

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

REF NO: FP/1/26/S73

LOCATION: Land Rear of 107 Felpham Way
Felpham
PO22 8QB

PROPOSAL: Variation of condition 2 imposed under FP/45/24/PL relating to plans condition.

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	The application seeks to vary condition 2 under FP/45/24/PL for the development of 1No. dwelling.
	Condition 2 relates to the approved plans.
TOPOGRAPHY	Predominantly flat.
TREES	None.
BOUNDARY TREATMENT	A post and rail fence is present to the north, with fencing present to the east and west. A hedge and the building of No.107 forms the boundary to the south.
SITE CHARACTERISTICS	The site is occupied by a detached chalet dwelling. Immediately to the east of the site are 1 & 2 Sunnyside Cottages, Rainbow Cottages (1 to 3) to the west and 2-storey building with shop and flexible use commercial unit at the ground floor and three 2-bed flats at the first floor level to the south.
CHARACTER OF LOCALITY	Flax Mean is a private road of an open character with terrace dwellings within a spacious area and one pair of semi-detached dwellings (Sunnyside Cottages).

RELEVANT SITE HISTORY

FP/45/24/PL	1 No detached 2-bedroom chalet bungalow with electric mobility scooter/cycle & refuse storage facilities. This application is in CIL Zone 4 and is CIL Liable as a new dwelling.	ApproveConditionally 20-05-24
FP/135/24/DOC	Approval of details reserved by condition imposed under reference FP/45/24/PL relating to condition numbers 4 - site investigation, 6 - schedule of materials, 11 - cycle storage details.	DOC Approved 09-10-24

REPRESENTATIONS

Felpham Parish Council provided no objection.

1 letter of objection from nearby residents.

- The plans show the north elevation as the front of the property, this re-orientates the plot and would have traffic implications for Roundle Residents and Flax Mean.
- There are legal covenants preventing access to the site from Flax Mean.
- Request conditions that the address given will not be a Flax Mean address.
- The north boundary is fully enclosed and it should remain in perpetuity.
- No vehicular or pedestrians access is allowed from Flax Mean.

COMMENTS ON REPRESENTATIONS RECEIVED:

Comments noted and addressed in the conclusion.

The address allocated to the property is not a planning consideration and is provided by land charges and the street naming team.

CONSULTATION RESPONSES RECEIVED:

None.

COMMENTS ON CONSULTATION RESPONSES:

None.

POLICY CONTEXT

Built Up Area Boundary

2km Buffer for Site of Special Scientific Interest

CIL Charging Zone 4

DEVELOPMENT PLAN POLICIES

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

DDM1	D DM1 Aspects of form and design quality
DDM4	D DM4 Extensions and alter to exist builds (res and non-res)
DSP1	D SP1 Design
SDSP2	SD SP2 Built-up Area Boundary
TSP1	T SP1 Transport and Development

PLANNING POLICY GUIDANCE:

NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance

SUPPLEMENTARY POLICY GUIDANCE:

SPD13	Arun District Design Guide (SPD) January 2021
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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 is considered to comply with relevant Development Plan policies in that the proposals will not have an unacceptable impact on the character or visual amenity of the site, nor upon nearby occupiers.

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.

BIODIVERSITY NET GAIN

The application is exempt from biodiversity net gain (BNG). The original application was submitted prior to February 24 and therefore is exempt.

CONCLUSIONS

PRINCIPLE

This application seeks to vary condition 2 (approved plans) and only the matters which are relevant to the changes will be discussed below. All other matters were considered and remain as approved under application FP/45/24/PL.

DESIGN AND VISUAL AMENITY

ALP policy D SP1 requires that development proposals make efficient use of land. Policy D DM1 provides criteria for design aspects that should be addressed.

The application seeks to alter the plans condition. There have been some deviations in the design when compared to the approved plans which include;

- The extension to the north alters from a gable to a hip end.

- Alterations to the shape/design of windows and the removal of one ground floor window.
- Change to the shape of the dormer.
- Change to the front door design and removal of porch canopy.
- Alterations of materials from full brick to render with minor brick course to the ground floor.
- Alterations to the pergola/bin store to the south.
- Removal of flue.

Whilst the alterations do alter the appearance of the dwelling, the changes are relatively minor and the design is acceptable and does not result in the dwelling appearing out of character with the area.

The proposed site plan shows that hedging and a post and 2 rail fence is proposed to the northern elevation. This is largely the same as that which was approved which sought a post and 3 rail fence and remains acceptable and is already in situ.

Comments have stated that the plans have re-orientated the building which shows the northern elevation as the front and this would enable access from this elevation. It is clear from the plans that the front door which provides access to the property is to the eastern elevation and a fence is to be in place to the north. Access to the dwelling remains as approved, from the south on Felpham Way.

The changes do not result in adverse harm upon the character of the area and comply with ALP policies D DM1 and D SP1.

RESIDENTIAL AMENITY

ALP policy D DM1(3) indicates planning permission will only be granted where it has minimal impact on the users or occupiers of nearby land.

The changes proposed are minor in nature. Whilst there are alterations to the windows, there are no additional windows proposed that would result in overlooking. The change to the shape and frame design do not result in harm upon amenity.

The proposal would not result in adverse harm upon neighbouring amenity and comply with ALP policies D DM1 and D DM4.

PARKING

ALP policy T SP1 requires development proposals to provide safe access on to the highway network and to incorporate appropriate levels of parking in line with adopted planning policies.

No parking spaces were proposed as part of the original planning permission and the Transport Statement demonstrated that the total parking demand could be accommodated within available on street provision. This application does not seek to amend the parking.

There have been concerns from residents that vehicular access and on-site parking is to be proposed from the road to the rear on Flax Mean. The road to the rear is private and permissions would be required from the relevant persons should the development seek on site parking. No driveway nor dropped kerb has been constructed to serve the property and the garden to the north has not been used for parking. The application has installed a fence along the northern elevation and this would restrict parking on site.

Representations have requested that conditions be included for the fence to be retained in perpetuity. This is not considered reasonable. Even if the fence was to be removed, additional permissions are required to be able to use the site for parking, which if approved, there are unlikely any planning reasons why parking would not be acceptable in this location, which would be the same arrangements as

neighbouring dwellings. If permissions are obtained from the landowner, it may fall under permitted development.

The parking arrangements were considered acceptable under FP/45/24/PL and with no changes proposed to this, there is no harm.

CONDITIONS

The original application had a number of conditions attached. Condition 5 and 10 of FP/45/24/PL were not discharged.

Condition 4 required a scheme for the risk of contamination and any remediation be submitted and approved. This was discharged. Condition 5 was a follow up to this condition and required a verification report showing that the remediation works identified within condition 4 were carried out. As there was no contamination on the site and no remediation was required, no report was submitted and condition 5 was not discharged. Correspondence has been submitted on behalf of those that undertook the contamination report which confirmed no remediation was required. As such, as no contamination was present on site and no remediation took place, evidence of this to satisfy condition 5 is not considered necessary and the condition will not be reapplied.

Condition 10 required details of (i) biodiversity enhancements on the site, and (ii) the fencing and planting to be submitted to and approved by the LPA. This detail has been submitted as part of this application and therefore it is not necessary for it to be reapplied.

SUMMARY

As this is a Section 73 application any new permission sits alongside the original permission, which remains intact and unamended. Government guidance states that for the purpose of clarity to reinstate the conditions imposed on earlier permissions that continue to have effect. As stated above, all conditions have either been discharged or are no longer necessary.

HUMAN RIGHTS ACT

The Council in making a decision should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as Arun District Council to act in a manner, which is incompatible with the European Convention on Human Rights.

Consideration has been specifically given to Article 8 (right to respect private and family life) and Article 1 of the First Protocol (protection of property). It is not considered that the recommendation for approval of the grant of permission in this case interferes unreasonably with any local residents' right to respect for their private and family life and home, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation for approval is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

DUTY UNDER THE EQUALITIES ACT 2010

Duty under the Equalities Act 2010

In assessing this proposal the following impacts have been identified upon those people with the following protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation).

The proposal would have a neutral impact on the protected characteristics.

CIL DETAILS

This application is CIL liable, therefore, developer contributions towards infrastructure will be required (dependent on any exemptions or relief that may apply).

RECOMMENDATION

APPROVE CONDITIONALLY

- 1

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

 - Location and Block Plan - LS-031-PL-08
 - Proposed Elevations - Rev C
 - Proposed Plot Plan - Rev F
 - Proposed Street Scene
 - Proposed Ground Floor Plan DLS-031-PL 01 REVA
 - Proposed First Floor Plan DLS-031-PL 02 REVA

Reason: For the avoidance of doubt and in the interests of amenity and the environment in accordance with Arun Local Plan policies D DM1 and D SP1.
- 2

Notwithstanding the provisions of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order, 2015 (or any Order revoking or re-enacting this Order) no extensions (including porches or dormer windows) to the dwellinghouse shall be constructed or buildings shall be erected within the curtilage unless permission is granted by the local planning authority on an application in that behalf.

Reason: In the interests of amenity and the environment in accordance with Arun Local Plan policy D DM1.
- 3

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or re-enacting that Order) no further gates, fences or other means of enclosure shall be constructed unless permission is granted by the Local Planning Authority on an application in that behalf.

Reason: In the interests of amenity and the environment in accordance with Arun Local Plan policy D DM1.
- 4

Based on the information available, this permission is exempt from the requirement to provide a biodiversity gain plan under Paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990. The following exemption applies:

The application relates to a S73 permission where the original permission which the section 73 relates to was either granted before 12 February 2024 or the application for the original permission was made before 12 February 2024.

Reason: In accordance with Schedule 7A of the Town and Country Planning Act 1990 (as amended).
- 5

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 assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the NPPF.