SP1 Natural Environment
LANDM1	LAN DM1 Protection of landscape character
QEDM2	QE DM2 Light pollution
QESP1	QE SP1 Quality of the Environment
SDSP1	SD SP1 Sustainable Development
SDSP2	SD SP2 Built-up Area Boundary
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
WMDM1	WM DM1 Waste Management
WSP1	W SP1 Water

Barnham & Eastergate Neighbourhood Plan 2019 POLICY ES10	Trees and Hedgerows
Barnham & Eastergate Neighbourhood Plan 2019 POLICY ES12	Energy efficiency of existing development
Barnham & Eastergate Neighbourhood Plan 2019 POLICY ES13	Renewable and Low Carbon Energy
Barnham & Eastergate Neighbourhood Plan 2019 POLICY ES1a	Flooding
Barnham & Eastergate Neighbourhood Plan 2019 POLICY ES1b	Reducing Flood Risk
Barnham & Eastergate Neighbourhood Plan 2019 POLICY ES1c	Sewage
Barnham & Eastergate Neighbourhood Plan 2019 POLICY ES4	Protection of open views
Barnham & Eastergate Neighbourhood Plan 2019 POLICY ES5	Quality of design
Barnham & Eastergate Neighbourhood Plan 2019 POLICY ES9	The Portsmouth and Arundel Canal
Barnham & Eastergate Neighbourhood Plan 2019 POLICY GA4	Parking and new development
Barnham & Eastergate Neighbourhood Plan 2019 POLICY H5	Outdoor space

PLANNING POLICY GUIDANCE:

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.

DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND

Section 73 provides for the determination of applications to develop land without compliance with conditions previously attached. It only provides for the variation of conditions attached to an existing permission; it does not provide a means of varying the development permitted (other than through the imposition of new/varied conditions). Given the previous permission, the principle of the development is considered to be acceptable.

OTHER MATERIAL CONSIDERATIONS

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

CONCLUSIONS

PRINCIPLE

BN/56/20/PL remains implementable, subject to any related works being stated on or before 10/08/2023. The application form stated that works commenced on 04/06/2023. The policies of the Arun Local Plan remain in force now as at the time of the original decision. An updated Neighbourhood Plan was made in 2021 but the amended policies do not impact this application. It is not necessary to reconsider the whole application scheme afresh since the original permission is still extant. The only aspect to consider under this s73 application is whether the existing fence can be made exempt from the condition imposed under condition 12 of BN/56/20/PL. This required that all buildings, structures, and fences be kept to at least 3m from the edge of the watercourse culvert which crosses the site. The applicant is unable to comply with this condition, due to an existing boundary fence. Permission is sought to vary the wording of the condition.

SUMMARY

The applicant provided information proposing improvement works to the inspection chambers on the culvert to provide better protection and have included construction details of the existing fence, indicating how the fence may be dismantled in order to enable maintenance or repair of the culvert. ADC Drainage Engineers are agreeable with these works and supporting documents, and therefore approved as part of this application.

The retention of the fence will not result in any planning concerns, and will have no change in the harm or impact on the character of the area or to amenity as posed by the dwelling approved under BN/56/20/PL. The exemption of this fence from compliance under condition 12 of BN/56/20/PL is

acceptable, and accords with the Arun Local Plan and Barnham and Eastergate Neighbourhood Plan.

The wording of this condition has been amended accordingly in the conditions below.

OTHER MATTERS
As this is a Section 73 application any new permission sits alongside the original permission, which remains intact and unamended. Government guidance states that for the purpose of clarity to reinstate the conditions imposed on earlier permissions that continue to have effect. The application form states that the works of the original permission have commenced as of 04/06/2023 and therefore a time condition will not be added.

The condition, as amended, now becomes condition 5 of this permission.

A number of previous conditions on the original application BN/56/20/PL have been discharged and no longer relevant to this s73 application. However, in accordance with government advice some conditions have been re-imposed to this permission.

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 (dependent on any exemptions or relief that may apply). A Self-Build exemption form has been submitted with regards the original application.

RECOMMENDATION

APPROVE CONDITIONALLY

1 The development hereby approved shall be carried out in accordance with the following approved plans:

- Location Plan
- Culvert & Fence Constructional Details Dwg No MGS-BN/56/20-rev01
- Culvert & Fence Layout Details Dwg No MGS-BN/56/20-rev01
- Bin and bike storage details (as submitted under BN/28/23/PL)
- Existing and Proposed Plans and Elevations (drawing number: 15058/100), received 02/06/2020 in connection with permission BN/56/20/PL.

Reason: For the avoidance of doubt and in the interests of amenity and the environment in accordance with policies D SP1, D DM1, D DM2, LAN DM1, QE SP1, T SP1, T DM1, ENV DM4 and ENV DM5 of the Arun Local Plan and policies ES4, ES4, GA4, and ES10 of the Barnham & Eastergate Neighbourhood Plan.

2 No part of the development shall be first occupied until 2 car parking spaces have been provided on site in accordance with the approved plans. These spaces shall thereafter be retained at all times for their designated use.

Reason: To provide car-parking space for the occupiers of the dwelling, in accordance with policy T SP1 of the Arun Local Plan and policy GA4 of the Barnham & Eastergate Neighbourhood Plan.

3 No part of the development shall be first occupied until a minimum of 2 covered and secure cycle parking spaces have been provided on site in accordance with the approved plans. The cycle spaces shall thereafter be permanently retained in good working condition.

Reason: To provide alternative travel options to the use of the car, in accordance with policies T SP1 and T DM1 of the Arun Local Plan.

4 No part of the development shall first be occupied, until the provision of facilities to enable the charging of electric vehicles has been installed for all car parking spaces. The charge points shall thereafter be permanently retained and maintained in good working condition.

Reason: New petrol, diesel and hybrid cars/vans will not be sold beyond 2035, and to mitigate against any potential adverse impact of the development on local air quality, in accordance with policy QE DM3 (c) of the Arun Local Plan, the Arun Parking Standards SPD and the NPPF.

5 No buildings, structures or fences - excluding the existing fence shown in drawing MGS - BN/56/20 - rev001 "Culvert & Fence Layout Details" - are to be located within 3m of the edge of the watercourse culvert that crosses the site. Any replacement or repair of the existing fence must be on the same footprint and capable of both partial and full dismantling to enable access to the culvert. No tree planting is to take place that would have a detrimental effect on the culvert on the site.

Reason: To ensure that the proposed development is satisfactorily drained and does not increase flood risk elsewhere, in accordance with policies W DM1, W DM2 and W DM3 of the Arun Local Plan and policy ES1 of the Barnham & Eastergate Neighbourhood Plan

6 No external lighting shall be installed until details have been submitted to and approved in writing by the Local Planning Authority. The external lighting shall be installed and maintained thereafter in accordance with the approved scheme.

Reason: To protect the character of the countryside and its dark skies and for the protection of local wildlife including bats, in accordance with policies D DM1, LAN DM1, QE DM2 and ENV DM5 of the Arun Local Plan.

7 Any works to the trees or vegetation clearance on the site should only be undertaken outside of the bird breeding season which takes place between 1st March - 1st October. If works are required within this time an ecologist will need to check the site before any works take place (within 24 hours of any work).

Reason: To protect local wildlife, in accordance with the relevant legislation and policy ENV DM5 of the Arun Local Plan.

8 Prior to first occupation, the biodiversity enhancement measures recommended within the Preliminary Ecological Appraisal (dated July 2020) provided with application BN/56/20/PL must be undertaken.

Reason: To enhance the environment for local wildlife and result in net biodiversity gain, in accordance with the relevant legislation and policy ENV DM5 of the Arun Local Plan.

9 Unless varied by this application, or any other s73 application, this permission shall be implemented in accordance with any condition where a DOC (discharge of condition) application has already been approved in relation to BN/56/20/PL. These permissions are BN/15/23/DOC, BN14/23/DOC BN/72/22/DOC and BN/121/22/DOC.

Reason: To ensure compliance with the original environmental concerns of BN/56/20/PL in accordance with the policies of the Arun Local Plan.

10 INFORMATIVE: Infiltration rates for soakage structures are to be based on percolation tests undertaken in the winter period and at the location and depth of the proposed structures. The infiltration tests must be carried out in accordance with BRE365, CIRIA R156 or a similar approved method. All design storms must include a climate change allowance, as per https://www.gov.uk/guidance/flood-risk-assessments-climate-change-allowances, on stored volumes or rainfall intensity. Infiltration structures must cater for the critical 1 in 10 year storm event, (plus40%) between the invert of the entry pipe to the soakaway and the base of the structure. All surface water drainage designs must also have provision to ensure there is capacity in the system to contain the critical 1 in 100 year storm event (plus 45%).

Freeboard is to be provided between the base of the infiltration structure and the highest recorded groundwater level identified in that location. Ideally this should be 1 metre where possible, as stated in the CIRIA Suds Manual guidance. However, on the coastal plain in particular, where geology dictates and where shallow perched/tidally influenced water tables are often present, this is unlikely to be achievable irrespective of this, infiltration must still be fully considered. Therefore, to maximise this potential and avoid utilising other less favourable methods of surface water disposal, the bases of infiltration structures are permitted to be immediately above the peak recorded groundwater levels where it is deemed necessary.

In areas where an aquifer is to be protected (subject to guidance from the Environment Agency) then a minimum 1 metre freeboard must be provided. Suitable water treatment is required upstream to the point of discharge in all circumstances to minimise any groundwater pollution risk or detriment to the drainage network. Any SuDS or soakaway design must include adequate groundwater monitoring data to determine the highest groundwater table in support of the design. The applicant is advised to discuss the extend of ground water monitoring with the council's engineers.

Supplementary guidance notes regarding surface water drainage are located at

https://www.arun.gov.uk/drainage-planning-consultations on Arun District Council's website. A surface water drainage checklist is available on Arun District Council's website, this should be submitted with a Discharge of Conditions Application. Reference should also be made to the 'West Sussex LLFA Policy for the Management of Surface Water'.

11 INFORMATIVE: Under Section 23 of the Land Drainage Act 1991 Land Drainage Consent must be sought from the Lead Local Flood Authority (West Sussex County Council), or its agent (Arun District Council land.drainage@arun.gov.uk), prior to starting any works (temporary or permanent) that affect the flow of water in an ordinary watercourse. Such works may include culverting, channel diversion, discharge of flows, connections, headwalls and the installation of trash screens. The development layout must take account of any existing watercourses (open or culverted) to ensure that future access for maintenance is not restricted. No development is permitted within 3m of the bank of an ordinary watercourse, or 3m of a culverted ordinary watercourse.

12 INFORMATIVE: The applicant is reminded that should any sewer be found during construction works, an investigation of the sewer will be required to ascertain its ownership before any further works commence on site.

13 INFORMATIVE: Due to surface water inundation issues in the Lidsey Catchment the applicant is advised to adopt, where appropriate, the measures in the table "Practical measures to reduce the potential impacts of development". Developer should look to protect the public sewerage system from inundation and infiltration, which contribute to flooding in unfavourable conditions.

14 A formal application for connection to the public sewerage system is required in order to service this development. Please read our New Connections Services Charging Arrangements documents which has now been published and is available to read on our website via the following link: southernwater.co.uk/developing-building/connection-charging-arrangements. For further advice, please contact Southern Water, Southern House, Yeoman Road, Worthing, West Sussex, BN13 3NX (Tel: 0330 303 0119). Website: southernwater.co.uk or by email at: developerservices@southernwater.co.uk

15 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.