

Recommendation Report for Planning Permission

**REF NO:** FG/15/25/PL

**LOCATION:** Kivesborough  
Littlehampton Road  
Ferring  
BN12 6PN

**PROPOSAL:** Subdivision of existing curtilage and erection of 3 No. 3-bedroom dwellings (self build), retention of existing access and provision of landscaping (resubmission following FG/49/24/PL). This application affects a Public Right of Way and is in CIL Zone 4.

<b>SITE AND SURROUNDINGS</b>
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<b>DESCRIPTION OF APPLICATION</b>	This application seeks the subdivision of an existing residential curtilage and erection of 3 No. 3-bedroom 'self-build' dwellings with the retention of the existing access and provision of associated landscaping.
<b>SITE AREA</b>	1271sqm (excluding access road).
<b>RESIDENTIAL DEVELOPMENT DENSITY (NET)</b>	24 dwellings per hectare.
<b>TOPOGRAPHY</b>	Predominantly flat.
<b>TREES</b>	Mature trees along the northern end of the west site boundary, semi mature group of trees along the northern boundary (recently pruned), individual mature and semi mature trees scattered throughout the site and within the southwestern corner.
<b>BOUNDARY TREATMENT</b>	The site boundaries all feature a tall wooden boundary fence, alongside a mix of semi-mature trees and mature trees sporadically distributed along the site boundaries, primarily within the northwest and southeast corners.
<b>SITE CHARACTERISTICS</b>	The host site is a residential plot featuring a semi-detached single-storey dwelling with generous grounds and associated outbuildings. The site features an access track through the car park of Ferring Nurseries to the west which connects to the A259.
<b>CHARACTER OF LOCALITY</b>	With the exception of the Ferring Nurseries to the west, the site is bordered by residential uses with a mixed character. To the north are two-storey dwellings, to the east and south are a variety of single-storey dwellings. Immediately south of the site is an attached neighbour dwelling ,Lynton, and extenisve open scrubland to the front. Ferring Nurseries has a large car park with associated log storage to the north of the main Nurseries and a dwelling to the northwest of the site.

## RELEVANT SITE HISTORY

FG/49/24/PL	Subdivision of existing curtilage and erection of 3 No. 3-bedroom dwellings, retention of existing access and provision of landscaping. This application may affect a Public Right of Way and is in CIL Zone 4 and is CIL Liable as new dwellings.	Refused 20-05-24
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FG/49/24/PL - This application sought permission for the same proposal but was refused due to insufficient surface water drainage information. The current application seeks a largely identical proposal supported by additional and revised drainage details.

## REPRESENTATIONS

Ferring Parish Council - No response.

Ferring Conservation Group - Objection:

- Concerns over the lack of footway to the vehicular access.
- Concerns regarding the existing right of way agreement between the site and the nursery.
- Concerns that large/emergency vehicles may not have sufficient width along the private right of way to access the site.
- Concerns additional vehicle movements through the car park may impact customers of the nursery.
- Concerns the proposal does not provide statutory biodiversity net gain.

1 No. Objection from nearby occupier:

- Agreement with the comments made by the Ferring Conservation Group.

2 No. Support from nearby occupiers:

- The houses are of excellent design.
- The area is served by nearby amenities and public transport.
- Provides much needed housing.
- Very good usage of the garden land.
- Design is modern as well as sympathetic.

### COMMENTS ON REPRESENTATIONS RECEIVED:

All comments noted. All relevant planning matters have been addressed within the conclusions section below. It should be noted that private rights of access cannot be considered and bare no influential factor in the determination of this application.

## CONSULTATIONS

### CONSULTATION RESPONSES RECEIVED:

Drainage Engineers - Objection:

- Insufficient Winter Groundwater Monitoring data.
- Insufficient infiltration tests.

- Lack of a dissolution risk assessment despite supporting documents and guidance recommending it.
- Concerns that conditions could not be imposed to address the objections raised.

Ecology Officer - No objection:

- Preliminary Ecological Appraisal adequate.
- No further surveys needed.
- Condition for Biodiversity Enhancement Layout plan to secure Biodiversity Net Gain recommended.

Environmental Health - No objection:

- Conditions relating to Construction Hours, Precautionary Contamination, EV Charger, and securing proposed noise mitigations requested.

Tree Officer - No response.

WSCC Highways - No objection:

- Raise no concerns with access from the public highway.
- Advise that the access track should be 3.1m in width to allow access for refuse and fire appliance vehicles.
- Increase in trips would not create an unacceptable impact on highway safety, and the residual cumulative impacts on the road network would not be severe.
- SPA diagrams confirm small refuse vehicles and fire appliances can enter turn and exit the site in forward gear.
- Parking and cycle provisions adequate. EV Chargers should be secured.
- Public transport connections are available.
- Access to the Public Right of Way from within the site will be provided and has benefit for residents.
- Condition for 'Site Set Up Plan' requested.

WSCC Public Rights of Way - No response.

WSCC Fire & Rescue:

- Conditions relating to the provision and securing of fire hydrants on site.
- Noting the requirement of suitable access for firefighting vehicles and equipment from the public highway under Building Regulations and that these may require additional works on or off site.

#### COMMENTS ON CONSULTATION RESPONSES:

Comments noted. All relevant conditions and informatives would have been applied. WSCC Highways confirmed the swept path diagrams demonstrate adequate access provision for fire and waste appliances. They note the width of the private access across the car park would need to be 3.1m minimum. From visiting the site and measuring the submitted plans, this width appears to be achievable and provided. This is discussed further in the transport section below but it is acknowledged that private rights of access and private agreements to this effect cannot be considered in the determination of this application and are a private matter to be resolved.

#### POLICY CONTEXT

Built-up Area Boundary.

Potential Susceptibility to Groundwater Flooding (>= 50% <75%).

#### DEVELOPMENT PLAN POLICIES

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

SDSP1 SD SP1 Sustainable Development

SDSP1A	SD SP1a Strategic Approach
SDSP2	SD SP2 Built-up Area Boundary
DSP1	D SP1 Design
DDM1	D DM1 Aspects of form and design quality
DDM2	D DM2 Internal space standards
INFSP1	INF SP1 Infrastructure provision and implementation
ECCSP1	ECC SP1 Adapting to Climate Change
ECCSP2	ECC SP2 Energy and climate change mitigation
ENVDM3	ENV DM3 Biodiversity Opportunity Areas
ENVDM4	ENV DM4 Protection of trees
ENVDM5	ENV DM5 Development and biodiversity
ENVSP1	ENV SP1 Natural Environment
HSP1	HSP1 Housing allocation the housing requirement
QESP1	QE SP1 Quality of the Environment
QEDM1	QE DM1 Noise Pollution
QEDM4	QE DM4 Contaminated Land
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

[Ferring Neighbourhood Plan 2014 Policy 1A](#)

Ferring Neighbourhood Plan 2014 Policy 10

A Spatial Plan for the Parish

Sustainable water management

**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 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 does not comply with relevant Development Plan policies in that it does not sufficiently demonstrate that infiltration drainage is a viable means of surface water drainage on site, and given the lack of alternatives, if it were to be found unviable, the scheme would risk increasing flood risk elsewhere.

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**

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

**CONCLUSIONS**

**DETERMINATION PROCEDURE**

NPPG Paragraph: 061 Reference ID: 14-061-20140306 advises that "It is possible for an applicant to suggest changes to an application before the local planning authority has determined the proposal. It is equally possible after the consultation period for the local planning authority to ask the applicant if it would be possible to revise the application to overcome a possible objection. It is at the discretion of the local planning authority whether to accept such changes, to determine if the changes need to be reconsulted upon, or if the proposed changes are so significant as to materially alter the proposal such that a new application should be submitted."

The Arun District Council Customer Advice Note is clear that where pre-application advice has been sought and the advice has been followed, we will negotiate on minor amendments if required, and in the case of non-major applications, officers may seek one set of amendments to make a scheme acceptable and which would not result in the need for re-consultation and allow the application to be determined within the statutory time limits.

Following receipt of the Drainage Engineers objection, the agent was advised of the objection and comment with regards to the objection was invited. Whilst comment was invited, the submission of technical details to address the concerns was not. Comment was invited in the interests of clarity and to understand the agents thoughts on the matter, particularly given one of the points of objection was a fundamental objection raised by the engineers under the previously refused application that had been sustained.

The agent provided an additional technical note from their drainage consultants that responds to the objections raised by the ADC engineers. Whilst officers have reviewed the technical note informally, it is not apparent that this fully resolves the concerns raised by the ADC engineers. Additionally, a reconsultation would be necessary to ensure the additional technical note was reviewed and considered with the appropriate expertise. Whilst the response from the ADC engineers was, unfortunately, delayed,

and resulted in the application exceeding the statutory timeframes, the principle remains that officers are not to seek additional information that would require consultations. As such, the additional technical note has not been accepted for formal review, and the application has been determined on the basis of the information originally submitted.

#### **PRINCIPLE**

The site benefits from being within the Built-Up Area Boundary in which the principle of residential redevelopment is acceptable. Policies SD SP2 of the Arun Local Plan (ALP), and 1A of the Ferring Neighbourhood Development Plan seek to focus development within the Built-Up Area Boundary, subject to consideration of other relevant Development Plan policies.

Sections H & J the Arun Design Guide, and the Arun Parking Standards are of relevance.

The NPPF gives a presumption in favour of sustainable development (paragraph 11) and generally seeks to promote the effective use of land (para 124). The Council experiences a significant shortfall of a 5-year supply of housing land where, according to paragraph 11d of the NPPF, the Councils policy SD SP2 which controls Built-up Area boundaries is out of date. As a result, the tilted balance is triggered and para 11d(ii) applies where planning permission should be granted for residential development unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

The principle of additional residential development on this site is acceptable.

#### **CHARACTER & DESIGN**

The site is a large residential curtilage that with a semi-detached bungalow and associated outbuildings. The site is isolated from the surrounding urban grain, neighbouring the nurseries to the west, the attached dwelling, Lynton, to the south, and is otherwise self-contained from the residential estates to the north and east. Lynton is separated from the wider residential developments and has a large portion of open scrubland to the west and south. Kivesborough has undergone substantial alterations over time and does not share a cohesive visual appearance with Lynton. Lynton features a mobile home within the grounds to the front of the building that is approx. 6m from the south side boundary of the host site. No planning history has been found in relation to the siting of this mobile home and from review of remote imaging it appears to have been placed there sometime between late 2018 and early 2019. The mobile home does not benefit from formal planning consent for permanence or as an independent unit of accommodation.

The proposal is for 3 No. 3-bedroom dwellings of a contemporary design that is not clearly reminiscent of any dwellings within the wider locality. They are to be of two storeys but are designed in such a way that the front elevation would read as 1.5 storeys. Plots 2 & 3 are semi-detached and to the south side of the site, with Plot 1 being detached and to the north of the site. They feature a mix of brickwork with projecting headers, tile hanging, metal cladding, and black metal fenestrations. The materials generally feature brown and deep red colorations with the exception of the fenestrations. As aforementioned, the site is well separated from the wider locality which has a relatively consistent material palette. The host dwelling and its neighbour, Lynton, do not establish any uniformity of appearance, but the host dwelling does feature facing red brickwork and clay roof tiles. The proposed materials would not be a significant departure from those of Kivesborough, and although they contrast those of the neighbour, would not result in any unacceptable compromise of the overall character of the site.

The use of a 1.5-2 storey design is acceptable given the quantity of two-storey dwellings to the north/north-west and the dominance of single storey dwellings to the east of the site. The site is well contained from the wider residential developments and would have limited visual impact on them despite their proximity. The primary locations from which these dwellings would be read from outside of the site is above the fence line from within the greenspace to the north, and above the same fence within the

public foot path which is to the north of the site. The aforementioned greenspace serves a dense, two-storey development and viewing other two-storey dwellings within this context would not be unexpected. Views of the proposal above the fence line within the footpath would be limited and not significantly adverse, particularly with the two-storey units to the north also being visible. The site and its adjoining neighbour share little in terms of visual design and do not establish any particular visual character within the site. Section J.01 of the Arun Design Guide identifies that contemporary designs that take design cues from well-designed features within the existing environment will be supported. This scheme would utilise traditional materials in a contemporary way which is acceptable. Influential factors for the designs taken from traditional designs in the area have been illustrated within the supporting documents. However, the resultant design strays from these examples to a degree that the traditional design influences are not clearly read within the scheme. Whilst the contemporary design is not clearly derived from established traditional design features within the area and would be a visual contrast to the same, given the isolation of the development the designs would not have any significant harm to the established character of the wider area.

Section H.04 of the ADG sets out minimum separation distances between dwellings that avoid potentially overly dense and unneighbourly developments. This includes a recommended 14m minimum front-to-side separation distance between habitable rooms/side gables of units. The spatial relationships between the proposed dwellings and Kivesborough are in breach of the minimum separation distances advised by Section H.04, with the front elevation of Kivesborough being 12.1m from the east elevation of Plot 3, and the front elevation of Plot 2 being 9.1m from the south elevation of Plot 1. It is acknowledged that the minimum 14m guidance applies to habitable rooms and two-storey side gables. The front room at ground-floor within Plot 2 is a kitchen (non-habitable), although at first floor, the front room is a bedroom with dormer window which is separated from Plot 1 by 10.5m. The dormer window would be at a greater elevation and impacts due to the proximity of the southern elevation of Plot 1 would be lessened as a result. Whilst there is a breach of guidance here, and the limited separation distances evidence some harm that the density of the proposal is greater than recommended, it is not concluded that this harm is unacceptably detrimental to the amenity of future occupiers. It is acknowledged that to the south and east of the site, the residential estates are dominated by low density, single storey dwellings, but also that to the north and northwest of the site is a two-storey estate with separation distances between dwellings that are lower than the minimums set out in Section H.04 of the Arun Design Guide. Whilst the character of the site is separated from the character of the wider area, it should be acknowledged that denser, two-storey developments are not alien to the wider area. The density of the site would be approx. 24 dwellings per hectare which is in accordance with recommended densities for semi-detached and detached dwellings in village locations as set out in Section G.02 of the ADG.

Overall, whilst some harms are identified as outlined above, the site remains of an acceptable density, and the harms of the limited separation distances are limited. Also, whilst the contemporary designs do not distinctly relate to the designs of dwellings within the wider area, the site remains relatively isolated from these areas and has no established uniformity of character within the site that it is required to uphold. Although dwellings in the site are currently single storey and the proposed are two-storey, the proposed dwellings would establish themselves as the prevailing character within the site and immediate context by majority and would not appear overly alien or incoherent with the overall urban grain of the wider area. The proposal is in contradiction to policy D DM1(15) with respects to minimum separation distances but is compliant with policies D SP1 & D DM1 on balance.

#### NEIGHBOURING RESIDENTIAL AMENITY

The host dwelling, Kivesborough, and Lynton, are the only dwellings that neighbour the proposal within a reasonable proximity and the assessment of neighbouring residential amenity is therefore, primarily within the context of these dwellings.

The front elevation of Kivesborough is separated from the east elevation of Plot 3 by only approx. 12m,

lower than the recommended minimum. It is noted that from review of historic plans, that the 2 No. southernmost windows and entrance door on the front (west) elevation of Kivesborough that overlap the east elevation of Plot 3 serve a dining room and entrance hall rather than habitable rooms. The 2 No. windows north of these openings on the front elevation serve bedrooms. When considering the declining ridge line, neither of the bedroom windows breach the 25-degree rule established by the Arun Design Guide that seeks to limit overshadowing impacts. The proximity and extent of the side elevation when viewed from the front elevation openings of Kivesborough would be a prominent visual alteration and have some overbearing and overshadowing impact, but not one which is unacceptable.

Lynton benefits from a designated private rear amenity space that extends east and south of the building and is enclosed by fencing and outbuildings. Due to the spatial relationship of the proposed dwellings relative to Lynton, the proposed dwellings would not have any unacceptable overbearing or overshadowing impacts on Lynton. Owing to their scale, the dwellings would be a prominent visual change and have some overbearing impact on the forward amenity space of Lynton, but not any unacceptable harms.

To the west (front) of Lynton and south of the site is a large area of scrubland that benefits from high levels of privacy due to the seclusion of the site and lack of surrounding neighbours, but it does not serve as a designated private amenity space. Within this area is a mobile home. There would be no unacceptable overbearing or overshadowing impacts on this land.

In terms of overlooking, the windows to the east elevation of Plot 3 are either at ground floor level or would serve bathrooms/en-suites. Those serving the bathroom and en-suite would be obscure glazed and would have been conditioned as such, and those to the ground floor would be met by boundary fencing and planting. The proposal would not result in any unacceptable overlooking impacts of Kivesborough. As part of the submitted acoustics assessment, an acoustic fence at 2m in height is proposed to the north, west, and south site boundaries. This would afford the forward amenity space of Lynton with sufficient privacy from the rear ground floor openings of Plots 2 & 3.

With respects to first-floor rear viewpoints, Plots 2 & 3 feature 4 No. rear windows (2 No. serving en-suites) and 2 No. rear roof terraces. A condition would have been attached to ensure both rear en-suite windows will be obscure glazed, and for an obscured screen to be installed between the terraces to prevent inter-overlooking. The rear gardens of Plots 2 & 3 are to be 8.2m in depth, with a depth of only 7.3m from the rear terraces. Minimum rear amenity space depths of 10.5m are recommended by Section H.04 of the Arun Design Guide but it notes that smaller gardens with adequate daylight and privacy may be acceptable in certain circumstances, when justified. A 10.5m rear garden depth is recommended where dwellings are back-to-back to allow a 21m between rear elevations, but therefore, a 10.5m separation between first-floor rear viewpoints and private amenity spaces can be acceptable. The rear garden depths are significantly lower than the recommended minimum, but these rear viewpoints look out over scrubland to the front of Lynton rather than any designated private rear amenity space where such distances are applicable. Within the forward amenity space of Lynton is a mobile home, directly south of Plots 2 & 3. The mobile home does not appear to benefit from any formal planning consent or as an independent unit of accommodation. This structure could be relocated if desired and should not sterilise development such as that proposed. There will be some overlooking impacts on the scrubland to the south, and some very oblique and distant views toward the front of Lynton and over its access track, but none that unacceptably jeopardise the residential amenity of neighbours.

A Construction Hours condition and Construction Management Plan condition would have been attached to this decision had the proposal been successful, to aid in safeguarding residential amenities and preventing unacceptable impacts of the public highway during the construction process.

The proposal is in accordance with policies QE SP1, D SP1 & D DM1 of the ALP.

### QUALITY OF ACCOMODATION

The proposed dwellings all meet the Nationally Described Space Standards (NDSS) in accordance with Policy D DM2 of the ALP.

The depths of the proposed private rear amenity spaces are below minimum recommendations; however, they wrap around the side of the units and are clearly functional spaces. Residential gardens within the wider locality also generally have varying depths, often less than 10.5m depth. The level of amenity afforded by the internal and external amenity spaces remain acceptable.

The proposal is in accordance with policies D DM2 & QE SP1 of the ALP.

### DRAINAGE & FLOOD RISK

The proposal site is within Flood Zone 1 and is identified by the Council's mapping as potentially being susceptible to groundwater flooding. A Site-specific Flood Risk Assessment has been submitted as part of this application and provides evidence to conclude that the site is not at any significant risk of flooding now or in the future.

ALP policy W DM3 and Policy 10 of the FNP require all developments to identify opportunities to incorporate a range of Sustainable Urban Drainage Systems (SUDS) as appropriate to the size of development and will support proposals that do. The proposal sought to provide a betterment of surface water management on site and includes a permeable driveway, green roofs, and recommends water butts. All of which are supported in principle by policy W DM3 of the ALP.

The application has sought to demonstrate that infiltration is a viable means of managing surface water drainage for the site, however, the Arun District Council Engineers have been consulted on this and have objected. They identify that the proposal has failed to provide sufficient site-specific winter ground water monitoring, that the infiltration tests provided do not align with the likely infiltration systems proposed, and that a chalk dissolution risk assessment has not been submitted despite this risk being discussed in the ground investigation reports. They go on to identify that the infiltration tests submitted do give the impression that infiltration may be viable on site, but that the investigations and evidence provided are not sufficient to confirm this, and that given the lack of alternatives for draining surface water from the site that are clearly viable, the use of conditions to address the matter would be inappropriate as they may not be able to be discharged.

No site-specific and up-to-date winter groundwater monitoring has been provided. The historical data (2013) taken from the neighbouring site indicates a peak groundwater level of 2.7mBGL during the winter, and the falling head test conducted for this site in July 2024 struck groundwater at 2.85m. Although the historical data was in proximity to the site, it is not site-specific nor up to date, and groundwater levels vary between seasons. Peak groundwater levels have been found to occur any time between October and March within in The District, meaning groundwater levels could rise significantly above the 2.85mBGL struck in the summer during the winter months. Until current, site-specific winter groundwater monitoring across the winter months has been provided, it cannot be confirmed that the onsite peak groundwater level necessary to conclude the viability of infiltration drainage and inform the relevant constraints for any drainage design, has been captured.

Two infiltration tests were provided on site at depths of 1.5m and 2m during November 2024. Groundwater was not struck within the 2m pit, however, as outlined above, peak groundwater levels can be reached anytime between October and March, the snapshot this pit provides is not sufficient to conclude peak groundwater levels would not exceed 2m through the winter at the site.

The ADC Engineers have objected as there has been conflicting advice within the various supporting

documents provided for this application regarding the risk of solution or dissolution features within the underlying chalk. The supporting documents reference the potential need for easements of 5-10m from structures depending on the risk of solution/dissolution features that can be created/worsened by infiltration features, and that the guidance referenced within some of the supporting documents advises that the advice of a specialist geotechnologist should be sought as to the advisability and siting of infiltration soakaways.

The advice of the ADC Engineers concludes that the application has not been supported by sufficient information to assert that the surface water of the site can be viably or suitably drained via infiltration. Given the absence of alternative outfall locations for surface water, if infiltration were found to be an unviable means of draining the site, the site may not be able to be viably drained. Additionally, the density and layout of the development leaves limited capacity for alternative drainage designs without conflict with the scheme and if a geotechnical assessment, as recommended by the applicants supporting guidance, were to conclude that easements are necessary for the infiltration systems proposed, the proposed site layout could be required to change. Planning Practice Guidance (PPG) explains that conditions impacting the proper implementation of the planning permission should not be used. As there is insufficient evidence to confirm that the proposal would be deliverable in terms of surface water drainage, it would not be appropriate to leave the matter of surface water drainage to condition, nor risk the layout that would be approved needing to be changed if easements are required.

It has not been shown that the surface water of the development could be viably drained from the site and, therefore, not increase flood risk elsewhere in conflict with policy W DM3 of the ALP and paragraph 181 of the NPPF.

#### **TRANSPORT & ACCESS**

The Arun Design Guide (Sections I.01, I.02 and I.03), and the Arun Parking Standards include guidance on the provision and design of car parking, electric vehicle charging points, and cycle parking.

The proposal seeks to make use of an existing access to the public highway located at the entrance to Ferring Nurseries from the A259 to the north. This access proceeds through a private right of access across the Ferring Nurseries car park and into the residential properties Kivesborough and Lynton. The access to the public highway is sufficient, established, and the increased traffic as a result of the development would have no unacceptable or severe impact on the public highways network as concluded by WSCC Highways.

WSCC Highways have identified that the private right of access to the proposal site across the Ferring Nurseries car park should be a minimum width of 3.1m, and that the access shown in the swept path diagrams into the proposal site from the Ferring Nurseries car park is sufficient for refuse and fire appliance vehicles to enter, manoeuvre, and exit the proposal site. Following the site visit and measurement of the plans, the access track through the Ferring Nurseries car park appears to meet the 3.1m minimum width and would be able to provide access for such vehicles, however, a representation made by Ferring Nurseries under the previous application (FG/49/24/PL) identified that the private right of access agreement for Kivesborough and Lynton is for a width of track that is 3m wide. Private rights of access are not a material planning consideration and are a private matter. From review of the site, it is apparent that the land could facilitate the provision of a 3.1m width access across the private land, and this is sufficient for the purposes of this assessment. Should the private right of access require any amendment or reconsideration to facilitate this development, this is a private matter to be resolved.

The vehicular access to the public highway is sufficient, as is the access into the proposal site from the intervening private land. The additional traffic that would follow the completion of the development would not have any unacceptable or severe impacts on the wider highway network, nor would it likely have an unacceptable impact on the private land through which access is required given it is an already

established residential access serving 2 No. dwellings, it currently serves as a car park with pedestrian, cycle, vehicular, and large delivery traffic on a regular basis, and the increase in vehicular movements would not be substantially greater.

As part of the proposal, a locking gate would be installed to the northern boundary fence which connects to the public footpath that runs along the northern boundary, connecting Langbury Lane to the car park access and, informally, through to the ASDA superstore car park further west of the site. This allows for pedestrian access to nearby bus stops and retail facilities which bolsters the sustainability of the site.

Each dwelling also provides 2 No. external parking spaces in line with recommended dimensions, with plots 2 & 3 providing integral cycle storage facilities. Cycle storage would have been secured by way of condition for Plot 1. Furthermore, the supporting statement identifies the provision of EV charging points which would have been secured on a one per dwelling basis by way of condition. The proposal would promote sustainable transport methods and provide sufficient private parking.

The capacity for the proposal to support the access and egress of large vehicles such as fire appliances and refuse vehicles infers there is capacity for standard delivery vehicles to service the site. From measurement of the plans, the private intervening land would appear able to support a minimum 3.1m width of track (0.1m greater than the private agreements outlined by representation made under the previous application), without any significant impact on the neighbouring land. It is acknowledged that the existing private right of access arrangement might not be sufficient to facilitate such vehicular movements through the land in its current format, but this is private matter, and any variation of this agreement would need to be agreed outside of the planning process. From review of the site, it is apparent that subject to any private arrangements necessary, the private land could facilitate necessary access and allow for the efficient delivery of goods, and access by service and emergency vehicles.

A Construction Hours and Construction Management Plan condition would have been attached to aid in preventing unacceptable impacts of construction on the public highway during the construction process.

The proposal is in accordance with Policies T SP1 & T DM1 of the ALP, and paragraphs 115, 116 & 117 of the NPPF.

#### WATER & ENERGY EFFICIENCY

Policy W DM1 requires this proposal to be water efficient and reduce pressure on water abstraction sites. It must include measures that meet the optional standards of 110 litres per person per day. The submitted water efficiency report has confirmed this is to be achieved.

Plots 2 & 3 propose the use of solar panels and air source heat pumps, Plot 1 does not. All plots identify a fabric first energy efficiency approach. To ensure that adequate decentralised, renewable, and low carbon energy supply systems were secured for all dwellings, a condition would have been attached to this decision to secure them.

The proposal is in accordance with relevant Development Plan policies W DM1 & ECC SP2 of the ALP.

#### BIODIVERSITY

The proposal is a 'self-build' development and is exempt from the 10% Statutory Biodiversity Net Gain requirement. Nonetheless, Policy ENV DM5 of the ALP still requires development proposals to achieve a Biodiversity Net Gain on site and to ensure adequate protection of protected species and be in accordance with standing advice from Natural England.

The Council's Ecologist has reviewed the submitted Preliminary Ecological Appraisal (PEA) and concluded that the methods and findings are acceptable and are capable of achieving a Biodiversity Net

Gain on site. A condition requiring full and finalised details of suggested ecological compensation and enhancement measures has been requested and would have been attached to this decision. In addition, a condition to ensure the development is undertaken in accordance with the recommended mitigation measures within Appendix V: Precautionary Non-Licensed Method Statement of the submitted PEA would have been attached.

The submitted Tree Protection Plan identifies various protective measures on site during the construction in the interest of retaining trees both on and adjacent to the site. Fencing and ground padding has been proposed along Group G1 to the northwest of the site, but it was not clear how access would be achieved into the site during construction with fencing blocking the existing access. The fencing obstructing the access was amended with the ground padding retained. A condition would have been attached to this decision requiring the development to be constructed in accordance with the submitted Tree Protection Plan.

It is accepted that some ground compaction as a result of vehicles travelling over existing root networks may occur and damage the southernmost trees of G1, however, this should be sufficiently mitigated by the 'ArborRaft' ground padding given the scale of the development and likely frequency of vehicular trips.

Subject to the above, the proposals would ensure a Biodiversity Net Gain on site and adequate consideration of any limited potential for protected species on site, despite their absence, in accordance with Policy ENV DM5 of the ALP.

#### **POLLUTION & CONTAMINATION**

The site is unlikely have any particular contamination constraints however, a precautionary contamination condition would have been attached to this decision due to the agricultural history of the site and neighbouring horticultural and commercial uses. The proposal is in accordance with Policy QE DM4 of the ALP.

With the presence of horticultural and commercial uses and nuisances immediately adjacent the site to the west, an Acoustics Assessment was submitted in support of this application to ensure the dwellings would benefit from a sufficient level of residential amenity and not be subject to unacceptable noise nuisances that could impede neighbouring uses. Environmental Health have been consulted on and confirm that the acoustics assessment is acceptable and that relevant noise mitigation measures should be secured. A condition would have been attached to this effect and the proposal is would not likely have impeded neighbouring non-residential uses such as Ferring Nurseries as a result.

Subject to conditions, the proposal is in accordance with policies QE DM4 & QE DM1 of the ALP.

#### **IMPACTS OF CONSTRUCTION ON BUSINESSES**

The Arun Local Plan has no policies that specifically account for impacts of neighbouring businesses during construction phases, nor are there any paragraphs of the NPPF that specifically relate to this issue. It is accepted that development has the potential to disrupt everyday activities, including those of businesses. Whilst unfortunate, it is often an inevitability and, in this instance, with access for construction likely being required to occur through the private land of Ferring Nurseries, it is likely to have some disruptive impact on usual business activities. However, these impacts are temporary and a condition requiring the approval of a schedule of delivery times for the development would have been attached to this decision, noting the requirement to account for neighbouring uses and potential conflicts. This would have mitigated potential conflicts with deliveries to Ferring Nurseries and minimised consequential disruptions to the public highway, but disruptions from construction vehicles crossing private land is a private matter.

#### **WASTE MANAGEMENT**

Policy WM DM1 of the ALP requires development to ensure that kerbside collection is possible for municipal waste vehicles. The proposal has demonstrated that suitable access for a refuse vehicle would be available however, the statement notes that the existing bin storage and collection arrangement is likely to be implemented. It is unclear that the existing collection arrangement benefits from sufficient space for an additional 3 No. dwellings refuse bins to be stored for collection. A condition would have been attached for details of the proposed waste storage and collection methods to be provided prior to occupation of the units.

Subject to condition, the proposal is in accordance with Policy WM DM1 of the ALP.

#### **FIRE SAFETY**

WSCC Fire & Rescue have provided comment on this application and requested a pre-commencement condition for the provision of details for a fire hydrant/stored water supply and subsequent implementation of the details ahead of occupation. A condition would have been attached to secure these details, but the details are not necessary to be agreed ahead of the commencement. This would have been amended to require provision of details prior to development above Damp-Proof Course.

The proposal is in accordance with policies INF SP1 of the ALP.

#### **SUMMARY**

The proposal lacks sufficient site-specific evidence to support the proposed method of draining surface water from the site. No clearly suitable or viable outfall locations for draining surface water from the site have been identified and as such, it has not been confirmed that the proposed development could be adequately drained and would not increase flood risk elsewhere in conflict with Policy W DM3 of the Arun Local Plan and Paragraph 181 of the NPPF.

The benefits of providing 3 No. new dwellings in a period of acute housing need is given moderate weight, but the potential resultant harms of increasing flood risk elsewhere is given substantial weight. The potential resultant harms significantly and demonstrably outweigh the benefits of providing 3 No. new dwellings in contradiction to paragraph 11d(ii) of the NPPF.

<b>HUMAN RIGHTS ACT</b>
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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.

<b>DUTY UNDER THE EQUALITIES ACT 2010</b>
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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.

<b>RECOMMENDATION</b>
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**REFUSE**

- 1 The proposal lacks sufficient site-specific evidence to support the proposed method of draining surface water from the site. No clearly suitable or viable outfall locations for draining surface water from the site have been identified and as such, it has not been confirmed that the proposed development could be adequately drained and would not increase flood risk elsewhere in conflict with Policy W DM3 of the Arun Local Plan and Paragraph 181 of the NPPF. The potential resultant harm significantly and demonstrably outweighs the benefits of providing 3 No. new dwellings in contradiction to paragraph 11d(ii) of the NPPF.
- 2 **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.