



# WORTHING BOROUGH COUNCIL

29 January 2018

## Worthing Planning Committee

**Date:** 7 February 2018

**Time:** 6:30pm

**Venue:** Gordon Room, Stoke Abbott Road, Worthing

**Committee Membership:** Councillors Paul Yallop (Chairman), Vicky Vaughan (Vice-Chair), Noel Atkins, Paul Baker, Joshua High, Hazel Thorpe, Paul Westover and Steve Wills.

### NOTE:

Anyone wishing to speak at this meeting on a planning application before the Committee should register by telephone (01903 221006) or e-mail

[heather.kingston@adur-worthing.gov.uk](mailto:heather.kingston@adur-worthing.gov.uk) before noon on Tuesday 6 February 2018.

## Agenda

### Part A

#### 1. Substitute Members

Any substitute members should declare their substitution.

#### 2. Declarations of Interest

Members and Officers must declare any disclosable pecuniary interests in relation to any business on the agenda. Declarations should also be made at any stage such an interest becomes apparent during the meeting.

If in doubt contact the Legal or Democratic Services representative for this meeting.

Members and Officers may seek advice upon any relevant interest from the Monitoring Officer prior to the meeting.

**3. Confirmation of Minutes**

To approve the minutes of the Planning Committee meetings of the Committee held on Wednesday 10 January 2018, which have been emailed to Members.

**4. Items Raised Under Urgency Provisions**

To consider any items the Chair of the meeting considers urgent.

**5. Planning Applications**

To consider the reports by the Director for the Economy, attached as Item 5 -

5.1 30 Poulters Lane, Worthing

5.2 Tesco Supermarket

5.3 21 West Way, Worthing

**6. Public Question Time**

To receive any questions from Members of the public in accordance with Council procedure Rule 11.2.

(**Note:** Public Question Time will last for a maximum of 30 minutes)

**7. Enforcement Report - 39 Central Avenue, Worthing**

To consider the report by the Director for the Economy, attached as Item 7.

**Part B - Not for publication - Exempt Information Reports**

None

**Recording of this meeting**

The Council will be voice recording the meeting, including public question time. The recording will be available on the Council's website as soon as practicable after the meeting. The Council will not be recording any discussions in Part B of the agenda (where the press and public have been excluded).

<b>For Democratic Services enquiries relating to this meeting please contact:</b>	<b>For Legal Services enquiries relating to this meeting please contact:</b>
Heather Kingston Democratic Services Officer 01903 221006 heather.kingston@adur-worthing.gov.uk	Sally Drury-Smith Lawyer 01903 221086 sally.drury-smith@adur-worthing.gov.uk

**Duration of the Meeting:** Four hours after the commencement of the meeting the Chairperson will adjourn the meeting to consider if it wishes to continue. A vote will be taken and a simple majority in favour will be necessary for the meeting to continue.



WORTHING BOROUGH  
C O U N C I L

Report by the Director for Economy

Planning Applications

1

Application Number: **AWDM/1965/17**

Recommendation – Refuse

Site: **30 Poulters Lane, Worthing**

Proposal: **Outline application for demolition of existing buildings and construction of apartment building comprising 8 x 2-bed flats and 1 x studio flat. Provision of associated car parking and cycle storage. (Outline application including details of access, layout and scale with all other matters reserved.) (Re-submission of previously refused AWDM/0603/17)**

2

Application Number: **AWDM/1568/17**

Recommendation – Approve

Site: **Tesco Supermarket, Former West Durrington Shopping Centre,  
New Road, Worthing**

Proposal: **Variation of Condition 9 of WB/05/0245/OUT and Condition 5 of WB/09/0146/ARM to allow an additional delivery to the Tesco store between the hours of 11pm and 6am on a permanent basis.**

3

Application Number: **AWDM/0061/18**

Recommendation – Approve

Site: **21 West Way, Worthing**

Proposal: **Retention of existing outbuilding in reduced size.**

Application Number: AWDM/1965/17

Recommendation – Refuse

Site: 30 Poulters Lane Worthing West Sussex BN14 7SU

Proposal: Outline application for demolition of existing buildings and construction of apartment building comprising 8 x 2-bed flats and 1 x studio flat. Provision of associated car parking and cycle storage. (Outline application including details of access, layout and scale with all other matters reserved.) (Re-submission of previously refused AWDM/0603/17)

Applicant: Mr Justin Owens  
Case Officer: Rebekah Smith

Ward: Offington



Not to Scale

## Proposal, Site and Surroundings

The application site is located on the corner of Poulters Lane and Gorse Avenue and contains a single dwelling house, set well back into the plot towards the north-west corner of the site. Lawned gardens and mature shrubs and some trees surround the southern and eastern frontages. There is an existing vehicular access in the north east corner of the site onto Gorse Avenue and a pedestrian access to the south west corner onto Poulters Lane to the front of the existing house. Tree Preservation Order 3 of 1992 relates to the site which includes a Common Beach Tree at the southern side of the front garden and a Sycamore Tree at 32 Poulters Lane close to the western boundary of the application site.

Outline permission is sought for the construction of an apartment building comprising of 8 x two bedroom flats and 1 x studio flat with eight parking spaces with access from Gorse Avenue. Approval is being sought for Access, Layout and Scale (with Appearance and Landscaping being reserved matters).

This application follows refusal of a previous application AWDM/0603/17 by Members of the Planning Committee following the meeting on 4 October 2017. This previous application sought outline permission for the construction of a part two storey/part three storey building comprising of 8 x two bedroom flats with eight parking spaces with access from Gorse Avenue.

The earlier application AWDM/0603/17 was refused for the following reasons:

*The proposed building comprising of eight 2-bedroom flats would, by reason of its excessive scale, bulk, and massing, relate poorly to the character of the area and be detrimental to the appearance of the streetscene. As such the proposal is considered contrary to policy 16 of the Worthing Core Strategy and the relevant paragraphs of the NPPF relating to good design.*

The applicant has lodged an appeal with the Planning Inspectorate and is awaiting a decision.

The overall siting and footprint of the current proposal has not been altered since the previous application. As before, the south facing block of the building would be 17.5 metres in length and approximately 9.7 metres in depth on its eastern side, although balconies are detailed as protruding southwards beyond this line. This section would be three storeys and measuring 8.9 metres in height.

The east facing section at the rear of this would measure 7.5 metres in width (giving an overall length of 17.2 metres to the east elevation). As before, this section would be set back by 2 metres behind the 3 storey east wall and with a first floor balcony indicated on the east side. However the angle of the roof pitch is more shallow than previously proposed.

The current proposal now also includes a third storey to this part, which is indicated to be set back from the first floor by approximately 1.5 metres on the east side and with a balcony within set partially within the roof space of the first floor on this side. The third storey would be set back by approximately 2.2 metres from the north side wall of the lower floor and 0.9 metres from the west wall of the lower floor. The

third storey is shown to continue at the height of the main roof but pitched down to an eaves height of 8.4 metres at its northern side, stepping down to approximately 5.6 metres at first floor roof level. As before the east elevation would contain the main entrance to the flats.

The relationship to boundaries has not altered with the building sited between 1.9 metres and 2.6 metres from the northern boundary with No. 1 Gorse Avenue, a two storey dwelling to the north. To the west, the building would be sited 5.7 metres from the boundary with 32 Poulter's Lane, a bungalow to the west of the site.

The parking layout and access remains as previously refused with a new 5.4 metre wide vehicular access formed onto Gorse Avenue to serve a parking area comprising of 8 parking spaces, including two disabled bays. Bin storage would be to the south of the parking area. Cycle storage would be contained within a store in the north-west corner of the site.

Indicative elevation details have been provided again which indicate the appearance of the building to be a contemporary brick building with zinc roof and cladding, recessed brick detailing, aluminium windows, and glazed balconies. A sedum roof and solar panels are indicated but not detailed. Landscaping is also indicated in the site plan and streetscene elevations. The detailing to these elevations are for illustrative purposes and go beyond the scope of this outline application which is considering matters of layout, scale and access.

The applicant has submitted a Design and Access Statement that contains the following rationale:

#### *'Layout*

*The proposal seeks to maintain a spacious layout when compared with the surrounding properties. The application site comprises a large corner plot and is clearly large enough to host a well-designed building that will complement the character of the area. Apartment sizes adhere to the Council's internal space standards. The rear aspect has been amended akin to the existing building to ensure neighbour amenity is protected.*

*The proposed block plan at figure 8 on page 13 provides a comparison between the existing dwelling and the proposed apartment building. While larger in footprint the design and shape of the proposed building makes the most of this corner location and links well with the rhythm of development found to the north, east and west of the application site.*

*The proposed site layout plan can be seen at figure 9. The proposal seeks a vehicular entrance to the side via Gorse Avenue. A total of 9 (now reduced to 8) off street parking spaces are provided including 2 disabled spaces. A cycle store is provided to the rear of the proposed building. Comparison plans to show the difference between the pre-application proposal and current proposal can be seen at figure 10.*

*A refuse store is located to the south east of the main building which is conveniently located near the parking forecourt and completely screened from public views by*

*retained boundary vegetation. There is ample room for refuse and recycling in accordance with the Council requirements.*

#### *Form*

*The form of the proposed building is in direct response to the Councils previous criticism of the more traditional design proposed. Given the examples of more contemporary flats with flat roofs at the opposite end of Gorse Avenue a short walk from the application site it is clear that this approach is in keeping with the surrounding area. While built to a lower density than the current proposal this is understandable given the need to make the best use of the land and significantly boost the supply of housing.*

#### *Scale*

*The size and scale of the proposed building has been amended considerably following the pre-application submission. The building has been moved further away from No.32 Poulter's Lane in order to assist with the transition between the two plots. The design on the corner of the building has also been addressed through the use of well-proportioned balconies that break up the scale of the building and address the concerns raised at pre-application regarding how the building addresses the streetscene.*

*The scale and massing of the building is also broken up next to No1 Gorse Avenue with the pitched roof above the proposed studio flat.*

#### *Detailing & Materials*

*The architects have given careful attention to detail to ensure that the elevational treatment is of a high quality.*

*The building uses stock brick with glass balconies and zinc roof. The use of recessed brick detailing is also used to add increased visual interest. The flat roof will comprise a mix of solar panels and green roof which will assist with the sustainability of the proposed building.*

#### *Tree & Landscaping*

*The proposal has been assessed by Broad Oak Tree Consultants. The proposed layout has been informed by this assessment and designed to ensure the retention of boundary screening including the protected Beech tree on the Poulter's Lane frontage.*

*While landscaping is a reserved matter the site is large enough to provide additional landscaping within the site.*

#### *Energy*

*The proposal will be designed to meet with Building regulations requirements following the removal of the Code for Sustainable Homes.*

#### *Access:*

##### *Vehicular and Transport Links*

*Access points have to be carefully considered and respond to existing road layouts and public transport provision. It is important that key local features such as surrounding roads, footpaths, sight lines and level changes be incorporated into the*

*design of the proposal. The parking layout can be seen at Figure 14. During the course of the previous application the applicants Highways consultants (now known as Motion) undertook an overnight parking stress survey which confirmed that 8 parking spaces would be sufficient for a development of 9 apartments. Additional evidence will be submitted by Motion with regard to the current proposal to demonstrate that turning, parking and all elements of Highway Safety have been complied with.*

*In line with the requirements of the NPPF, the application site is positioned in a sustainable location. Local bus routes enable access to Worthing town centre and the site is situated within recommended cycling and walking distance from the application site having regard to the Institute of Highways and Transportation Guidelines for 'Providing for Journeys on Foot'. The site is also located in close very close proximity to the local open space, shops and schools.*

#### *Inclusive Access*

*It is essential that everyone can get to and move through developments on equal terms regardless of age, disability, ethnicity and social grouping. Consideration should also be given to access for the emergency services.*

*People are very different in their needs, and in the way they use the built environment. An inclusive environment recognises and accommodates these differences in a way that is universal. An inclusive design provides a single solution for everyone.*

*The current proposal has been designed to fully comply with Part M of the Building Regulations.*

#### *Conclusion*

*The high quality indicative design submitted with this application has been informed and led by a detailed assessment of the wider context of the surrounding area. The bulk, scale and massing of the building are wholly commensurate to the site and will not impact on neighbour amenity.*

*The proposal follows an assessment of feedback following a pre-application submission for a larger building than is currently proposed. The design and layout have been amended following receipt of the Councils recent decision. It is clear that the redevelopment of the application side is acceptable in principle. The internal layout has been carefully considered to ensure no harm to neighbour amenity.*

*The Planning, Design & Access statement has identified that the proposal would result in a sensitive development that would relate well with the character of the area.*

*The application is supported by and Arboricultural Method Statement prepared by Broad Oak Tree Consultants Ltd. The report ensures that sufficient measures can be made to protect trees during construction and confirms that the proposal will not have a detrimental impact on the character of the area.*

*The siting of the proposed development combined with the retention and strengthening of the mature landscaping to the boundaries ensures that the final detailed proposal would not harm the amenities of the adjoining residents. The access has been amended in line with advice from the Motion to ensure adequate sight lines and parking provision are proposed for the development.*

*The amended proposal fully adheres to the relevant Central Government Guidance contained within the NPPF, PPG and Development Plan Policies contained within the Worthing Core Strategy and saved policies of Worthing Local Plan.'*

### **Relevant site history**

AWDM/0603/17 - Outline application for demolition of existing buildings and construction of apartment building comprising 8 x 2-bed residential units. Provision of associated car parking and cycle storage. (Outline application including details of access, layout and scale with all other matters reserved.) Refused 18 October 2017. Appeal Decision pending.

03/00904/FULL - Demolition of existing house and garage and construction of block of 7 No. one and two bedroom flats and parking. Refused 4 September 2003.

03/01287/FULL - Demolition of existing house and garage and construction of block of 6 no. two bedroom flats and parking. Refused 18 December 2003.

### **Consultations**

#### West Sussex County Council as Local Highway Authority:

##### *Summary*

*West Sussex County Council, as the Local Highway Authority (LHA), was consulted previously on Highway Matters for this location under planning application AWDM/0603/17 (8 x 2-bed flats) to which no objections were raised. The application was refused by the Local Planning Authority (LPA) for reasons unrelated to highways. The LHA's comments to the previous application, dated 4<sup>th</sup> August 2017 should be referred to when read in conjunction with the following report.*

##### *Content*

*The amended application includes proposals for 8 x 2-bedroom flats and a single studio flat. The parking and access arrangements remain the same as previously commented on under AWDM/0603/17. The WSCC Car Parking Demand Calculator envisions a total demand of seven spaces for the development, provided that parking remains of an unallocated arrangement.*

*Previously a car parking capacity survey was carried out on the surrounding road network. It was found that with Poulter's Lane being removed from the survey area parking stress would be at 30.4% at times of peak demand (00.30-05.30). The LHA previously agreed that whilst an unallocated parking forecourt area of eight spaces meets with the anticipated demand for this location and scale of development, we consider that if overspill parking did occur this would not be anticipated to result in a highway safety or capacity concern.*

*As per the previous submission the applicant has demonstrated that the proposed access and turning facilities on site are suitable for the development's needs. I note that the shared bicycle storage facility is capable of storing at least one bicycle per flat. This is appropriate considering the urban location and opportunity for sustainable modes of transport.*

*On balance the LHA could not substantiate that the proposals would be contrary to paragraph 32 of the National Planning Policy Framework. A 'severe' impact on the operation of the highway network is not anticipated and therefore no transport grounds are raised to resist the proposals.*

*Previously advised conditions and informative should be included:*

*Access*

*No part of the development shall be first occupied until such time as the vehicular access serving the development has been constructed in accordance with the approved drawing.*

*Reason: In the interests of road safety.*

*Access closure*

*No part of the development shall be first occupied until such time as the existing vehicular access onto Gorse Avenue has been physically closed in accordance with plans and details submitted to and approved in writing by the Local Planning Authority.*

*Reason: In the interests of road safety.*

*Car parking space*

*No part of the development shall be first occupied until the car parking has been constructed in accordance with the approved site plan. These spaces shall thereafter be retained at all times for their designated purpose on an unallocated basis.*

*Reason: To provide car-parking space for the use.*

*Turning space*

*No part of the development shall be first occupied until the vehicle turning space has been constructed within the site in accordance with the approved site plan. This space shall thereafter be retained at all times for their designated use.*

*Reason: In the interests of road safety.*

*Pedestrian Visibility (details required)*

*No part of the development shall be first occupied until pedestrian visibility splays have been provided either side of the proposed site vehicular access onto Gorse Avenue in accordance with plans and details submitted to and approved in writing by the Local Planning Authority. These visibility splays shall thereafter be kept free of all obstructions over a height of 0.6 metre above adjoining carriageway level or as otherwise agreed.*

*Reason: In the interests of road safety*

### *Cycle parking*

*No part of the development shall be first occupied until covered and secure cycle parking spaces have been provided in accordance with plans and details submitted to and approved by the Local Planning Authority.*

*Reason: To provide alternative travel options to the use of the car in accordance with current sustainable transport policies.*

### *Construction Management Plan*

*No development shall take place, including any works of demolition, until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. Thereafter the approved Plan shall be implemented and adhered to throughout the entire construction period. The Plan shall provide details as appropriate but not necessarily be restricted to the following matters,*

- the anticipated number, frequency and types of vehicles used during construction,*
- the method of access and routing of vehicles during construction,*
- the parking of vehicles by site operatives and visitors,*
- the loading and unloading of plant, materials and waste,*
- the storage of plant and materials used in construction of the development,*
- the erection and maintenance of security hoarding,*
- the provision of wheel washing facilities and other works required to mitigate the impact of construction upon the public highway (including the provision of temporary Traffic Regulation Orders),*
- details of public engagement both prior to and during construction works.*

*Reason: In the interests of highway safety and the amenities of the area.*

### *INFORMATIVE*

*The applicant is advised to contact the Highway Licensing team (01243 642105) to obtain formal approval from the highway authority to carry out the site access works on the public highway.*

### *Southern Water*

*Southern Water requires a formal application for a connection to the public sewer to be made by the applicant or developer. We request that should this application receive planning approval, the following informative is attached to the consent:*

*“A formal application for connection to the public sewerage system is required in order to service this development. To initiate a sewer capacity check to identify the appropriate connection point for the development, Please contact Southern Water, Sparrowgrove House, Sparrowgrove, Otterbourne, Hampshire SO21 2SW (Tel: 0330 303 0119) or [www.southernwater.co.uk](http://www.southernwater.co.uk)”.*

*The Council’s Building Control officers or technical staff should be asked to comment on the adequacy of soakaways to dispose of surface water from the proposed development.*

*We request that should this application receive planning approval, the following condition is attached to the consent: “Construction of the development shall not commence until details of the proposed means of foul and surface water sewerage*

*disposal have been submitted to, and approved in writing by, the Local Planning Authority in consultation with Southern Water.”*

*Due to changes in legislation that came in to force on 1st October 2011 regarding the future ownership of sewers it is possible that a sewer now deemed to be public could be crossing the above property. Therefore, should any sewer be found during construction works, an investigation of the sewer will be required to ascertain its condition, the number of properties served, and potential means of access before any further works commence on site.*

*The applicant is advised to discuss the matter further with Southern Water, Sparrowgrove House, Sparrowgrove, Otterbourne, Hampshire SO21 2SW (Tel: 0330 303 0119) or [www.southernwater.co.uk](http://www.southernwater.co.uk)”.*

*The proposed development would lie within a Source Protection Zone around one of Southern Water's public water supply sources as defined under the Environment Agency's Groundwater Protection Policy. Southern Water will rely on your consultations with the Environment Agency to ensure the protection of the public water supply source.*

#### Adur & Worthing Councils

The Council's **Engineer** has commented as follows:

*Thank you for the opportunity to comment upon this application, the site lies in Flood Zone 1 has no known history of flooding, but does lie in an area recognised as being prone to Surface Water flooding issues.*

*I note that this is the fourth time an application has been made to develop this site with the previous three being refused.*

*No details relating to drainage except the tick relating to soakaways on the application form are provided, it is my opinion that the proposed property and its car parking and other paved areas can and should be drained to soakaways.*

*Therefore*

*The applicant needs to assess if the use of soakaways is viable on this site. The proposed location for the soakaways will need to be more than 5m from existing or new structures, and there will need to be a soakage test undertaken at that location to ascertain if a soakaway will adequately empty. There appears from the drawings to be sufficient area to adequately site soakaways, for both the roofs and parking areas. Alternatively the applicant could install permeable paving in the car parking areas with a suitable drainage medium below which will treat any hydrocarbon spillages before conveying water to the soil beneath*

*Therefore in this instance the only comments we wish to make at this time relates to the disposal of the surface water.*

*In the absence of any ground investigation details or detailed drainage details in support of the application we request that should approval for this new build be*

*granted it be conditional such that 'no development approved by this permission shall commence until full details for the disposal of surface water has been approved by the Planning Authority'*

*Soakage tests (not just one) in accordance with DG 365 (2016) would be required to be undertaken on the proposed site to provide the data to ascertain the size of the soakaway required for the impermeable areas.*

*Full design calculations should be provided for the soakaway soakage test result, and the ensuing soakaway and any permeable paving designs, along with the rainfall calculations with the additional rainfall quantities appropriate for climate changes, as required under planning policy.*

The Council's **Environmental Health Officer** has recommended the following:

- *hours of demolition/construction/works - standard hours to apply;*
- *dust - appropriate suppression methods submitted prior to works (if necessary);*
- *noise - provision of a noise assessment and/or preventative measures to protect from noise between bedrooms/kitchen of F1/F4 and bedrooms/shower and kitchen of F4/F7;*
- *contaminated land - no comments;*
- *air quality - as the application site is located within approximately 200m of the Worthing Air Quality Management Area No.2, the developer is requested to consider the provision of electric vehicle (EV) charge points at the site. A development such as this can have a major influence on public behaviour; providing 3kW or 7kW charge points in parking spaces can encourage residents to switch to low emission vehicles. Additionally, charge points are much cheaper and easier to install during the construction phase rather than as a retrofit. Consideration should also be given to providing ducting for the addition of EV charge points in the future, which will again be cheaper and easier if completed at the construction stage.*

The Council's **Senior Tree and Landscape Officer** previous comments would still be relevant. He commented on the previous scheme that the site does have one protected tree but that the existing trees and those to be retained are not considered to be under threat, providing that tree protection fencing is put in place before any works commence.

## **Representations**

At the time of writing 37 letters of representation have been received from local residents objecting to the proposals. Concerns include the following points summarised from the representations:

- Overdevelopment
- This is larger than previously refused applications/does not address concerns previously raised
- Out of character - modern/flat roof design out of character with area/unsympathetic to prevailing character – predominantly 2 storey houses and bungalows

- Overbearing - excessive bulk and massing
- Additional storey more obtrusive
- Other flats should not be used as example as they predate guidelines that exclude such development from area and inappropriate/not relevant
- Undesirable precedent would be set
- Loss of privacy/overlooking
- Unneighbourly/loss of amenity
- Loss of light to gardens and neighbouring dwellings
- Reduced security
- Additional noise
- Structural issues during demolition
- Disruption/safety concerns during building work/demolition
- Provision of car parking/cycle storage/loss of garden area will affect the appearance of the site
- Impact on local infrastructure – water, power, sewerage, vehicular access, internet, schools, doctors etc
- Increased traffic
- Inadequacy of parking study/drawings
- Lack of parking
- Increased risk to highway users/congestion/pollution
- Exacerbation of parking/congestion/safety/pollution issues already experienced at peak times/issues of college parking etc
- Parking layout is restrictive and will further encourage on street parking/dangerous manoeuvres
- Light pollution/intrusion
- Reduced property values
- Loss of vegetation/trees/garden area
- History/heritage of Poulterers Lane and Offington Park should be protected.

The Worthing Society object to the application proposals for the following reasons:

- Too much mass, overbearing and out of keeping with neighbourhood
- Loss of privacy to neighbouring properties
- Three storey block of flats would set unwelcome precedent
- Insufficient parking/increase in on street parking
- Increased vehicular movement to and from the site would cause a hazard so close to the junction with Poulterers Lane, which is a very busy road, especially at peak times.

### **Planning Assessment**

The Committee should consider the planning application in accordance with: Section 70 of the Town and Country Planning Act 1990 (as amended) that provides the application may be granted either unconditionally or subject to relevant conditions, or refused. Regard shall be given to relevant development plan policies, any relevant local finance considerations, and other material considerations; and

Section 38(6) Planning and Compulsory Purchase Act 2004 that requires the decision to be made in accordance with the development plan unless material considerations indicate otherwise.

The Core Strategy, including Worthing Saved Local Plan policies, comprises the Development Plan here but the Government has accorded the National Planning Policy Framework considerable status as a material consideration which can outweigh the Development Plan's provisions where such plan policies are out of date; or silent on the relevant matter. In such circumstances paragraph 14 of the NPPF states that where the proposal is not otherwise in conflict with specific restrictive policies in the Framework, development should be approved unless the harm caused significantly and demonstrably outweighs the benefits when assessed against the NPPF overall.

The Council's self-assessment of the Core Strategy's Conformity with the National Planning Policy Framework demonstrated that, in many respects, the Council's key Development Plan conforms closely to the key aims and objectives of the Framework. However, it is acknowledged that in response to the requirements of the Framework and informed by local evidence it is clear that Council cannot demonstrate a current 5 year supply of housing in respect of Objectively Assessed Needs and that all relevant policies which constrain housing delivery in the Core Strategy are out of date in respect of the National Planning Policy Framework. Accordingly the Council needs to assess the housing delivery strategy set out in the current Development Plan.

The Worthing Housing Study (GL Hearn 2015) has been undertaken to address this requirement and to inform the forthcoming Local Plan. The Report concludes that core demographic projections plus an uplift to account for 'housing market signals' indicates an OAN for housing in the Borough of 636 dwellings per annum over the 2013-33 period. It goes on to recommend that the provision of market housing should be more explicitly focused delivering smaller family housing for younger couples, of which 40% is recommended to be 2-bedroom properties.

The proposal should be principally assessed in relation to the presumption in favour of sustainable housing development as set out in paragraphs 14 and 49 of the NPPF and informed (as far as they are relevant with the weight attached to be determined by the decision maker) by saved Worthing Local Plan Policies H18; TR9 and RES7 and Core Strategy Policies 7, 8, 9,10, 11, 15, 16 and 19; The OAN; The National Planning Policy Framework and allied PPG; and Worthing Borough Council Supplementary Planning Documents; Guide for Residential development, Sustainable Economy and Development Contributions; Residential space standards, West Sussex Parking Standards and Transport Contributions Methodology (WSCC 2003); West Sussex 'Guidance for Parking in New Residential Developments' and 'Residential Parking Demand Calculator' (WSCC 2010) and Worthing Local Plan – Threshold for Affordable Housing Contributions Report by the Director for the Economy Agreed 28.11.16 in accordance with the above.

The main issues raised by this proposal are:

- The principle of residential development including housing need, dwelling mix and quality
- Design and impact on local character and townscape
- Impact on amenity of neighbours
- Parking and access arrangements
- Affordable housing planning obligation

This is in the context of matters of layout, scale and access to be considered under this outline application and with particular consideration to the previous decision to refuse eight flats proposed under application AWDM/0603/17.

#### Principle, need, mix and quality of residential development

The site situation has not altered significantly since the previously refused application in that it is located within an established residential suburb of Worthing. It is sustainably located, close to main road networks, bus services and local facilities.

The proposal makes more intensive residential use of the site and to this extent advances the aim of more efficient use of land and, as a windfall site it would also make a contribution, albeit small, towards meeting the latest OAN housing delivery target.

Core Strategy Policy 9 protects family housing (typically 3 bed rooms or more) unless it suffers a poor quality of environment. Core Strategy Policy 8 seeks to deliver a wide choice of high quality homes to meet the needs of the community. It states that within suburban areas only limited infilling will be accepted which will predominantly consist of family housing. The SPD defines acknowledges that there may be circumstances where a larger 2 bedroom dwelling would provide for family accommodation. Whilst the redevelopment of No.30 to form nine flats involves a loss of a family house, the proposal for eight two bedroom flats and one studio flat meets a need and does provide three ground floor two bedroom units which would have suitable layout and direct access to private amenity space as well as communal gardens which may render these units in particular, suitable as a small family dwelling.

As before, detailed floor layouts have been provided which are for illustrative purposes but in terms of the standard of accommodation, all except one of the proposed flats would fall short of the Governments Nationally Prescribed Space Standards of 70 sqm for a 2 bed 4 person flat but would meet individual bedroom standards and would meet 61sqm standard for a 2 bed 3 person flat. No national standard exists for a studio flat.

Each flat would exceed the Council's own internal floorspace standards of 32 sqm for a studio and 66 sqm for a two bed flat, with adequate living/cooking/eating area and sleeping area. All habitable rooms would be provided with a reasonable standard of outlook and natural daylight.

The site would retain a generous garden enclosed by the existing trees and some new planting to provide a good standard of communal amenity space to the proposed flats, in excess of the Councils standards for outdoor amenity space and in addition each flat would be provided with their own balcony or enclosed patio/amenity space.

### Design and impact on local character and townscape

The detailed elevations and floor plans are illustrative but issues of design and impact on local character and townscape should be assessed in terms of layout, scale and access only.

One of the Core Principles of The National Planning Policy Framework (paragraph 17) is to always secure high quality design and advises in paragraph 56 that 'The Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people', and in paragraph 64 that 'Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.'

Policy 16 requires all new development to demonstrate good quality design and use of materials, take account of local physical, historical and environmental characteristic of the area and respond to important aspects of local character.

The previous application was refused on the grounds of excessive scale, bulk and massing, relating poorly to the character of the area and its detrimental effect on the appearance of the streetscene.

The context of the site and relationship with the surrounding streetscene has not altered since the previously refused scheme was considered, with the prevailing character of the area primarily consisting of traditional two storey dwellings or bungalows. The scale, bulk and massing has not been reduced to address the reasons for refusal and has, in fact, been increased with an additional storey proposed to the northern side of the building, which would exacerbate the effect on the streetscene adding to the scale and massing appearing out of character with neighbouring dwellings. The additional storey, although having a modest set back from the front and sides of the lower floor, would be up to the height of the main roof, appearing awkward in relation to the adjoining elements of the building and would not represent a sympathetic transition in scale between the neighbouring two storey dwellings to the north and the main three storey element of the proposed building, heightening the issues of excessive scale, bulk and massing and further relating poorly to the character and scale of neighbouring dwellings and streetscene in general.

### Residential Amenity – Effect on Neighbours

Issues of loss of residential amenity were considered in detail in the previous application AWDM/0603/17 and the application was not refused on these grounds. This is relevant to the current application but further consideration needs to be given to the effect of an additional storey to the northern side of the proposed building comprising an additional studio flat.

Securing a good standard of amenity for future occupiers of new dwellings and safeguarding the amenity of neighbouring residential occupiers lies at the heart of the relevant policy framework.

Saved Local Plan Policy H18 states:

*Development, including changes of use and intensification, which would result in an unacceptable reduction in amenity for local residents will not be permitted*

Core Strategy Policy 8 states:

*The Core Strategy will deliver a wide choice of high quality homes to address the needs of the community:*

The NPPF states:

*17. Within the overarching roles that the planning system ought to play, a set of core land-use planning principles should underpin both plan-making and decision-taking. These 12 principles are that planning should:*

- *always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings;*

*123. Planning policies and decisions should aim to:*

- *avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development;*
- *mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions.*

The effect of an additional studio flat proposed in the current scheme in terms of the impact arising from the intensity of the use of the site and access, would not be significantly increased when compared with the previously refused proposal that was considered acceptable in this respect.

The relationship of the footprint of the proposed building to site boundaries has not altered since the previous application and design elements that were also introduced to the elevations to illustrate how privacy could be protected from first and second floor windows and balconies by, for example, the partial cladding of oriel windows to the west elevation and protruding side elements to windows to reduce the angle of view still remain on this application due to the close proximity of neighbouring dwellings particularly at No.32 Poulter's Lane, a detached bungalow to the west, and No.1 Gorse Avenue a semi-detached two storey dwelling to the north.

The floor plans in this revised application indicate that windows required for the additional studio flat can be obscure glazed at the rear, serving the bathroom and kitchen area of this flat and with outlook gained from the front to avoid overlooking into the private rear gardens of neighbouring dwellings, although the perception of overlooking may be heightened as these additional windows would be apparent to neighbouring occupiers. The balcony to the front elevation is indicated to have a privacy screen to its side to protect privacy from this aspect.

There are no main ground floor windows to habitable rooms to either neighbouring property in their side elevations that directly face the proposed building or additional storey proposed, and both properties have intervening garage buildings positioned to the rear of each dwelling. Whilst this relationship, in combination with the separation distances proposed, ensured that the previously refused scheme would not have posed any significant threat to neighbour amenity in terms of loss of light or outlook, the current revised proposal adds bulk and height in a sensitive position close to the neighbouring dwellings, enclosing the some of the space between the north side of the three storey part of the building and No.1 Gorse Avenue.

Although the setback proposed and separation distance would limit loss of light, the additional storey proposed would be readily apparent from neighbouring rear gardens further enclosing the north-west corner of the site, adding bulk that would increase the sense of enclosure to these areas.

### Parking and access

Although parking demand would increase to 7 spaces in the current proposal, the layout demonstrates that eight car parking spaces can be provided with adequate access that the Highway Authority considers acceptable subject to the conditions as outlined in their comments. As before, secure and undercover cycle parking is proposed to provide for alternative modes of transport to the private car. The applicants parking capacity study, prepared during the course of the previous application in response to resident's concerns over parking and congestion issues, is still relevant here. This demonstrated that if Poulter's Lane is omitted due to local conditions not allowing for parking, parking stress would be 30.4%. The Highway Authority considers that if overspill parking did occur this would not be anticipated to result in a highway safety or capacity concern. The Highway Authority raises no objections.

### Affordable Housing Requirement

Policy 10 of The Core Strategy requires a scheme of this scale to provide for 10% affordable housing in the form of a commuted sum.

National Planning Practice Guidance as set out in paragraph 031 was reinstated on the 19th May 2016 in respect of thresholds for the provision of affordable housing as a result of the Appeal Court Case. This echoes a Ministerial Statement discouraging the collection of affordable housing contributions, such as in Policy 10, on schemes of 10 or fewer dwellings.

The PPG and Ministerial Statement are material considerations, amongst others including the NPPF, and, as expressions of Government views, the PPG and Ministerial Statement carry substantial weight.

Following on from the full Appeal Court decision and subsequent appeal precedent as well as advice from The Planning Inspectorate, the PPG and Ministerial Statement are to be balanced against the Development Plan (Core Strategy) and the evidence base supporting the LPA's application of the policy. The decision maker has discretion in applying his or her judgment as to where the balance should lie, drawing on the evidence presented.

The application of Core Strategy Policy 10 in this light has been considered by the Executive Member for Regeneration on 28th November 2016. He resolved that in line with Core Strategy Policy 10 and subject, to viability considerations, the Council should continue to seek 10% affordable housing (sought via a financial contribution) on sites of 6-10 dwellings.

A contribution in the form of a commuted sum towards offsite affordable housing is not proposed either but would be acceptable in this case.

Using the approach of the policy and using the Developer Contributions Supplementary Planning Document (July 2015) this attracts a 10% tariff and calculates as follows:

8 x two bed flats	@ £8,085	=	£64,680
1 x studio flat	@ £2,976	=	£2,976
	Total	=	£67,656

As the site is not vacant (as set out on the application form) no vacant land credits would apply as set out in the NPPF PPG.

The need for affordable housing and the importance of such small sites to the borough's delivery, combined outweighs the PPG and Ministerial Statement. No evidence to indicate that viability would be impaired has been submitted.

### **Other Issues**

The Community Infrastructure Levy (CIL) is now payable following its adoption in 2015. The site is within the Offington Ward which is a Zone 1 ward for the purposes of CIL. With an internal chargeable floorspace of 498.92 square metres for the proposed new dwellings, this would equate to a CIL payment of £49,892 (charged at £100/sqm).

### **Recommendation**

**REFUSE** outline planning permission for the following reasons:

1. The proposed building comprising of eight 2-bedroom flats and one studio flat would, by reason of its excessive scale, bulk, and massing, relate poorly to the character of the area and be detrimental to the appearance of the streetscene. As such the proposal is considered contrary to policy 16 of the Worthing Core Strategy and the relevant paragraphs of the NPPF relating to good design.
2. Having regard to its height, scale and proximity to neighbouring dwellings, the proposed building would be overbearing to neighbouring occupiers notably in terms of increased sense of enclosure. As such the proposal is considered contrary to policy H18 of the Worthing Local Plan, policy 16 of the Worthing Core Strategy, and the NPPF.
3. It has not been demonstrated to the satisfaction of the Local Planning Authority, that the requirements for off-site affordable housing as a result of

the proposal have been met. As such the proposal is considered contrary to policy 10 of the Worthing Core Strategy.

7<sup>th</sup> February 2018

Application Number: AWDM/1568/17

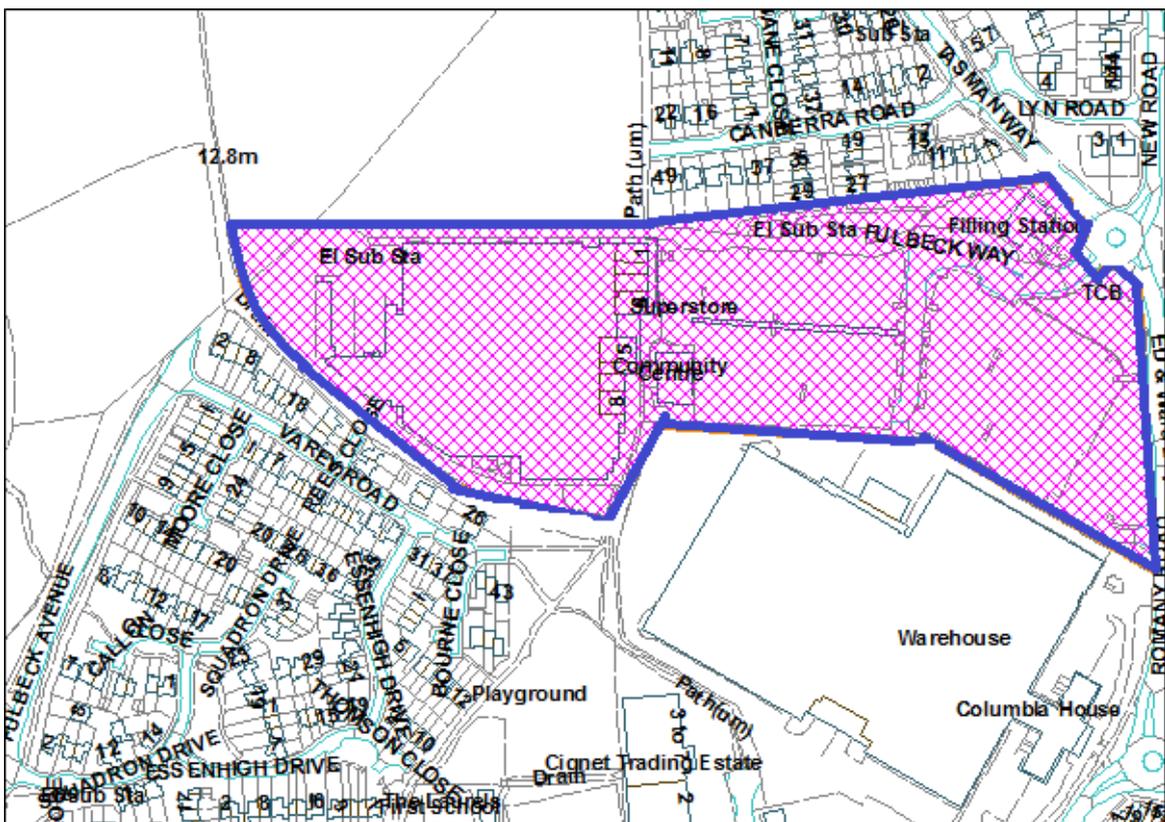
Recommendation – APPROVE

Site: Tesco Supermarket Former West Durrington Shopping Centre New Road Worthing

Proposal: Variation of Condition 9 of WB/05/0245/OUT and Condition 5 of WB/09/0146/ARM to allow an additional delivery to the Tesco store between the hours of 11pm and 6am on a permanent basis.

Applicant: Tesco Stores Ltd  
Case Officer: Jackie Fox

Ward: Northbrook



Not to Scale

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**The Proposal and Site & Surroundings**

This proposal seeks planning permission for the variation Condition 9 of outline planning approval WB/05/0245/OUT and Condition 5 of approval of reserved matters application WB/09/0146/ARM to allow for one additional delivery to the Tesco store between the hours of 23:00 hours and 06:00 hours on a permanent basis. The supermarket store forms part of the redeveloped Durrington District Neighbourhood Core & Non-Core Shopping Centre which was approved under these planning permissions.

Condition 9 of the Outline application specifies:

*“No loading, unloading, deliveries or collections shall take place other than between the hours of 06:00 hours and 23:00 hours on any day.”*

Condition 5 of the Approval of Reserved Matters permission specifies:

*“At no time shall delivery vehicles arrive at the site before 06:00 hours and no delivery vehicles shall wait within the internal access road or parking areas before this time.”*

In 2016, permission was granted for the temporary variation of the above conditions to allow an additional delivery to the Tesco store between the hours of 2300 and 0600. The condition was varied but only for a temporary period of 12 months until 7<sup>th</sup> November 2017 and hence a further application is now required.

The current opening hours of the store are also restricted to 06:00 hours to 00.00 hours Monday to Saturday and 10:00 hours to 18:00 hours on Sunday under condition 13 of the outline approval. Planning application AWDM/0605/14 was submitted in May 2014 which sought to vary condition 13 of WB/05/0245/OUT to allow 24 hours opening of the store. The application is currently undetermined after being held in abeyance pending agreement of new conditions and the Applicant's liaison with local residents.

This application does not propose any change to the hours of the Dotcom deliveries which are currently restricted under Condition 4 of reserved matters approval to 08:00 hours and 23:00 hours daily along with the cooling process of the Dotcom vehicles which is restricted between the hours of 07:00 hours and 23:00 hours daily.

The application site is surrounded by residential development which lies in the roads of Varey Road and Rees Close to the south of the site, Canberra Road to the north-east of the site and the newly built properties which form part of the major residential development at West Durrington to the north.

The service yard and 'Dotcom' facility serving the store is located directly to the westerly rear aspect of the store and is enclosed by 4 metre high acoustic fencing to the north and west. The acoustic barrier and tree/shrub planting to the western boundary of the site adjacent to Varey Road was secured under condition 16 of the outline permission. There are two main lorry loading bays on the westerly end of the building which enable goods to be delivered directly from the lorry into the main warehouse.

The entry gates are located to the north of the service yard area and delivery vehicles are required by condition 12 of the reserved matters application to arrive and depart the site via Fulbeck Avenue to the west.

### **Applicant's Supporting Statements**

The following statement has been submitted to support the proposal for an additional night time delivery:

*Tesco have operated under the terms of Condition 3 over the past year, receiving one additional delivery between the hours of 23:00 06:00. This has given Tesco the ability to stock the store with fresh produce prior to opening at 06:00 hours. This has eased the pressure on staff starting their shift early in the day, and has allowed the store manager to coordinate resources so that staff can focus on serving customers rather than working on a rush of deliveries. Restocking outside peak trading hours has also ensured that the shop floor has remained uncluttered during busier trading hours. As a result, Tesco now seek permission to receive a single night-time delivery on a permanent basis.*

*We note that justification for the temporary nature of the consent was to allow for the Council to monitor the impact of the additional night-time delivery on residential amenity. During the 12 month trial period, Sharps Redmore have monitored the direct noise impact to determine whether the additional delivery activity has given rise to any adverse impact. The attached acoustic assessment updates the report submitted as part of planning application AWDM/1242/16, finding that the additional night-time delivery has not had any adverse impact that would be of detriment to local residents. Tesco propose to continue to adhere to the delivery activity noise reduction measures set out in the Sharps Redmore Acoustic Assessment should the additional delivery be permitted on a permanent basis. “*

### **Acoustic Report**

An acoustic report has been submitted with the application which updates the assessment report submitted with the previous application to include measurements taken during the 12 month night time delivery trial at the store.

The purpose of this noise assessment is to consider whether the temporary 12 month planning permission could be main made permanent without associated noise giving rise to significant adverse impact.

Two noise surveys have been carried out since the commencement of the night time delivery trial in November 2016 to establish through direct measurement the levels of noise from night time delivery to the store at a position representative of the residential properties in Primrose Place to the north and Rees Close to the south.

Direct noise measurements of night time delivery activity were made during the early morning of Wednesday 29th March 2017 and Tuesday 15th August 2017, outside the properties in Primrose Place to the north of the Tesco service yard.

Further direct noise measurements of night time deliveries were made during the early morning of 10<sup>th</sup> and 11<sup>th</sup> January 2018 outside the properties in Rees Close to the south of the site.

The noise measurements were taken in free field conditions away from reflecting surfaces and at a height of approximately 4 metres above local ground height, such that the measured noise levels would be representative of those found at first floor (bedroom) height of the properties.

The original noise assessment report and the direct noise measurements in this assessment of night time delivery activity during the current 12 month temporary permission, demonstrate that in the context of national and international noise standards and guidance, the single night time delivery (on a daily basis) avoids giving rise to significant adverse impact, which is the planning test under paragraph 123 of the NPPF.

### **Delivery Management Plan**

A copy of the Delivery Management Plan (DMP) accompanies the application providing formal instructions to Tesco staff and delivery drivers to minimise noise from activity associated with delivery to the store. It is the responsibility of the store management team to ensure the DMP is adhered to and necessary instruction made to the staff.

The approach below to the reception of deliveries and materials handling is applicable to all deliveries including those where the driver is not a Tesco employee (such that the DMP also applies equally to deliveries made by third party suppliers).

- Vehicles reversing alarms shall be switched off during deliveries between the hours of 23:00 hours-06:00 hours
- The delivery yard access shall be kept closed except to allow entry/exit of delivery vehicles
- Refrigeration units are not to be operated whilst the delivery vehicle is in the delivery area
- All engines to be switched off as soon as vehicles are parked at the unloading bay
- Goods shall be moved directly between the delivery vehicle and store
- There will be adequate signage and instruction to ensure that all drivers and staff follow the delivery management measures
- All delivery vehicles to be driven in as quiet a manner as possible, avoiding unnecessary engine revving
- No radios or stereos to be left on in vehicles during night time deliveries or at other times
- Staff to be instructed to work quietly when outside the store between the hours of 23:00 – 06:00 and
- All components of the delivery system to be maintained in good working order

## Relevant Planning History

WB/05/0245/OUT – Outline Application approved in 2008 for the redevelopment of the existing district centre to provide a new district centre incorporating a Tesco superstore, shopper cafe, unit shops, community centre and associated car parking and access arrangements.

WB/05/1097/FULL – Planning permission refused in 2005 for the erection of a temporary single storey 'Dot-Com' home shopping facility to rear of existing store.

WB/09/0331/FULL – Planning permission approved in 2009 for change of use of single car parking space to house steel cabin for the storage of supplies in connection with hand car valeting operation.

WB/09/0146/ARM - Application for Approval of Reserved Matters following Outline Approval WB/05/0245/OUT approved in 2009 for the redevelopment of the existing district centre to provide a new district centre incorporating a Tesco superstore, shopper cafe, unit shops, community centre and associated car parking and access arrangements (including diversion of public footpath)

WB/09/0146/ARM/NMA1 - Application for non-material amendments following a grant of planning permission WB/09/0146/ARM approved in 2010 for redevelopment of the district centre to provide a new district centre incorporating a Tesco Superstore. Amendments include; change to position of doors (generally), changes to door styles (generally), updated main entrance glazing (centre of east elevation), plant screen return indicated (left side of east elevation), roofline alteration to stair pod (south and west elevation), amended cladding colour (right side of south elevation), horizontal cladding changed to vertical spanning at change in roof level (left side of west elevation), curtain walling height reduced over mall MOE doors (left side of north elevation) and panel of curtain walling removed/re-arranged doors (left side of north elevation).

WB/09/0146/ARM/NMA2 - Application for non-material amendments following grant of planning permission WB/09/0146/ARM approved in 2010 for redevelopment of the district centre to provide a new district centre incorporating a Tesco Superstore. Amendments include; change of appearance of cycle shelter and covered trolley bays.

WB/09/1022/FULL – Planning permission approved in 2010 for erection of canopy to cover part of pedestrian walkway in car park of new district centre.

WB/09/0925/FULL - Retrospective application approved in 2009 for the erection of 3 metre high close boarded timber fence on land within Tesco site and rear of 43-49 Canberra Road and along western side of the garden of 49 Canberra Road.

WB/10/0074/FULL – Planning permission approved in 2010 for the provision of a new Community Centre and associated site works involving demolition of the existing Centre and relocation to the east of the new Tesco Store Development car park.

AWDM/0569/12 – Planning permission approved in 2012 for 12 non-illuminated fascia signs in connection with proposed car wash (AWDM/0570/12).

AWDM/0570/12 – Planning permission approved in 2012 for the change of use of nine parking spaces to a hand car wash and valeting operation including the erection of a canopy and installation of an office.

AWDM/0605/14 – Planning permission was sought in 2014 to vary condition 13 of WB/05/0245/OUT (Construction of new Tesco store) to vary the hours of opening to be 24 hours. This application is currently undetermined after being held in abeyance pending agreement to new conditions and Applicant liaison with local residents.

AWDM/1242/16- Variation of Condition 9 of WB/05/0245/OUT and Condition 5 of WB/09/0146/ARM to allow an additional delivery to the Tesco store between the hours of 2300 and 0600. The condition was varied but only for a temporary period of 12 months until 7<sup>th</sup> November 2017.

### **Consultations**

**WSCC:** The Highway Authority has confirmed that there would be no highway safety or capacity reason to resist this variation.

### ***Adur and Worthing Councils:***

The Council's **Environmental Health Officer** has commented as follows:

I understand this application is to establish permanent consent of Condition 3 of planning permission ref. AWDM/1242/16, a temporary consent allowing a single night-time delivery to be made to the store each night.

*An Environmental Noise Assessment of a Proposal to Extend the Permitted Delivery Hours* (8th September 2017 Ref: 1716789) has been submitted in support of AWDM/1568/17. This report discusses the results of two noise surveys undertaken in Primrose Place at 1st floor (bedroom) level to the north of the service yard during two separate night time deliveries.

An Addendum Report was subsequently submitted (*Addendum Environmental Noise Assessment of a Proposal to Extend the Permitted Delivery Hours*, dated 17th January Ref: 1716789). This report discusses a noise survey undertaken at the end of Rees Close at 1st floor (bedroom) level outside the closest properties to the south of the service yard.

The *Environmental Noise Assessment of a Proposal to Extend the Permitted Delivery Hours* uses assessment criteria within the WHO Guideline for Community Noise. These are considered to be the most appropriate for this assessment of noise as during the night time period the critical consideration in determining noise impact is peak noise (L<sub>Amax</sub>) in respect of the potential for sleep disturbance, for this reason the external Nighttime L<sub>Amax</sub> levels have been used.

The noise levels obtained during the three nighttime surveys were found to be below the WHO external nighttime peak noise guideline value of 60dB L<sub>Amax</sub>

(above which the onset of sleep disturbance may occur). The maximum L<sub>Amax</sub> level obtained was 57dB during the March 2017 delivery while the vehicle was departing. The maximum noise levels were typically under 50dB L<sub>Amax</sub> during all deliveries and under 55dB L<sub>Amax</sub> on arrival and departure of the vehicle. It was noted in the report that peak noise levels presented within the report include extraneous noise sources that occurred at the same time as the delivery.

Another aspect which is important to consider is the number of substantiated complaints received relating to the temporary permission as this monitors the real impact of the deliveries by residents since they have been in operation. No complaints have been received by this department over this last year relating to the night time deliveries.

Considering the noise levels obtained from the three surveys carried out over this last year do not exceed the WHO Guidelines for Community Noise external nighttime L<sub>Amax</sub> levels and no noise complaints have been received from local residents concerning the nighttime deliveries I am satisfied that the proposal to establish permanent consent of Condition 3 of planning permission ref. AWDM/1242/16 should not give rise to significant adverse impact to local residents and there are no Environmental Health objections subject to the delivery activity noise reduction measures specified in the Service Yard Management Plan dated 22.09.16 continue to be implemented at all times.

## **Representations**

3 letters of objection have been received from neighbouring occupiers, comments are summarised below:

- 31 Shelby Road- Additional noise and disruption of additional lorries
- 29 Canberra Road- Noise, disturbance, additional traffic and smells
- 29 Canberra Road- Noise, disturbance, additional traffic and smells

## **Relevant Planning Policies and Guidance**

Core Strategy: Policy 1 & 6

Local Plan policies: TR13

The National Planning Policy Framework 2012

## **Planning Assessment**

### ***Principle***

The supermarket store lies within the West Durrington District Retail Centre. Policy 6 of the Core Strategy requires development to meet the needs of the area served by the Centre and to be of a scale appropriate to the Centre so as to avoid adversely impacting on the vitality or viability of other nearby retail centres. The policy also seeks to encourage the hierarchy of town, district and local retail centres by encouraging convenient and accessible district and local shopping facilities to meet day to day needs of residents and contribute to social exclusion.

The principle of the replacement supermarket store was established under outline consent WB/05/0245/OUT and approval of reserved matters consent WB/09/0146/ARM in which the hours of deliveries were restricted by condition 9 of the outline approval between 06:00 hours and 23:00 hours and delivery vehicles were restricted under condition 5 of the reserved matters approval to not arrive at the site before 06:00 hours or wait within the internal access roads or parking areas before this time.

The supermarket chain now seeks planning permission to vary these conditions to allow for one additional delivery during the night between 23:00 hours and 06:00 hours on a permanent basis following the temporary permission for one year.

The principle of extending the delivery times of this supermarket in this sustainable District Centre location is supportable subject to the one additional delivery not significantly harming adjoining residents living conditions or having a harmful impact on the local highway network.

### ***Impact to residential amenity***

Tesco have operated the additional delivery during the hours of 23:00 hours and 6:00 hours for the past year following the granting of temporary permission to operate outside the conditioned hours. The main issue is therefore whether during this period there has been such an adverse impact of these deliveries on local residents as to not grant the permanent variation of the restrictive condition.

During the night time period the critical consideration in determining noise impact is peak noise (LA<sub>max</sub>) in respect of the potential for sleep disturbance. The general noise survey methodology for assessing noise from the single night delivery was to measure the noise climate before, during and after the delivery

The nearest noise sensitive residents are located in properties within Varey Road and Rees Close immediately to the south of the site. The back gardens to properties in Varey Road are located approximately 15 metres away from the acoustic fence enclosure surrounding the service yard area. The newly built properties within the West Durrington residential development are located approximately 30 metres from the service yard to the north of the site. The properties within Canberra Road are located to the north-east of the service yard adjacent to the access road and customer car park. A fence buffer and low level planting has been provided on the site adjacent to the rear gardens of the properties within Canberra Road.

The applicants have produced two acoustic reports which updates the information provided as part of the 2016 application to include monitoring of noise levels during the night on 2 dates both to the north and south of the site

The assessment to the north included two night time delivery trials at a position representative of the residential properties in Primrose place to the north. Direct noise measurements were made during the early morning of Wednesday 29<sup>th</sup> March and Tuesday 15<sup>th</sup> August 2017 outside the properties in Primrose Place. The measurements were taken during maneuvering on arrival, unloading and vehicle departing. The noise levels ranged from 42-57 dB, these are all below the World

Health Organisation night time peak noise guideline value of 60dB. The overall duration of the observed night time delivery was for 30 minutes. The ambient noise level was 39-40dB

The assessment of noise to the south was undertaken at the end of Rees Close outside the properties closest to the Tesco Store. Direct noise measurements were made during the early morning of Wednesday 10<sup>th</sup> and Thursday 11<sup>th</sup> January 2018 outside the properties off Rees Close. The measurements were taken during maneuvering on arrival, unloading and vehicle departing. The noise levels range from 29-45 dB. These are below the World Health Organisation night time peak guidelines value which is 60dBL. The overall duration of observed night time delivery was for 37 minutes. The ambient noise level was 40dB.

This 12 month trial period has now come to an end and the applicants have submitted further information and monitoring which shows that the noise lies within acceptable world standards. The Councils Environmental Health Officers has also confirmed that they do not have any objections and the noise is within acceptable limits for nighttime activity.

Furthermore during this 12 month period there have been no noise complaints

### ***Traffic Implications & Highway Safety***

The proposal would involve one additional delivery lorry accessing the service yard from Fulbeck Avenue to the west between the hours of 23:00 hours and 06:00 hours daily. As the delivery vehicle would be accessing and exiting the site during the night time period it is anticipated that the surrounding roads to the south and west would be less busy. The County Council Highways Authority has confirmed that one additional delivery would not cause any concern from a road capacity or highways safety perspective. It is therefore considered that the provision of one additional night time delivery would not cause any harmful impact in terms of traffic implications of highways safety.

### ***Comments on representations***

3 objections have been received from residents in Canberra Road and Shelby Road both of which are some distance from the yard and the delivery routing. In relation to these comments, as indicated above the acoustic report supports that the noise associated with the additional lorry movement would be below the World Health Organisation guidelines for night time activity. The highway authority have no objections to the night time activity and the one additional delivery is unlikely to give rise to adverse smell.

### **Conclusion**

The 12 month trial period has proved that there is not as adverse impact on nighttime noise associated with the additional delivery to local residents. It is therefore recommended by that the application to vary the conditions is granted.

## **Recommendation**

### **APPROVE**

#### **Subject to Conditions:-**

1. Approved Plans
2. No loading, unloading, deliveries, collections or associated delivery vehicle movements shall take place on the site (including the access road to the north of the store or parking areas) other than between the hours of 06.00 hours and 23.00 hours on any day.
3. Notwithstanding the wording of condition 2, one additional delivery shall be allowed between the hours of 06:00 hours and 23:00 hours Monday to Sunday.

No loading, unloading, dispatch, deliveries, collections or vehicle movements associated with Dotcom deliveries shall only be undertaken between the hours of 08:00 hours and 23:00 hours on any day and the cooling process in relation to the Dotcom vehicles shall only be undertaken between the hours of 07:00 hours and 23:00 hours on any day.

4. All delivery/collection vehicles serving the supermarket shall only arrive and depart from the western access off Fulbeck Avenue, other than Dotcom vehicles being moved from the parking area to the east of the District Centre to the delivery yard. The acoustic gates to the Delivery Yard shall be kept closed at all times when not in use to allow ingress or egress of a delivery vehicle.
5. At all times deliveries to the store shall be made in full compliance with the details of the Service Yard Management Plan dated 22.09.16.
6. The premises shall not be open for trade of business except between the hours of 06:00 hours and 00:00 hours Mondays to Saturdays and 10:00 hours and 18:00 hours on Sundays.
7. Retention of shop window display – east and north elevations
8. Surface water sewer from parking areas and hard standings susceptible to oil contamination must be passed through an oil separator designed and constructed to have a capacity compatible with the site being drained. Roof water shall not pass through the interceptor. On-going maintenance of the interceptor shall be provided in accordance with the manufacturer's instructions.
9. Development retained in accordance with the previously approved scheme to mitigate the loss of habitat caused by the proposed development on the watercourse.

10. Development retained in accordance with the approved details for buffer zone alongside the watercourse to the west of the site.
11. Development retained in accordance with approved details relating to wall around the substation/transformer, the fence around the Dotcom parking area to the south of Canberra Road and the acoustic fence to the rear of No.'s 45 to 49 Canberra Road.
12. Development retained in accordance approved parking provision and maneuvering areas shown on the approved phasing plan. The approved parking and maneuvering areas shall thereafter be only used for this purpose.
13. Development retained in accordance with approved details for the loading and unloading of vehicles and parking of delivery vehicles and this space shall not thereafter be used for any purpose other than for the purposes for which it is provided.
14. No external lighting or flood lighting shall be installed.
15. Development retained in accordance with the approved ventilation system for the extraction and disposal of cooking odours.
16. Development retained in accordance with the previously approved landscaping scheme.
17. Development retained in accordance with the approved acoustic barrier and associated tree and shrub planting along the boundary of the site parallel with Varey Road.
18. Any facilities, above ground for the storage of oils, fuels or chemicals, shall be sited on an impervious base and surrounded by impervious walls. The volume of the bunded compound should be at least equivalent to the capacity of the tank plus 10%. All filling points, vents, gauges and sight glasses must be located within the bund. The drainage system of the bund shall be sealed with no discharge to any watercourse, land or underground strata. Associated pipework should be located above ground and protected from accidental damage. All filling points and tank overflow pipe outlets should be detailed to discharge into the bund. Such facilities shall be constructed and completed in accordance with plans approved by the Local Planning Authority.
19. No additional floorspace shall be provided within the store, including any mezzanine floor, without the prior approval of the Local Planning Authority in an application on that behalf.
20. The level of convenience floor space within the Tesco superstore shall not exceed 3,750 square metres unless approved by the Local Planning Authority in an application on that behalf.

21. The approved District Centre in addition to the superstore floorspace referred to in condition 21 shall provide a minimum of 2,765 square metres for unit shops and shopper café. These unit shops/café shall be located outside of the superstore retail area (i.e. beyond the till area).

7<sup>th</sup> February 2018

Application Number: AWDM/0061/18

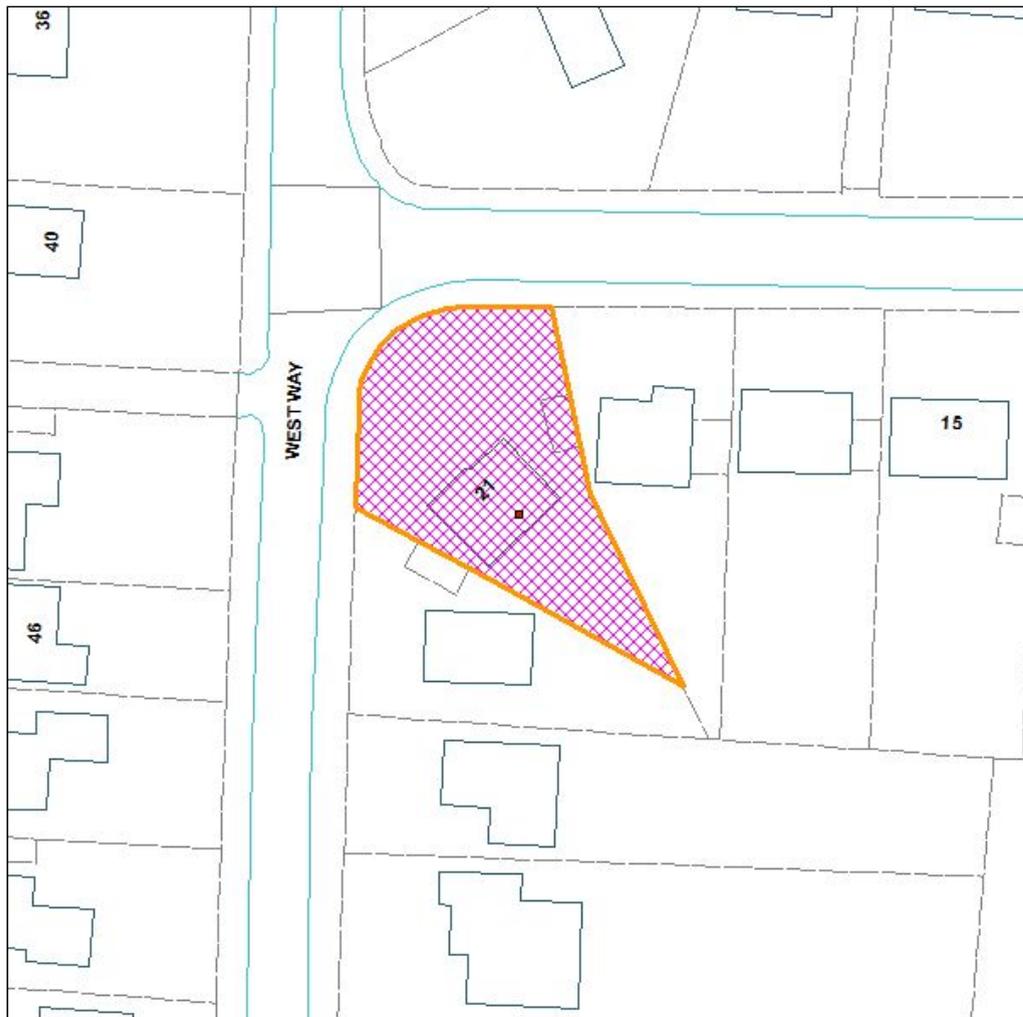
Recommendation – APPROVE  
subject to the expiry of the  
consultation period on 8  
February

Site: 21 West Way, Worthing

Proposal: Retention of existing outbuilding in reduced size.

Applicant: Mr David Setchell  
Case Officer: Gary Peck

Ward: Salvington



Not to Scale

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**Proposal, Site and Surroundings**

This application seeks permission to reduce the size of an existing unauthorised garage by about half to 3 metres in depth. The front part of the building would have a gable with a half hip remaining to the rear.

The application site comprises a large corner plot with a detached house facing the corner of West Way. The unauthorised subject building is to the north east of the dwelling.

### **Relevant Planning History**

As reported to the meeting of the Committee last August, the building in question was erected without planning permission in 2008. Planning and enforcement appeals were dismissed in 2011, 2012 and 2015 in respect of its retention.

At the August meeting of the Committee, members resolved that the file be passed to Legal Services to consider whether enforcement action should be proceeded with. The Legal Services section did consider that such action was justified and therefore witness statements were completed and a summons was being drafted prior to Christmas. The Council was then contacted by the applicant's solicitor who stated that the applicant was willing to submit an application to reduce the size of the building in agreement with the Council. It was agreed that such an application would be submitted no later than 12 January for the Council's consideration.

### **Consultations**

Any comments received will be reported verbally at the meeting

### **Representations**

Any comments received will be reported verbally at the meeting

### **Relevant Planning Policies and Guidance**

Worthing Core Strategy (WBC 2011): Policy 16  
National Planning Policy Framework (CLG 2012)  
Planning Practice Guidance (CLG 2014)

### **Relevant Legislation**

The Committee should consider the planning application in accordance with: Section 70 of the Town and Country Planning Act 1990 (as amended) that provides the application may be granted either unconditionally or subject to relevant conditions, or refused. Regard shall be given to relevant development plan policies, any relevant local finance considerations, and other material considerations.

Section 38(6) Planning and Compulsory Purchase Act 2004 that requires the decision to be made in accordance with the development plan unless material considerations indicate otherwise.

### **Planning Assessment**

Members will be aware of this long standing case. In June 2015, members had resolved that enforcement action should be proceeded with in accordance with a timescale to be agreed between officers and the applicant and that, if possible, a solution should be sought.

In June 2016, Officers had offered, in writing, the following solution:

*We also discussed a compromise solution where the building is removed up to the first post level within the building, which would reduce its footprint. If this were done, and the roof alterations made which you suggested, then without prejudice I feel this may offer a potential solution. I would stress that you would need planning permission to make this alteration*

As stated in the August 2016 committee report, the applicant at that time was not willing to enter into such a solution. However, following the resolution of the Committee to proceed with enforcement action and subsequent correspondence between the Council's Legal Services section and the applicant's solicitor, it was subsequently indicated that the applicant would be willing to accept a solution of reducing the size of the building.

Although the removal of the entire building would be preferable, your Officers do consider that this is an acceptable compromise which would resolve this long standing matter and accordingly it was recommended that permission be granted.

### **Recommendation**

To GRANT permission

### **Subject to Condition**

1. The works hereby approved shall be completed in accordance with the approved plans and to the satisfaction of the Local Planning Authority by no later than Monday 9 April 2018.

Reason: The retention of the building in its current form has found to be unacceptable and therefore it is necessary to ensure that the works are carried out without further delay.

7<sup>th</sup> February 2018

### **Local Government Act 1972**

#### **Background Papers:**

As referred to in individual application reports

#### **Contact Officers:**

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## **Schedule of other matters**

### **1.0 Council Priority**

- 1.1 As referred to in individual application reports, the priorities being:-
- to protect front line services
  - to promote a clean, green and sustainable environment
  - to support and improve the local economy
  - to work in partnerships to promote health and wellbeing in our communities
  - to ensure value for money and low Council Tax

### **2.0 Specific Action Plans**

- 2.1 As referred to in individual application reports.

### **3.0 Sustainability Issues**

- 3.1 As referred to in individual application reports.

### **4.0 Equality Issues**

- 4.1 As referred to in individual application reports.

### **5.0 Community Safety Issues (Section 17)**

- 5.1 As referred to in individual application reports.

### **6.0 Human Rights Issues**

- 6.1 Article 8 of the European Convention safeguards respect for family life and home, whilst Article 1 of the First Protocol concerns non-interference with peaceful enjoyment of private property. Both rights are not absolute and interference may be permitted if the need to do so is proportionate, having regard to public interests. The interests of those affected by proposed developments and the relevant considerations which may justify interference with human rights have been considered in the planning assessments contained in individual application reports.

### **7.0 Reputation**

- 7.1 Decisions are required to be made in accordance with the Town & Country Planning Act 1990 and associated legislation and subordinate legislation taking into account Government policy and guidance (and see 6.1 above and 14.1 below).

### **8.0 Consultations**

- 8.1 As referred to in individual application reports, comprising both statutory and non-statutory consultees.

### **9.0 Risk Assessment**

- 9.1 As referred to in individual application reports.

**10.0 Health & Safety Issues**

10.1 As referred to in individual application reports.

**11.0 Procurement Strategy**

11.1 Matter considered and no issues identified.

**12.0 Partnership Working**

12.1 Matter considered and no issues identified.

**13.0 Legal**

13.1 Powers and duties contained in the Town and Country Planning Act 1990 (as amended) and associated legislation and statutory instruments.

**14.0 Financial implications**

14.1 Decisions made (or conditions imposed) which cannot be substantiated or which are otherwise unreasonable having regard to valid planning considerations can result in an award of costs against the Council if the applicant is aggrieved and lodges an appeal. Decisions made which fail to take into account relevant planning considerations or which are partly based on irrelevant considerations can be subject to judicial review in the High Court with resultant costs implications.



Planning Committee  
7 February 2017  
Agenda Item 7

Ward: Offington

ADUR DISTRICT  
COUNCIL

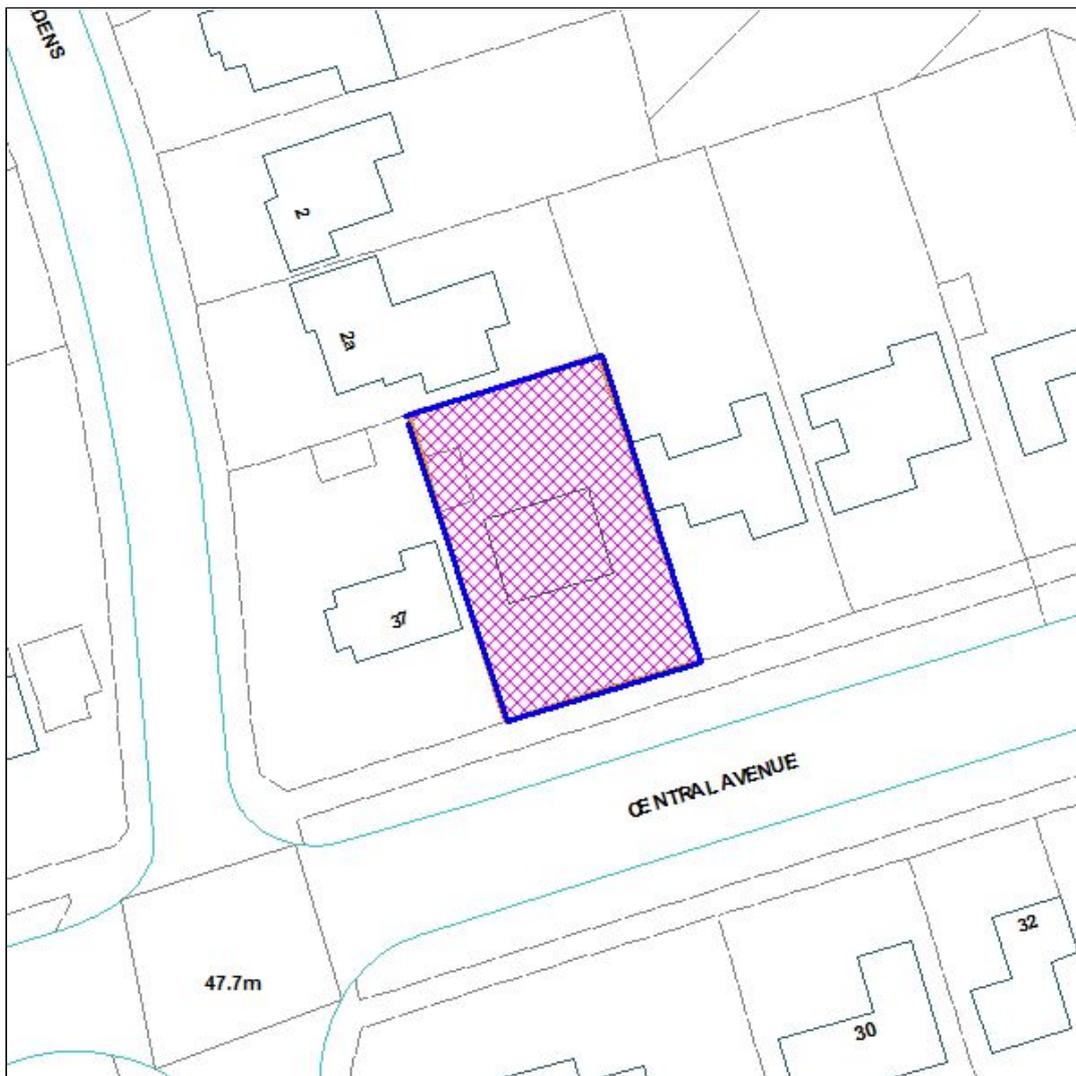
Report by the Director for Economy

ENFORCEMENT REPORT

39 Central Avenue Worthing West Sussex BN14 0EA

Development not carried in accordance with conditions 1, 3 and 4 of  
AWDM/1064/16

Reference Number: AWEN/0029/18



Not to Scale

## 1. BACKGROUND

At the Planning Committee meeting held on 14 December 2016, planning permission was granted for the construction of single storey side and rear extensions and addition of first floor to the existing dwelling at 39 Central Avenue (Application AWDM/1064/16 refers). The planning permission was subject to conditions including those relating to: the development being carried out in accordance with the approved plans (condition 1); external materials to match the existing building (condition 3); and obscure glazing to first floor side and rear windows, except any part above 1.7m from finished floor level of the room it serves (condition 4).

Following the receipt of a complaint and upon an external inspection it was found that development had commenced and was not in accordance with the approved plans and was in breach of conditions 3 and 4.

The following items have been noted:

- (i) First floor windows rear and side (east) windows contain clear glazing
- (ii) Vertical timber cladding has been installed to the first floor and apparent preparation for a render finish to the ground floor.
- (iii) The design of first floor windows to the front elevation and ground and first floor windows and doors to the rear elevation are not in accordance with the approved plans.

The applicant and their agent were contacted in early October 2017 requesting a retrospective planning application in order to consider the impact of the building as built. Although the applicant has stated an intention to submit an application, despite several requests and over a period of more than 3 months, regrettably at the time of writing no application has been received.

This report therefore considers the impact arising from the breach of conditions 3 and 4 and from the changes to the approved plans.

## 2. PLANNING ASSESSMENT

It is regrettable that the applicant has not submitted a planning application within a reasonable timescale but there is no legal requirement for them to do so. The applicant is aware that the failure to submit an application may register on future searches of the property. It therefore falls upon the Council to consider whether, with the amendments, planning permission would have been granted for the extensions as built and whether any further action is necessary.

### Obscure glazing:

When the decision was made to approve the extensions to the first floor, the applicant had offered obscure glazing to attempt to address overlooking concerns raised by neighbouring occupiers at that time and so a condition was included for rear and side windows to be obscure glazed up to 1.7m above finished floor level.

All but one of the windows have been installed with clear glazing, with obscure glazing only installed to the rear bathroom window.

Rooflight windows to the side are at a high level with cill heights exceeding 1.7m and so there would be no significant overlooking to the side towards No.41. Views down the rear garden of No. 41 would be possible from rear windows but privacy to the rear rooms of No.41 has still been retained.

On the west side, there are no side windows overlooking No.37 and views from rear windows are limited to towards the rear of the garden area of No.37 and similar relationships exist elsewhere in the vicinity.

At the rear, a distance of 12.5 metres between the position of first floor windows and the side of No.2a Sullington Gardens to the north existed at the time the application was considered and this situation has not changed. There is a high level window to the side elevation of No.2a facing the rear of No.39, serving a rear bedroom and is sited close to the boundary fence. This bedroom at No.2a has its main outlook from a rear facing window. Views of this high level side window are possible from the new first floor windows but are also possible from the ground floor and rear garden of No.39, as existed before the extensions were built as this window exceeds the height of the boundary fencing. Views back into the rear rooms of No.2a are not possible from the new first floor windows due to the restrictive angle. Similar views into the garden at 2a exist as at No.41 except in that the view is across the width rather than down the length of the garden. Views towards the northern corner patio of the garden at No. 2a would be possible but at a distance of approximately 22 metres, although it is noted that garden area to the south of this is also partially visible from rear first floor windows but is not dissimilar to a relationship that might exist had the applicant constructed a dormer window as permitted development.

Materials: The streetscene comprises of a mix of two storey dwellings and single storey bungalows with a variety of designs and with variation to external materials and design details. The extensions as approved would appear, overall, as a more contemporary addition to the streetscene and with a combination of painted render, vertical timber cladding, dark grey windows and surrounds, and grey plain roof tiles.

The use of vertical timber cladding is not a feature of the locality with materials generally comprising of brick, traditional tile hanging, and render but with variety to type and colouring. The use of the vertical timber cladding is the main matter of contention here.

The applicant has clarified verbally that the timber used is Syberian Larch and the intention is for it to weather naturally rather than to apply a protective finish. The overall appearance of the cladding is relatively knotty giving a more rustic

appearance than some other more contemporary cladding boards. It is anticipated that natural weathering to a consistent grey colour would take a number of years but would still retain the knotty appearance. The applicant has stated that they have no intention of painting the timber but your officers feel that a combination of painted render to the ground floor and a light grey painted finish to the cladding would help to immediately blend with surrounding buildings and give a more uniform appearance to the cladding.

Design details: There is variation to the appearance of the surrounds to the windows that break through the eaves that represent the most noticeable change to the windows with a more bulky, box like appearance to those parts, largely due to their simplistic form without detailing to break up the appearance of bulk. However, it is noted that a modern dormer window would have similar width to the sides and roof due to depth of insulation and other materials used in their construction, and examples of such can be seen in the locality. Although the design is not ideal in terms of its simple form exacerbating the appearance of bulk, an alternative design would not offer any actual reduction in bulk. In terms of the overall changes that relate to the configuration and appearance of windows and doors, these changes have not resulted in any significant harm to visual amenity or to the amenities of neighbouring occupiers and with ground floor windows to the frontage replaced to follow the alignment and general design of first floor windows for uniformity.

### 3. LEGAL SECTION

Section 172(1) Town and Country Planning Act 1990 (as amended) states that a Local Planning Authority may issue an enforcement notice where it appears to them:

- (a) that there has been a breach of planning control; and
- (b) it is expedient to issue an enforcement notice, having regard to the provisions of the development plan and to any other material considerations.

Section 72(1) Planning (Listed Buildings and Conservation Areas) Act 1990 states in exercising any functions under the Town and Country Planning Act 1990, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

Paragraph 207 National Planning Policy Framework reiterates that enforcement action is discretionary, and local planning authorities should act proportionately in responding to breaches of planning control.

Paragraph: 003 Reference ID: 17b00320140306 Planning Practice Guidance states "The provisions of the European Convention on Human Rights such as Article 1 of the First Protocol, Article 8 and Article 14 are relevant when considering enforcement action. There is a clear public interest in enforcing planning law and planning regulation in a proportionate way. In deciding whether enforcement action is taken, local planning authorities should, where relevant, have regard to the potential impact on the health, housing needs and welfare of those affected by the proposed action, and those who are affected by a breach of planning control."

Paragraph: 005 Reference ID: 17b00520140306 Planning Practice Guidance states:

“Effective enforcement is important to:

- tackle breaches of planning control which would otherwise have unacceptable impact on the amenity of the area;
- maintain the integrity of the decisionmaking process;help ensure that public acceptance of the decisionmaking process is maintained.”

#### 4. OTHER IMPLICATIONS

- 4.1 There are no significant direct race relations, equal opportunity, environmental or community safety implications arising in this report.

#### 5. CONCLUSION AND RECOMMENDATION

- 5.1 It is considered that the inclusion of clear glazing to side and rear windows has not caused any significant threat to residential amenity in terms of loss of privacy and so no further action is required in respect of installing obscure glazing.
- 5.2 It is considered that the amendments to the appearance and design of the building, namely the changes to the configuration of windows and doors, and amended design of the first floor window surround as outlined above, are acceptable and cause no significant harm to the visual amenities of the site or surrounding area and so no further action is required in respect of these design changes.
- 5.3 In relation to the timber cladding, it is recommended that an enforcement notice be issued to ensure a painted finish to the cladding within a specified timescale to give a more uniform appearance to the cladding and to blend better with the surrounding streetscene.

7<sup>th</sup> February 2018

## **Schedule of other matters**

### **1.0 Council Priority**

1.1 To support and contribute to the health, safety and well-being of the area

### **2.0 Specific Action Plans**

2.1 Matter considered and no issues identified.

### **3.0 Sustainability Issues**

3.1 The location at this level in a flood zone is unsustainable.

### **4.0 Equality Issues**

4.1 Matter considered and no issues identified.

### **5.0 Community Safety Issues (Section 17)**

5.1 None in this context.

### **6.0 Human Rights Issues**

6.1 Article 8 of the European Convention safeguards respect for family life and home, whilst Article 1 of the First Protocol concerns non-interference with peaceful enjoyment of private property. Both rights are not absolute and interference may be permitted if the need to do so is proportionate, having regard to public interests. The interests of those affected by proposed developments and the relevant considerations which may justify interference with human rights have been considered in the planning assessment.

### **7.0 Reputation**

7.1 Decisions are required to be made in accordance with the Town & Country Planning Act 1990 and associated legislation and subordinate legislation taking into account Government policy and guidance (and see 6.1 above and 14.1 below).

### **8.0 Consultations**

8.1 As referred to in the above report.

### **9.0 Risk Assessment**

9.1 As referred to in the above report.

## **10.0 Health & Safety Issues**

10.1 As referred to in the above report.

## **11.0 Procurement Strategy**

11.1 Matter considered and no issues identified.

## **12.0 Partnership Working**

12.1 Matter considered and no issues identified.

## **13.0 Legal**

13.1 Powers and duties contained in the Town and Country Planning Act 1990 (as amended) and associated legislation and statutory instruments.

## **14.0 Financial implications**

14.1 Decisions made which cannot be substantiated or which are otherwise unreasonable having regard to valid planning considerations can result in an award of costs against the Council if the land owner is aggrieved and lodges an appeal. Decisions made which fail to take into account relevant planning considerations or which are partly based on irrelevant considerations can be subject to judicial review in the High Court with resultant costs implications.