

Recommendation Report for Planning Permission

REF NO: BN/97/21/PL

LOCATION: Land to rear of Birchwood House
Church Lane
Barnham
PO22 0DB

PROPOSAL: Retention of existing site entrance (resubmission following BN/110/20/PL). This site is in CIL Zone 3 (Zero Rated) as other development.

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	As above. The application seeks retrospective planning permission for the creation of a new vehicular access off Church Lane, Barnham, on land to the south-west of Birchwood House and its curtilage. The access entrance consists of angled timber post and rail fencing with wire on the bottom section, timber double gates and a gravel surface. It provides access to land to the side and rear of Birchwood House and its curtilage. Recent historic imagery indicates there was no access gate in this location previously (or at least not in the recent past) and the area was overgrown and consisted of trees, scrub and a section of brick and flint walling.
SITE CHARACTERISTICS	The site consists of an area of land fronting Church Lane (to the south-west side of Birchwood House and its curtilage) where the new access entrance has been created, and land to the side and rear of Birchwood House and its curtilage. This proposal relates only to the front area of land where the new access has been created.
CHARACTER OF LOCALITY	The area has an edge of village, rural character, being on the edge of Barnham village, on a country lane with a scattering of dwellings.

RELEVANT SITE HISTORY

BN/110/20/PL	Reinstatement of an existing site entrance. This site is in CIL Zone 3 (Zero Rated) as other development.	Withdrawn 23-11-20
BN/135/19/PL	Sub-division of existing dwelling into two separate dwellings.	Withdrawn 14-01-20

A previous retrospective application in 2020 for the same access entrance (BN/110/20/PL) was withdrawn, on the basis of a lack of information regarding land ownership/inaccurate site location plan and pre-existing and existing site access plans and a failure to demonstrate acceptable highways impacts.

REPRESENTATIONS

Barnham & Eastergate Parish Council -

Objection. As per WSCC Highways comments, no clear evidence has been provided of a previous access being there in the recent past. Stretch of ancient flint wall has been removed to create wider entrance and B&E PC would wish to see this wall re-instated. Also concerns that were the planning application for a site access to be approved then a further application for development of the land to the rear of Birchwood House coming forward. B&E PC would want a planning condition imposed that the access road can only be used for the servicing of the keeping of animals and no further development of the land would be allowed. PC agreed destruction cannot be tolerated as it is detrimental to the fabric and character of the villages. An enforcement notice should be served requiring the applicant to close the access and re-instate the flint walls.

One other letter was received, summarised as follows:

Just moved to Birchwood House - do not object to the current arrangement with the stable and keeping of donkeys. However, would object and agree with PC comments if this access was to result in development of an access road or development on land at the rear of Birchwood House.

COMMENTS ON REPRESENTATIONS RECEIVED:

Comments noted and addressed in Conclusion section of report.

In respect of further development, only the site access/entrance treatment are being applied for under this current application, not an access road or any further development to the land to the side/rear of Birchwood House. The application must be assessed on the basis of only what has been applied for. Any future application for development of the land would be assessed on its own merits and impacts.

In respect of the brick and flint boundary wall, it is acknowledged that at least a small portion of walling has been removed to facilitate the creation of the access entrance. Although regrettable, this only appears to have affected a small area of walling with the rest of the area having been overgrown with vegetation before the site access was created, so the loss of the wall and creation of the new access in terms of harm to character is not considered significant.

CONSULTATIONS

CONSULTATION RESPONSES RECEIVED:

WSCC Highways:

Outstanding information required.

- No evidence that there was an access in this location prior to the works being undertaken. In order to establish a baseline position, the applicant should detail how the parcel of land (described as being used for a small stable and keeping of donkeys) has been accessed in the recent past or if it has been previously inaccessible. A comparison/assessment can then be made against the previous access arrangements and the proposed/new access arrangements.

- No plans have been submitted to demonstrate the maximum achievable visibility splays at the access point.

- Evidence required that a WSCC Highways licence has been granted for the crossover, if not a retrospective licence may be required.

Drainage Engineer:

Due to scale and nature of development no drainage conditions to request. If impermeable surfaces are to be introduced then Council Engineers should be re-consulted. Under BN/110/20/PL - on basis that scheme consists of the area between the new gates and road and is permeable gravel then no objection or conditions to request.

Trees Officer:

No comments received under this or BN/110/20/PL. Confirmed under enforcement case no issues with trees.

COMMENTS ON CONSULTATION RESPONSES:

Comments noted and addressed in Conclusion section of report.

POLICY CONTEXT

Designation applicable to site:

Outside Built-up Area Boundary

Countryside

Lidsey Wastewater Treatment Works Catchment Area

TPO area and FZ 2 & 3 to the western area of the site

DEVELOPMENT PLAN POLICIES

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

DDM1	D DM1 Aspects of form and design quality
DSP1	D SP1 Design
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
ENVDM4	ENV DM4 Protection of trees
ENVSP1	ENV SP1 Natural Environment

[Barnham & Eastergate Neighbourhood Plan 2014](#)
[POLICY ES1](#)

Applications for new development must meet the local drainage requirements

Barnham & Eastergate Neighbourhood Plan 2014
POLICY ES10

Trees and hedgerows

Barnham & Eastergate Neighbourhood Plan 2014
POLICY ES5

Quality of design

Barnham & Eastergate Neighbourhood Plan 2014
POLICY ES6

Contribution to local character

PLANNING POLICY GUIDANCE:

NPPF	National Planning Policy Framework
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SUPPLEMENTARY POLICY 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 policies contained within the Barnham & Eastergate Neighbourhood Plan (made 2014) and the draft Barnham & Eastergate Neighbourhood Plan 2 (Reg. 15 stage) are relevant in the determination of this application. The adopted policies in the made NP hold full weight and the emerging policies in the draft NP hold substantial weight, since Reg 14. stage has been reached.

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 fail to comply with relevant Development Plan policies in that insufficient information has been submitted and so there has been a failure to demonstrate acceptable highways safety impacts, contrary to policies T SP1 and T DM1 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 no other material considerations to be weighed in the balance with the Development Plan.

CONCLUSIONS**KEY ISSUES:**

The key issues in the determination of this application are as follows:

- Visual impacts
- Highways impacts
- Drainage impacts
- Lack of clear plans and drawings and land ownership issues

VISUAL IMPACTS:

Policy D SP1 of the Arun Local Plan (ALP) states development should reflect the characteristics of the site and local area, including in respect of scale, character, materials, finish. ALP policy D DM1 looks at aspects of form and design quality, including; character, appearance, landscaping and scale.

Policy ES5 of the Barnham and Eastergate made Neighbourhood Plan (B&ENP) states "All new development with the parishes should be of a high quality design, and will be expected to conform to the forthcoming Barnham and Eastergate Design Guide once it has been adopted as supplementary planning guidance". Policy ES6 states "New development should contribute positively to the character of the two villages". In the draft B&ENP 2, emerging policy ES5 has been amended to reflect the new Parish Design Guide (and now refers to new residential development not new development) and policy ES6 has been deleted and incorporated into the Design Guide.

Para 1.12 of Appendix 1 to the B&E Design Guide (2020) refers to Church Lane's characteristics including "there are ancient flint walls, using the traditional flint cobbles found in local ploughland and old estuary deposits as well as from the nearby beaches" and that "The general high architectural quality of the whole lane has been frequently commented upon". Para 4(j) states "The visual impact of boundary materials, driveways and access paths should be sensitive to the location and in keeping with the character of the street scene. The use of flint with brick walls should be encouraged as well as using natural materials and native species of hedging." Para 4(k) states "Gates should be low impact and appropriate to the adjacent boundary treatment." and para 4(r) states "Driveways, hardstanding, and where possible roadways, should be of porous or permeable construction...Other acceptable materials are gravel on permeable base".

The Arun District Council Design SPD (adopted 2021) Section Q.01 (Rural Development) states "boundaries should be reflective of their rural context" and "boundaries should be defined by hedgerows and planting in combination with walls, fencing and railings. Front boundaries should generally include gardens with lawns, tree planting and hedges; with areas of hard surfacing kept to a minimum and restricted to gravel and paving".

Recent historic imagery of the site indicates there was no access gate in this location previously (or at least not in the recent past) and the area was overgrown and consisted of trees, scrub and a section of brick and flint walling. It is acknowledged that at least a small portion of brick and flint walling has been removed to facilitate the creation of the new access entrance. This loss is regrettable, since brick and flint walling forms a positive characteristic of the area. These works appear to have affected a small area of walling with the rest of the area having been overgrown with vegetation (and any potential other sections of wall being hidden within this vegetation) before the site access was created. The loss of the small section of visible walling in terms of harm to character is not considered significant.

No Pre-existing and Existing Site Plans and Elevation Drawings clearly indicating dimensions, materials and finishes of the boundary treatments and hardstanding, have been supplied, which makes a proper assessment of visual impacts more difficult nor are there any clear drawings to tie into the approved plans condition of a Decision Notice. Only photos of what is existing i.e. the new access have been supplied. Based on the photos, the materials of the new site access boundary treatment and gates; traditional post and rail timber and timber gates, would be sufficiently high quality and reflect the rural character of the area. It is noted that the gate is a different colour (yellow-er) wood compared to the post and rail fencing (which is browner) and if planning approval were to be granted a planning condition could be applied requiring the gates to be stained in a colour to match to ensure a more consistent, traditional appearance overall. Natural, porous gravel, rather than impermeable paving, has been used which again is more appropriate within this rural context and accords with the Parish Design Guide. The height of the new boundary treatment would be similar to the height of the pilasters adjacent at the front

of Birchwood House and would be appropriate within this context. The gates would be low impact and an open structure rather than solid and retain an open appearance to the land as would the post and rail fencing. A degree of soft landscaping has been retained resulting in the sylvan appearance of the land behind being maintained.

Based on the photos provided, the new boundary treatment, gates and gravel, by reason of their scale, materials and finish, would be sensitive to their location, reflective of their rural context, and have an acceptable impact on the street scene along this part of Church Lane. The proposals would therefore appear to accord with policies D SP1 and D DM1 of the ALP, policies ES5 and ES6 of the B&ENP 1, and the principles within the B&E Design Guide (2020) and the ADC Design SPD (2021). Full plans and elevation drawings would be required to tie into the approved plans condition of a Decision Notice in the event of planning permission being granted.

HIGHWAYS IMPACTS:

Paragraph 110 of the NPPF 2021 states that in assessing specific applications for development it should be ensured that (b) safe and suitable access to the site can be achieved for all users. Paragraph 111 of the NPPF states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Policy T SP1 of the Arun Local Plan requires development proposals to provide safe access on to the highway network.

The Local Highways Authority (WSCC Highways) have been consulted on the application. They have provided comments as follows:

- No evidence has been supplied or is available to WSCC that there was an access in this location prior to works being undertaken. In order to establish a baseline position, the applicant would need to detail how the parcel of land (described as being used for a small stable and keeping of donkeys) has been accessed in the recent past or if it has been previously inaccessible. Pre-existing and existing site plans showing what access was and is there (including size/type) would be required. A comparison/assessment can then be made against the previous access arrangements and the proposed/new access arrangements in terms of material intensification of use and highways safety impacts.

- No plans have been submitted to demonstrate the maximum achievable visibility splays at the access point so no assessment can be concluded in respect of highways safety. The splays should be drawn to accord with the principles set out in Manual for Streets and should only be on land under the control of the applicant or that considered as public highway. Under the previous application, the Highways Officer also suggested that a Speed Survey may be of use to demonstrate that approach speeds in this location are particularly slow and that some form of visibility splay can be provided that is acceptable for the recorded approach speeds.

- Evidence is required that a WSCC Highways licence has been granted for the crossover, if not a retrospective licence may be required.

Based on these comments, it is clear that there is currently insufficient information with this application and thus a failure to demonstrate that the development results in a safe and suitable access or has an acceptable impact on the operation and safety of the highways network. The application therefore fails to accord with paras 110 and 111 of the NPPF and policy T SP1 of the ALP and is to be refused on this basis.

DRAINAGE IMPACTS:

Policy W DM1 of the ALP requires that applications for minor developments within the Lidsey Wastewater Treatment Works Catchment Area be accompanied by a Drainage Impact Assessment to take account of individual and cumulative impact upon foul water disposal, flood storage capacity and surface water drainage or flood flows within the LWWTW Catchment Area. Policy W DM3 requires that proposals for both major and minor development proposals incorporate sustainable urban drainage systems (SUDs).

Policy ES1 of the B&ENP 1 require that for new development full details of proposed drainage schemes for surface and foul water are required and must be implemented. Policy ES1 in the draft B&ENP 2 has amended wording.

Para 4(r) of the B&E Design Guide (2020) states that "Driveways, hardstanding, and where possible roadways, should be of porous or permeable construction. For longevity, block paving should be specified as part of the surface water SUDS system, rather than permeable tarmac....Other acceptable materials are gravel on permeable base".

Part of the site (uppermost western part of the land at the rear of Birchwood House) is within Flood Zones 2 & 3 adjacent to the Rife. However, given the specific location and nature of the application works i.e. site access/entrance, no Flood Risk Assessment (FRA) would be required and the proposal would not increase flood risk on site or elsewhere.

The site is in the Lidsey Wastewater Treatment Works Catchment Area. Under the previous withdrawn application (BN/110/20/PL) the Council's Drainage Engineer confirmed that on the basis that the scheme consists of the area between the new gates and road and is permeable gravel then they had no objection or conditions to request. Under this application, the Council's Drainage Engineer confirmed that, due to scale and nature of development (and on basis of no impermeable surfaces), they have no drainage conditions to request.

TREE IMPACTS:

Policy ENV DM4 of the ALP states that development will be permitted where it can be demonstrated that trees subject to TPOs, identified as Ancient Woodland, in Conservation Areas or contributing to local amenity will not be damaged or destroyed unless certain tests are met, including suitable replacement.

Policy ES10 of the B&ENP 1 states that "Development that damages or results in the loss of ancient trees or trees or hedgerows of arboricultural and amenity value will not be supported. Development proposals must be designed to retain ancient trees or trees or hedgerows of good arboricultural and amenity value." Emerging policy ES10 in the draft B&ENP 2 has amended wording to introduce a local species requirement.

The part of the site affected is not in a Tree Protection Order (the western upper part of site/land rear of Birchwood House is under a TPO Area) nor is the site in a Conservation Area. The trees in the area do make a positive contribution to the character and visual amenity of the area.

Recent historic imagery indicates that prior to the new access being created this area of the site was overgrown and consisted of trees and scrub/hedgerow. The application states that no trees have been removed as a result of the development. The photos supplied may suggest otherwise, with a large tree stump clearly visible in the foreground just behind the new fencing. However, it is unclear if this tree work

was historic, and even if it has been removed as a result of this development nothing can now be done as the damage has already occurred and this tree cannot be protected/managed, which is obviously regrettable if that is the case. Notwithstanding this, all other trees appear to be retained. Furthermore, the Council's Tree Officer has been consulted on this current and the withdrawn application and provided no comments/objection. Under the related enforcement case, they have confirmed they have no issues with the application in respect of tree impacts.

OTHER MATTERS:

As set out in the Highways section, the application is lacking clear plans showing any pre-existing access arrangements and boundary treatments on site and the now existing access arrangement and boundary treatments on site. Only photos of what is existing i.e. the new access have been supplied. There is a requirement for Pre-existing and Existing Site Plans and Elevation Drawings clearly indicating dimensions, materials and finishes of the boundary treatments and hardstanding, and the safety visibility splays. These were requested at the time of withdrawn application (BN/110/20/PL) but have not been provided with this application. Without these plans and drawings to scale it is not possible for the LPA to make a proper full assessment of the visual and highways impacts of the scheme, nor are there any clear drawings to tie into the approved plans condition of a Decision Notice.

In addition, it is considered that the matter of land ownership of all land within the red line site boundary and development area has still not been satisfactorily addressed. The previous application (BN/110/20/PL) was withdrawn in part on the basis that the red line site boundary shown on the Site Location Plan did not encompass the whole development area where the new access is sited and evidence had not been provided that the applicant owned all of the land on which development was located and thus whether notices had been served on the correct person/s or not and if the application form Certificate was accurate or not. Under this current application, the red line site boundary on the Site Location Plan now includes the whole development area and a document entitled 'Proof of ownership' has been submitted which seems to show a plan of the land and some form of land title. However, the image is not at all clear or readable and so the details of this cannot be confirmed and the matter of land ownership remains inconclusive. In the event of a future planning application or planning appeal, clear details of land ownership must be provided, and if the red line site boundary includes land not owned by the applicant then notices need to be served on those others with an interest in the land and the correct Certificate completed and a revised application form supplied.

SUMMARY:

In conclusion, due to a lack of information, the application currently fails to demonstrate that the new site access would have an acceptable impact on the operation and safety of the highways. The application therefore fails to accord with paras 110 and 111 of the NPPF and policy T SP1 of the Arun Local Plan, and is recommended for refusal.

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 a lack of information, in particular the lack of Visibility Splay Plan and Speed Survey, the application currently fails to demonstrate that the new site access would have an acceptable impact on the operation and safety of the highways network. The application therefore fails to accord with paragraphs 110 and 111 of the National Planning Policy Framework (2021) and policy T SP1 of the Arun Local Plan (2018).
- 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 identifying matters of concern with the proposal and determining the application within a timely manner, clearly setting out the reason(s) for refusal, allowing the Applicant the opportunity to consider the harm caused and whether or not it can be remedied by a revision to the proposal. The Local Planning Authority is willing to meet with the Applicant to discuss the best course of action and is also willing to provide pre-application advice in respect of any future application for a revised development.
- 3 **INFORMATIVE:** The matter of land ownership and how it relates to the proposed development, and if correct notices have been served and the accuracy of the Certificate in the application form and the Site Location Plan, remains inconclusive. The Planning Inspectorate may wish to consider this matter procedurally and address this in the event of any future appeal.