

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

REF NO: WA/5/26/S73

LOCATION: Land West of Yapton Lane
Walberton

PROPOSAL: Removal of condition 30 following grant of WA/2/22/OUT relating to improvement to A27/Yapton Lane.

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	The application seeks to remove condition 30 following the grant of permission (WA/2/22/OUT) for the construction of 48 dwellings.
	The condition sought for removal relates to highway works on A27/Yapton Lane.
TOPOGRAPHY	Predominantly flat.

REPRESENTATIONS

Walberton Parish Council - objection

- Fundamental requirement for safety and capacity.
- The improvements are mandatory required to mitigate severe impacts on the road.
- The removal of the condition the removes the Councils ability to ensure works are completed prior to the development being occupied.
- Premature application.
- There is no planning justification for the removal of this condition.
- No new evidence is provided to show why the condition should not applied.
- A failure to trigger enforcement on adjacent sites does not mitigate the risk for this application.

8 letters of objection from nearby residents

- Removing the condition would remove the control preventing delivery before the mitigation is in place.
- During busy periods, the slip lane is overburdened with cars.
- The condition is necessary to ensure that the junction improvements are delivered prior to occupation.
- The request to remove the conditions appears premature with it acknowledged that works are due to begin May 26.
- No additional transport evidence has been submitted to show the condition is no longer necessary.
- Other sites mentioned benefit from other connections and are not dependent on this mitigation.
- The applicant has not demonstrated that removal of the condition is justified on planning merit.
- Absence of enforcement elsewhere does not prove that the condition is not necessary.
- A similar application was refused under Y/19/21/PL as the works were deemed necessary.

COMMENTS ON REPRESENTATIONS RECEIVED:

Comments noted and addressed in the conclusion.

CONSULTATIONS

CONSULTATION RESPONSES RECEIVED:

WSCC Highways - Given this is not a condition sought by WSCC, no comments would be offered concerning its removal.

National Highways (NH) - Recommend that planning permission not be granted for a specified period. Works are scheduled to commence on 27th May. Given the context, it is recommended the condition is not removed unless the works on the improvement scheme are commenced.

COMMENTS ON CONSULTATION RESPONSES:

Comments noted.

POLICY CONTEXT

Outside the built up area boundary

DEVELOPMENT PLAN POLICIES

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

TSP1 T SP1 Transport and Development

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, 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 conflict with relevant Development Plan policies in that the proposal has not demonstrated that it would not give rise to adverse harm upon the highway in conflict with Arun Local Plan policy T SP1 and the NPPF.

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 not liable for BNG as it is a S73 application.

CONCLUSIONS

PRINCIPLE

Arun Local Plan (ALP) policy T SP1 states that development should make provision for safe access to the highway network through improvements to the existing road network. The NPPF states at para 115 that any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, must be effectively mitigated to an acceptable degree through a vision led approach. Paragraph 116 states 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, severe, taking into account all reasonable future scenarios.

The principle of development was established by WA/2/22/OUT which granted permission for 48 dwellings (30% affordable homes) and dental/doctors' surgery (Use Class E (e)). This application seeks to remove Condition 30 attached to the outline planning permission.

Condition 30 reads:

"No part of the development hereby permitted shall be occupied until the improvements to the A27/Yapton Lane junction shown on drawing ITB11324-GA-014 Revision C (within Transport Statement produced by Bellamy Roberts dated January 2023, ref ITR/5857/TS.2) are opened to the travelling public."

During the appeal for the outline application, NH recognised the development would impact on the existing road network. They stated 'There is an existing safety concern at the A27 right turn lane of the A27/Yapton Lane junction, with queues extending back onto the live carriageway, causing late braking swerving and other safety reducing manoeuvres on the main A27. The safety concerns are exacerbated in the hours of darkness'. As a result, the appeal decision included condition 30 for mitigation works to be secured. This has been applied to other permissions in the Yapton/Walberton area by condition or obligation to limit the number of new dwellings being occupied prior to the approved A27/Yapton Lane junction improvement works being completed.

The applicant states this condition (although the wording slightly varies across each permission) has been applied to 4 other permissions, most of which have been constructed and occupied. As the triggers for the other applications have been met and there has been no enforcement action, it is argued that there can be no safety requirement to require the works and as such the condition is no longer required.

Whilst there may be other sites which are in conflict with the condition/obligations to deliver the highway works, no additional information such as a transport assessment has been provided to support that the works are no longer required nor confirmation from NH that they are no longer necessary for their

intended purpose. With no new evidence, it is not proven that an improvement scheme for the A27/Yapton Lane junction is no longer necessary to mitigate additional development in the area.

NH were consulted and stated that the works were scheduled to start May 27th, 2026. However, since this response, further correspondence has been received which confirms that the works will not be commenced on this date and the date for scheduled works is now unknown.

In the absence of robust evidence, a confirmed commencement date for works or alternative mitigation which supports that the junction can safely operate, the condition cannot be removed.

SUMMARY

The condition is required to mitigate against additional development using the junction and the application 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.

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

REFUSE

- 1 The removal of condition 30 of WA/2/22/OUT would have the potential to adversely impact on the safe and efficient operation of the Strategic Road Network, in this case (A27) and would be in conflict with Arun Local Plan Policy T SP1 and National Planning Policy Framework (paras 115 & 116).

- 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 determining the application within a timely manner, clearly setting out the reason 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 provide pre-application advice in respect of any future application for a revised development.