

Recommendation Report for Planning Permission

REF NO:	BN/7/19/PL
LOCATION:	Land at former Pollards Nursery Lake Lane Bognor Regis
PROPOSAL:	Application for variation of conditions imposed on planning reference BN/16/12 referring to condition 15 - Energy Supply, 16 - Code for Sustainable Homes & 25 - Pedestrian Visibility Splay

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	This is a Section 73 application to vary Conditions 15 and 25 and to remove Condition 16 imposed on the outline planning permission (BN/16/12). - Condition 15 relates to energy supply; - Condition 16 deals with the Code for Sustainable Homes; and - Condition 25 requires pedestrian visibility splays at the site entrance.
SITE AREA	Approximately 6.2 ha
RESIDENTIAL DEVELOPMENT DENSITY (NET)	17.25 dwellings per hectare.
TOPOGRAPHY	Predominantly flat.
TREES	A significant belt of trees lies on the northern and western boundary of the site, including a group of Alder trees, which are protected by a Tree Preservation Order (TPO). A large number of Leylandii trees have been removed from the boundary of the site, in accordance with previously approved plans.
BOUNDARY TREATMENT	Existing vegetation on northern boundary adjoining residential properties to the north. There is a mature tree-lined boundary to the western boundary which includes a belt of Leylandii trees, some of which have been removed due to wind damage. The eastern boundary is adjoined by glass houses; and the railway line is located immediately south of the application site.
SITE CHARACTERISTICS	The site access lies approximately 950 metres to the east of Barnham village centre, south of Lake Lane. To the east, the site is bounded by glasshouses associated with the existing Pollards Nursery. To the south, the site is bounded by the railway line and to the west, by a development of 75 dwellings, on the Goodacres site.

The application site, now marketed as Ashdown Vale, was previously part of a horticultural business (the former Pollards Nursery). The site was formerly occupied by glasshouses that were built in the 1950s/60s, with associated hardstandings and structures.

Phase 1 of the housing development on Ashdown Vale is complete; which is located in the eastern part of the site, immediately west of the Redrow show house. The southern and western parts of the site, which comprises Part 2 of the residential development are almost complete and every property is occupied. The landscaping is currently being implemented and the surface water attenuation basins are under construction. There is an additional planning permission for 7 houses, located at the entrance to Ashdown Vale; and construction has commenced on the 7 houses.

CHARACTER OF LOCALITY

The site is located within the built-up area boundary (BUAB) of Barnham. There are some residential properties to the north of the application site and a newly completed housing estate west of the site (on the Goodacres site), but the area is generally semi-rural in nature and character and typical of areas close to the edge of settlements.

RELEVANT SITE HISTORY

BN/16/12/	Outline application with some matters reserved for a development of up to 107 no. residential units (this application is a Departure from the Development Plan)	Refused 22-11-12 Appeal: Allowed+Conditions 17-10-13
BN/52/16/RES	Approval of reserved matters following outline consent BN/16/12 & BN/21/14 for appearance, landscaping & scale for erection of 107 dwellings, car parking including garages, internal access roads, footpaths, parking & circulation areas, hard & soft landscaping, formal & informal play areas & public open spaces, attenuation basins, sewage treatment plant & other associated infrastructure & engineering - Duplicate application of BN/51/16/RES	ApproveConditionally 02-03-18
BN/51/16/RES	Approval of reserved matters following outline consent BN/16/12 & BN/21/14 for appearance, landscaping & scale for erection of 107 dwellings, car parking including garages, internal access roads, footpaths, parking & circulation areas, hard & soft landscaping, formal & informal play areas & public open spaces, attenuation basins, sewage treatment plant & other associated infrastructure & engineering	ApproveConditionally 22-09-17

BN/15/16/RES	Approval of reserved matters following outline consent BN/16/12/ for the reconfiguration of site layout to include the resitting of 4 No. residential buildings.	Withdrawn 17-02-17
BN/21/15/RES	Approval of reserved matters following outline consent BN/16/12/ for the construction of 107 No. residential dwellings with associated internal access roads, footpaths, boundary treatments, attenuation ponds, pumping station, landscape & open space (including allotments).	ApproveConditionally 02-12-15

Outline planning permission (BN/16/12) was allowed on Appeal, and amended by a Section 73 application BN/21/14/PL, which removed two small sections of land from the development site and removed them from the red line boundary.

REPRESENTATIONS

REPRESENTATIONS RECEIVED:

Barnham & Eastergate Parish Council
No objection.

COMMENTS ON REPRESENTATIONS RECEIVED:

The representation from the Parish Council is noted.

CONSULTATIONS

WSCC Strategic Planning
Building Control
Engineering Services Manager
Engineers (Drainage)
Arboriculturist
Environmental Health
Parks and Landscapes

CONSULTATION RESPONSES RECEIVED:

LOCAL HIGHWAY AUTHORITY:

No objection to the proposed variation of condition 25 of outline planning permission BN/16/12.
The applicant is seeking to amend condition 25 so that it refers to the need to demonstrate a visibility splay of 2x2 metres for a footpath on the western side of the vehicular access only; rather than on both sides. This is to reflect the reserved matters approval and the current proposals as per those included on Drawing Number C85102-D-128.

ADC ENVIRONMENTAL HEALTH:

No objection.

ADC BUILDING CONTROL:

No consultation response received. The Building Regulations for this site were dealt with by the NHBC.

COMMENTS ON CONSULTATION RESPONSES:

Comments noted.

POLICY CONTEXT

Designation applicable to site:

Within the Built-Up Area Boundary (BUAB) in the Arun Local Plan.

DEVELOPMENT PLAN POLICIES[Arun Local Plan 2011 - 2031:](#)

DDM1	D DM1 Aspects of form and design quality
DDM2	D DM2 Internal space standards
DSP1	D SP1 Design
ECCDM1	ECC DM1 Renewable Energy
ECCSP2	ECC SP2 Energy and climate change mitigation
INFSP1	INF SP1 Infrastructure provision and implementation
TDM1	T DM1 Sustainable Travel and Public Rights of Way
SDSP2	SD SP2 Built-up Area Boundary
TSP1	T SP1 Transport and Development

[Barnham & Eastergate Neighbourhood Plan 2014](#) Housing mix

[POLICY H3](#)

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

Barnham & Eastergate Neighbourhood Plan 2014 Quality of design
POLICY ES5

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 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 Neighbourhood Development Plan:

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 and policies within them will be considered in determining planning applications. Made NDP policies will be considered alongside other development plan documents including Arun District Council's Local Plan.

Made Plans in Arun District Council's Local Planning Authority Area are: Aldingbourne; Angmering; Arundel; Barnham & Eastergate; Bersted; Bognor Regis; Clymping; East Preston; Felpham; Ferring; Kingston; Littlehampton; Rustington; Walberton; Yapton; Ford.

Relevant Barnham and Eastergate Neighbourhood Plan (NP) policies have been taken into account.

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 complies with the Development Plan in terms of energy supply; the need to provide dwellings to the Code for Sustainable Homes standards (now by means of Building Regulations); and the provision of pedestrian visibility splays at the site entrance.

OTHER MATERIAL CONSIDERATIONS

It is considered that there are no other material considerations to warrant a decision otherwise than in accordance with the Development Plan and/or legislative background.

CONCLUSIONS

PRINCIPLE

Outline planning permission was granted (BN/16/12) on appeal on 17th October 2013 for residential development on the former Pollards Nursery site. The outline planning permission was subject to 26 conditions. This current planning application is made pursuant to Section 73 of the Town and Country Planning Act, 1990 and relates to the outline planning permission (BN/16/12) in relation to Conditions 15, 16 and 25 relating to energy, the Code for Sustainable Homes requirements and the pedestrian visibility splays, respectively. The site is being developed and completed in accordance with reserved matters approval BN/52/16/RES.

CONDITION 15:

Condition 15 currently says:

"At least 10% of the energy supply of the development shall be secured from decentralised and renewable or low carbon energy sources. Details and a timetable showing how this is to be achieved, including details of physical works on site shall be submitted to and approved in writing by the local planning authority (as part of the reserved matter submissions required by condition 1). The approved details shall be implemented in accordance with the approved timetable and retained as operational thereafter."

Policy ECC SP2 of the Local Plan requires all residential and commercial development (regardless of size) to ensure that they are energy efficient and to demonstrate how they comply with current efficiency

standards, use design and layout or decentralised energy etc. However, Policy ECC SP2 also requires all major developments to produce 10% of the total predicted energy requirements to be from renewables or low carbon unless it is unviable. Energy efficiency measures will be taken into consideration when the total predicted energy requirements are calculated.

Policy ES11 of the Barnham and Eastergate NP says: "New development should wherever possible include the following features:

- high quality, thermally efficient building materials;
- double glazing (at a minimum), and
- cavity walls and loft insulation (where relevant)".

The proposal is to amend the wording of this condition to reflect a 10% reduction in energy demand. The 10% reduction in demand balances out the need for 10% energy to be supplied from decentralised and renewable sources. The submitted Energy Statement (Revision B) outlines how this 10% reduction was achievable on the site through the Fabric First approach. The measures incorporated to deliver the energy standard comprised:

- energy efficient building fabric and insulation;
- high efficiency double glazed windows throughout;
- quality of build confirmed by achieving good air tightness results throughout;
- efficient building services including high efficiency heating systems;
- low energy lighting throughout the buildings;
- hi-therm lintels to reduce thermal bridging.

The implementation of Fabric First demand reduction measures resulted in 10.95% energy reduction.

The change to the wording of Condition 15 would reflect the energy approach which is set out in the Energy Statement, which was submitted at the reserved matters stage and approved under discharge of condition application BN/32/17/DOC, which is a Fabric First approach.

The Fabric First approach is when the lifetime energy consumption of a building takes precedence over the use of solar panels, wind turbines, air source heat pumps or ground source heat pumps, which would be added to the dwellings. It is considered that the proposed change to the wording does not alter the fundamental objective in terms of energy supply. The Fabric First approach adopted at Ashdown Vale is considered to be acceptable. The application is retrospective and does not strictly comply with all of the criteria in Policy ECC SP2 of the Local Plan or with Policy ES11 of the Barnham and Eastergate NP as it does not include renewable sources of energy.

It is therefore considered appropriate and acceptable to vary the wording of Condition 15 to bring it in line with the Energy Statement submitted at Reserved Matters and approved under the discharge of condition application BN/32/17/DOC. Condition 15 should be varied to read:

"The development shall proceed in accordance with the details set out in the approved Energy Statement Revision B dated 27.10.2017, which demonstrates a 10% energy demand reduction within the approved development, unless an alternative strategy is otherwise submitted to and approved in writing by the Council".

CONDITION 16:

Condition 16 currently says:

"The dwellings shall achieve Level 3 of the Code for Sustainable Homes (or any such national measure of sustainability for house design that replaces that scheme). No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that Code Level 3 has been achieved."

Policy ES11 of the Barnham and Eastergate NP says: "All new housing development with the exception of the conversion of listed historic buildings should have a minimum energy efficiency standard

equivalent to Level 3 of the Code for Sustainable Homes (DCLG 2006).

- New development should wherever possible include the following features:
- high quality, thermally efficient building materials;
- double glazing (at a minimum), and
- cavity walls and loft insulation (where relevant)".

The proposal is to remove Condition 16 as the Code for Sustainable Homes is now controlled through alternative legislation (i.e. by means of Building Regulations); and all of the houses have been constructed on the site now known as Ashdown Vale.

It is considered that Condition 16 was imposed by the Inspector in October 2013 to accord with objectives for sustainable development (paragraph 26 of the Inspector's decision letter).

The Code for Sustainable Homes has been replaced with technical standards including optional Building Regulations regarding water, access, space standards. The additional options, if applied, would be comparable to Level 3 or 4 of the Code, as required by the condition imposed.

No information has been provided to demonstrate whether the dwellings were constructed the basic standards or any optional higher standards in relation to water use or accessibility. Similarly, no information has been provided to demonstrate whether it met the national space standards which replaced the space standards within the Code. However, as the dwellings were constructed in accordance with the plans approved through the reserved matters applications it would be unreasonable to seek to retrospectively apply the standards.

In relation to energy, the dwellings have been constructed in compliance with Part L schedule 1 of the Building Regulations (2010 edition). The Code Level 3 energy requirement was incorporated into Building Regulations as it was a 25% improvement over the 2006 regulations. The current regulations equate to Level 4. Therefore, the scheme as constructed is likely to have met Level 3 of the Code in relation to energy efficiency.

Therefore, whilst it has not been demonstrated whether Code 3 equivalent optional standards for water efficiency, accessibility and space standards have been met, as the development has been built in accordance with approved plans, it would be unreasonable to seek compliance with this condition retrospectively. The energy requirements for Code Level 3 have been met which accords with Policy ES11 of the Barnham and Eastergate Neighbourhood Plan. Overall, it is reasonable to delete condition 16.

CONDITION 25:

Condition 25 currently says:

"No part of the development shall be first occupied until pedestrian visibility splays of 2m by 2m have been provided either side of the proposed vehicular access onto Lake Lane in accordance with plans and details first submitted to and approved in writing by the Local Planning Authority."

Policy T SP1 of the Local Plan says: "The Council will support transport and development which is incorporated into the District's green infrastructure network and gives priority to pedestrian and cycle movements" (Policy T SP1(b)).

One of the plans (Drawing No. C85102-D-128) that was approved at the reserved matters stage (BN/52/16/RES) demonstrates that the required visibility can be achieved using the existing access. The road has been re-surfaced and a footpath has been added to the western side of the access on entering the site. This footpath runs into the development from a cross-over point on Lake Lane, which provides a link to the existing footpath on the other side of the road. There is no footpath to connect to on the

eastern side of the site access on Lake Lane.

The wording of condition 25 is required to be varied to reflect the reserved matters approval and should read:

"No part of the development shall be first occupied until a pedestrian visibility splay of 2m by 2m has been provided on the western side of the proposed vehicular access onto Lake Lane in accordance with Drawing No. C85102-D-128."

It is considered that the proposed amendment to the wording of Condition 25 continues to provide the pedestrian access and visibility splay but it also provides consistency with the approved Reserved Matters scheme (BN/52/16/RES) for Phases 1 and 2, and consequently the condition should be varied accordingly, in compliance with Policy T SP1(b) of the Local Plan.

Summary:

It is considered that Condition 15 (energy supply) and Condition 25 (the provision of pedestrian visibility splays at the site entrance) should be varied as set out above; and that Condition 16 (Code for Sustainable Homes) be deleted as the relevant information has been submitted to and been confirmed by the NHBC as part of the Building Regulations for the site; the energy efficiency requirements have been met and Condition 16 can be deleted.

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 varying the conditions 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.

SECTION 106 DETAILS

A Unilateral Undertaking which accompanied the outline planning permission (BN/16/12) secured affordable housing (30% provision which was therefore policy compliant), on-site open space and a

landscape management plan, construction management plan and road safety audits (RSAs). Financial contributions were also identified in the Section 106 Unilateral Undertaking for highway works (bus stop improvements), fire and rescue, libraries and health provision.

RECOMMENDATION

APPROVE CONDITIONALLY

1 Condition 15 of BN/16/12 is hereby amended to read:

The development shall proceed in accordance with the details set out in the approved Energy Statement Rev. B dated 27.10.2017 which demonstrates a 10% energy demand reduction within the approved development, unless an alternative strategy is otherwise submitted to and approved in writing by the Local Planning Authority.

2 Condition 16 of BN/16/12 is hereby deleted.

3 Condition 25 of BN/16/12 is hereby amended to:

No part of the development shall be first occupied until a pedestrian visibility splay of 2m by 2m has been provided on the western side of the proposed vehicular access onto Lake Lane in accordance with Drawing No. C85102-D-128.

4 **INFORMATIVE:** All of the other conditions imposed on outline planning permission BN/16/12 should be retained and the original time limits unaltered.