



WORTHING BOROUGH  
C O U N C I L

Planning Committee  
27 June 2018

Agenda Item 5

Ward: ALL

Key Decision: ~~Yes~~ / No

Report by the Director for Economy

Planning Applications

1

Application Number: **AWDM/0123/18** Recommendation – Approve

Site: **Chiltingtons, 127-131 Lyndhurst Road, Worthing**

Proposal: **Change of use from C2 Residential Institutions to C1 Hotels/Guest House.**

2

Application Number: **AWDM/0436/18** Recommendation – Approve

Site: **45 First Avenue, Worthing**

Proposal: **Demolition of existing dwelling and attached garage and erection of two detached dwellings with integral garages.**

3

Application Number: **AWDM/0520/18** Recommendation – Approve

Site: **6 Furze Close, Worthing**

Proposal: **Retention of concrete apron in front of existing driveway together with 1.8m feather edge fence along eastern boundary of property. Proposed double hardwood driveway gates and side access gate. Proposed re-instatement of grass verge. (Part retrospective).**

4

Application Number: **AWDM/0178/18** Recommendation – **APPROVE** subject  
to the completion of a legal  
agreement

Site: **Unit B, Lyons Farm Retail Park, Lyons Way, Worthing**

Proposal: **Change of use of the retail unit (A1) to use as a gym/health and fitness centre (D2) and installation of a mezzanine level.**

Application Number: AWDM/0123/18

Recommendation – APPROVE

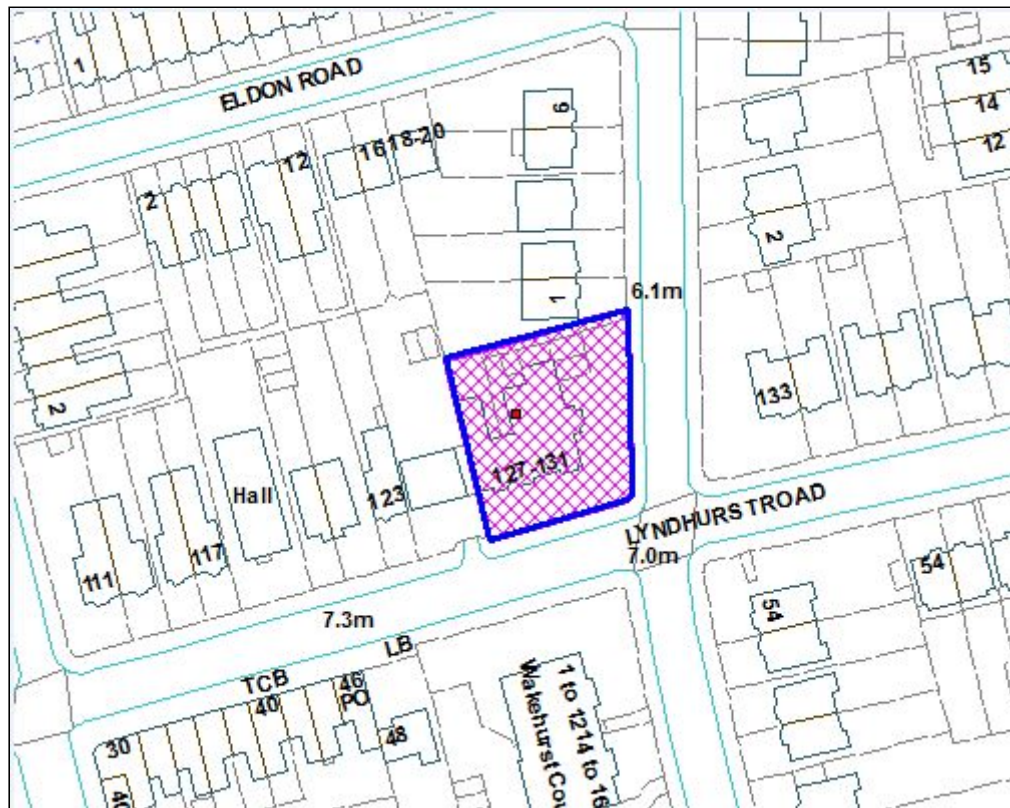
Site: Chiltingtons 127-131 Lyndhurst Way Worthing

Proposal: Change of use from C2 Residential Institution to C1 Hotel/Guest House

Applicant: Mr Sungur

Ward: Selden

Case Officer: Rebekah Smith



**Not to Scale**

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This application has been called in to the Planning Committee at the request of Councillor Keith Bickers.

### **Proposal, Site and Surroundings**

The application site relates to a vacant two storey building located on the north side of Lyndhurst Road on the corner at its junction with Ladydell Road formerly in use as 'Chiltingtons' residential care home. The building appears to be formed of a terrace of three dwellings (that would have originally continued westwards) that have been amalgamated to form one large detached building. The main pedestrian entrance is on the south side of the building with access from Lyndhurst Road and with a garage and hardstanding with vehicular access onto Ladydell Road to the east. The site is enclosed by a low brick wall and with hedges screening the corner garden area to its frontage. The building has previously been used as a residential

car home with 19 bedrooms and communal lounge and dining facilities. Residential uses surround the site.

Permission is sought to change the use of the existing vacant care home (class C2) to a hotel/guest house (class C1). No external alterations are proposed. Internal modifications would be made to include en-suite shower/wc rooms, accessible ground floor bedroom with wet room, removal of the lift, consolidating rooms to form a larger dining room and installing a new office. The hotel/guest house would comprise 19 bedrooms, one of which is indicated to be for staff use only. Four car parking spaces are indicated on the plans including the existing garage which are served by the existing dropped kerb. Covered bicycle storage is proposed within the rear (north/west) yard. Five full time equivalent staff would be employed.

### **Extracts from the Applicants supporting statement:**

*This proposal seeks planning permission for the change of use of the existing property from C2 (Residential Institution Use to C1 use (Guest House/Hotel).*

*The application site is located within the Built-up Area Boundary of Worthing where in accordance with paragraph 14 of the NPPF, there is a presumption in favour of sustainable development unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits.*

*The proposal would involve no changes to the external façade of the building.*

*Some minor changes and re-configuration to the internal layout are proposed as part of the development. It is our view that these would not detract from the character of the building or surrounding area, which is mixed in character.*

*The building has been in use as a residential care home that provided accommodation for up to 18 residents in 16 single and 1 shared rooms. The site was formerly a private owned care that was registered to provide care for persons who are of old age, and/or suffering from Dementia, physical disability, and Sensory Impairment. However, this use ceased, and the premises are vacant.*

*The proposed Guest House/Hotel would provide 19 No. bedrooms. It is our view that although the level of occupation would marginally increase as a result of the development, the intensity of activity associated with a Guest House/Hotel is not likely to be significantly greater than the care home use. Indeed, during the winter months, it may in fact be reduced.*

*Local and national policy highlights support for increased and improved visitor accommodation, and the proposed use accords with these policies, including Core Strategy Policy 5.*

*The proposal will not result in any demonstrable impact upon residential amenity by way of noise or disturbance.*

*The site is located within a highly sustainable area; within easy walking distance of a small precinct of shops to the east, and Worthing Town Centre, which is located to*

*the west. The site is well served by transport links, in the form of main bus routes. In addition East Worthing railway station is within easy reach of the site.*

*Vehicular access and existing parking arrangements are to be maintained via Ladydell Road.*

*Cycle storage can be provided if this is required by the Council.*

*The proposal meets all the necessary policy requirements, and will cause no significant harm to the character of the surrounding area. In our opinion the overwhelming weight of evidence supports the proposal as it is shown to comply with all relevant Development Plan policies.*

## **Consultations**

The **Highway Authority** has commented as follows:

### Summary

*West Sussex County Council, in its capacity as the Local Highway Authority (LHA), have been consulted on change of use of 19 bedroom C2 residential care home to 19 bedroom C1 guesthouse/ hotel use.*

*The building is located on corner of Lyndhurst Road ('C' classified) and Ladydell Road ('D' classified). Both roads are subject to a 30 mph speed restriction and areas of controlled parking between limited times. The junction is protected by double yellow road markings deterring illegal parking in locations that would be detrimental to highway safety.*

*The LHA has reviewed data supplied to WSCC by Sussex Police over a period of the last five years. There have been three recorded injury accidents at the junction of Lyndhurst Road with Ladydell Road. However, from an inspection of accident data it is clear that this was not due to any defect with the junction.*

### Access & Parking Arrangements

*Under WSCC Parking Standards Adopted November 2003 a C2 residential care home use could see a demand for one car parking space per twenty residents, one car parking space for visitors per eight residents and one car parking space for staff per five residents. On the basis of 18 residents being accommodated a maximum demand for seven spaces could therefore be provided.*

*A C1 hotel use could see a maximum demand of one space per bedroom. Nevertheless the LHA appreciate the town centre location and proximity to local amenities and sustainable modes of transport. It should also be noted that these are maximum parking standards.*

*No vehicle parking details have been submitted with the application. From an inspection of local and WSCC mapping vehicle access is in place from Ladydell Road in the form of a dropped kerb vehicle crossover (VCO). The agent has stated that the existing off-street parking and garage will be retained. It should be clarified how this will be allocated and whether this would be for staff only. A detailed parking*

*plan including the dimensions of the existing garage and hardstanding area should be provided in order that the LHA can assess the proposed arrangements.*

*We would also advise that bicycle parking for staff be provided in a secure facility. How many staff are anticipated to work at the hotel?*

### *Sustainable Transport*

*The LHA acknowledge the sustainable location of the site in proximity to Worthing Town Centre with a range of amenities and services within walking distance along street-lit footway links. East Worthing Train Station is approximately 3 minute cycle ride distant and main bus services along Lyndhurst Road provide onward routes to nearby towns and villages. On-street parking is limited in the vicinity due to the controlled parking zone with controlled hours to permit holders only and junction protection prohibiting on-street parking in locations that would be detrimental to highway safety.*

*Given the restrictions for parking in the locality the LHA encourage the applicant to provide a Travel Plan Statement outlining mitigation measures for sustainable transport. Guests of the hotel should be encouraged to utilise sustainable modes of transport when staying by providing information on local bus services, directions to amenities in the vicinity and encourage cycling and walking as well as the nearby train station as alternative yet realistic means of transport.*

### *Conclusion*

*In summary the LHA do not raise a highway safety or capacity concern to the principle of the application however clarification is sought on the existing car parking arrangements. Will these be for staff use only? How many staff are proposed? Will cycle parking facilities be provided for both staff and guests of the hotel? The applicant should ensure that the existing hardstanding is capable of providing sufficient sized parking bays (2.4m by 4.8m) so that cars do not overhang the adjacent footway. We would also anticipate that a single garage be at least 3m by 6m to be counted toward parking provision for the use.*

*The applicant should also provide a Travel Plan Statement setting out measures that will be undertaken to encourage use of sustainable traffic modes for staff and guests considering the restrictions to on-street parking in the vicinity.*

Following the receipt of the applicants Travel Plan Statement and parking layout, the **Highway Authority** commented as follows:

### *Parking*

*The revised layout plan indicates that the existing dropped kerb from Ladydell Road will be used to access three car parking spaces on the existing hardstanding. From an inspection of the plans there is sufficient depth and width across this hardstanding to accommodate this. The existing garage is insufficient depth to be counted as an allocated space however the LHA appreciate the historic use of this and consider it could be used as a staff parking space. Two of the external spaces are not marked as staff parking thus it is assumed that these could be used for guests of the hotel. As per previous comments a maximum demand for seven spaces, as set out in WSCC*

*Supplementary Planning Guidance, could be provided for the use. Whilst a shortfall in 5 spaces the LHA acknowledge the location of the site in regard to sustainable modes of transport being realistically utilised. Furthermore on street parking is restricted within the Controlled Parking Zone and the nearby junction with Lyndhurst Road is protected by double yellow line road markings. The LHA do not consider that any additional parking as a result of the proposals would occur in locations deemed detrimental to highway safety. Furthermore the applicant has promoted sustainable transport by supplying a Travel Plan Statement.*

### *Travel Plan Statement*

*Considering the location of the site the LHA advised that a Travel Plan Statement be provided to encourage and promote use of cycling, walking and public passenger transport for guests. This has been prepared and reviewed by the WSCC Senior Local Transport Improvements Officer, who has raised the following points:*

- *The adoption of modal shift targets is welcomed. Consideration should be given to the timeframe over which the targets should be achieved. This is usually five years from first occupation of the site.*
- *Please include a contact email address and telephone number for the Travel Plan Co-ordinator (Mr Burak Sungar).*
- *Please note that, unfortunately, it is likely that the [www.travelwestsussex.co.uk](http://www.travelwestsussex.co.uk) multimodal journey planner will be decommissioned shortly. Paragraph 4.3.2 will therefore need to be amended to reflect this. Instead, the Traveline South East and the National Rail Enquiries websites can be promoted (alongside other services such as Google Maps) to provide public transport information to staff and guests. The West Sussex Cycle Journey Planner and [www.westsussexcarshare.com](http://www.westsussexcarshare.com) will continue to operate and therefore may be promoted to staff and guests. The provision of paper maps (as outlined in the TPS) will support the provision of journey planning information.*
- *The provision of cycle parking is welcomed (paragraph 6.3.3) however it may be necessary to provide more than 3 spaces given that, potentially, these could all be occupied by employees bike. Is there scope to provide a secure, covered cycle shelter for guests' bikes and/or utilise the garage space to the rear of the property?*
- *The location of the hotel is conducive to promoting the use of sustainable transport to guests. Locations such as Brighton and Shoreham are accessible by both bus and rail. Moreover, National Cycle Route 2 is just a few hundred metres from the site. The hotel may therefore wish to position itself as 'cycle-friendly' stop-over accommodation for tourists cycling between Dover and St Austell, or as a base for those wishing to access the Downs Link (30 mins cycle) Brighton (70 mins) and other local attractions served by the route. The availability of a track pump, some basic tools, and puncture repair kits at the hotel would be of great benefit to guests arriving by bicycle.*

*The applicant is encouraged to take the above into account. A modified Travel Plan Statement can be secured via condition. The LHA would also advise that additional secure and covered bicycle parking is provided for use of guests as well as staff.*

### Conclusion

*The LHA does not consider that the proposal would have 'severe' impact on the operation of the Highway network, therefore is not contrary to the National Planning Policy Framework (paragraph 32), and that there are no transport grounds to resist the proposal.*

*If the LPA are minded to approve the application the following conditions should be secured:*

#### *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.*

#### *Travel Plan Statement (to be approved)*

*No part of the development shall be first occupied until such time as a Travel Plan Statement has been submitted to and approved in writing by the Local Planning Authority. The Travel Plan Statement shall be completed in accordance with the latest guidance and good practice documentation as published by the Department for Transport or as advised by the Highway Authority.*

*Reason: To encourage and promote sustainable transport.*

**Adur & Worthing Councils:** The **Environmental Health** Officer has commented as follows:

- hours of demolition/construction/works – standard hours to apply;
- dust - appropriate suppression methods submitted prior to works (if necessary);
- AQ - no comments;
- light - no comments;
- contaminated land - no comments;
- noise - appropriate sound insulation to be achieved through Building Control, in particular between:
  1. the kitchen and Bedroom 19
  2. the fire door and Bedroom 17
  3. the wet room and Bedroom 18
  4. the reception/lounge and Bedrooms 14 and 15
  5. the plant room and Bedroom 11.

The **Private Sector Housing** Manager has raised no objection.

### **Representations**

Thirty letters of representation received that raise the following concerns/objections:

- Lack of parking/traffic problems – proposed use would exacerbate congestion/parking problems/highway safety issues, travel plan does not offer solution to lack of parking
- Noise from hotel activity
- Disturbance/anti-social behaviour/safety problems
- Disturbance caused by lights left on at night
- Loss of privacy
- Would change character of residential area
- Overdevelopment
- Existing hotels and air bnb create surplus of tourist beds in Worthing
- Use not likely to attract genuine tourists
- Concern that hotel/guest house would be occupied by people requiring emergency accommodation/for people in crisis/hostel, and not by tourists, with no support for potential occupants who may have problems/be vulnerable. Associated difficulties, disturbance, risks to other residents and school children
- Shortage of C2 care home places affecting hospital discharge
- Trees/garden should be maintained and not removed for parking

One representation received from the Worthing Society raising particular concern over traffic and parking problems.

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

The National Planning Policy Framework 2012

Core Strategy policies 3, 5, 16, 19

Saved Local Plan policy: RES7, TR9 and H18

### **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; 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.



## **Planning Assessment**

The genuine intention of the use has been called into question in the representations with suggestions made that the use may operate as a hostel, emergency housing or similar. The applicant has indicated an intention for as a hotel/guest house use for visitor accommodation and to that end has clarified that the business would operate as follows:

*Bed and breakfast, therefore no evening meal offered. Cleaning will be provided for each room and the communal areas on a daily basis. The reception will be manned at all times and there will be at least one member of staff staying at the bed and breakfast overnight.*

Hostels are not included within the C1 use class. If a hotel/guest house was approved and the nature of the use and its operation differs from that described, consideration would need to be given as to whether a material change of use had occurred at that time. However, this application must be assessed at face value as described, as a proposed Hotel/guest house.

### ***Principle***

Although the proposal would result in the loss of a C2 residential care home, there is no specific policy contained within the core strategy that resists the loss of the C2 use.

Core Strategy Policy 5 supports the retention, upgrading and enhancement of visitor accommodation to meet the changing consumer needs. The Council supports suitable new tourist and leisure facilities with a particular focus on the town centre and seafront area. The overall aim is to enhance visitor accommodation to support the regeneration of the town and help seasonality.

There is a need to provide accommodation for a variety of visitor needs from lower budget to more 'high end' corporate requirements. It is not clear from the application details precisely who the target market for the proposed accommodation would be, but the proposal would make a small contribution towards the visitor economy by providing 18 new bed spaces with a mix of en-suite rooms and those with shared bathroom facilities, catering for a range of visitor needs. The site is sustainably located within walking distance of local facilities and public transport connecting to the town centre and surrounding area.

The loss of the former care home is acknowledged but there are no policy grounds to resist the proposal on these grounds. The principle of conversion of the existing care home to form hotel/guest house accommodation would therefore be acceptable subject to detailed consideration of the impacts on visual amenity, the amenities of neighbouring residential occupiers and on parking and access.

### ***Visual amenity***

No external alterations are proposed to the building. There would be no significant harm to the visual amenities of the site or surrounding area subject to suitably designed cycle storage to be agreed by condition.

### ***Residential amenity***

The site is located in a predominantly residential area with neighbouring houses and flats sited close to the boundary with the application site at 125 Lyndhurst Road to the west, where there is a vehicular access to a rear parking area to the immediate west of the site, and 1 Ladydell Road to the north.

Although the number of bedrooms remains as per the former care home use with 19 rooms proposed, one of which would be reserved for staff use, the use as a hotel/guest use may result in some increase in the level of activity at the site in terms of arrivals and departures. However, there is no bar or restaurant or evening meal service offered and so noise or odours from such activities would be absent here. The Council's Environmental Health Officer has raised no objection to the proposed use. Bedroom configurations remain similar to the former care home use and would not result in any significant loss of amenity to neighbouring occupiers.

### ***Accessibility and parking***

Four parking spaces are detailed on the site plan, including the existing garage which the Highway Authority considers could be used for staff parking and a further staff parking space, representing a shortfall of 5 spaces against maximum demand. The application site is located in a sustainable location, with access to local facilities and public transport links. The site is within the Controlled Parking Zone. A Travel Plan Statement has been prepared in order to encourage and promote use of cycling, walking and public transport for guests.

Although a parking shortfall would exist, the Highway Authority considers that the sustainable location of the site would make sustainable transport modes a realistic option for guests, and makes suggestions to improve the travel plan including promoting the hotel as a 'cycle friendly' destination. The Highway Authority considers that existing parking controls would ensure that additional on street parking would not be detrimental to highway safety and does not consider that there would be a 'severe' impact on the highway network therefore, in accordance with the NPPF, there are no transport grounds to resist the proposal. Parking and access is considered acceptable.

### **Recommendation**

#### **APPROVE**

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

1. Approved Plans
2. Standard 3 year time limit
3. Use limited to hotel/guest house only
4. Standard hours of demolition/construction/works
5. Storage of refuse/recycling to be agreed
6. Cycle storage to be agreed
7. Travel Plan Statement to be agreed

Application Number: AWDM/0436/18

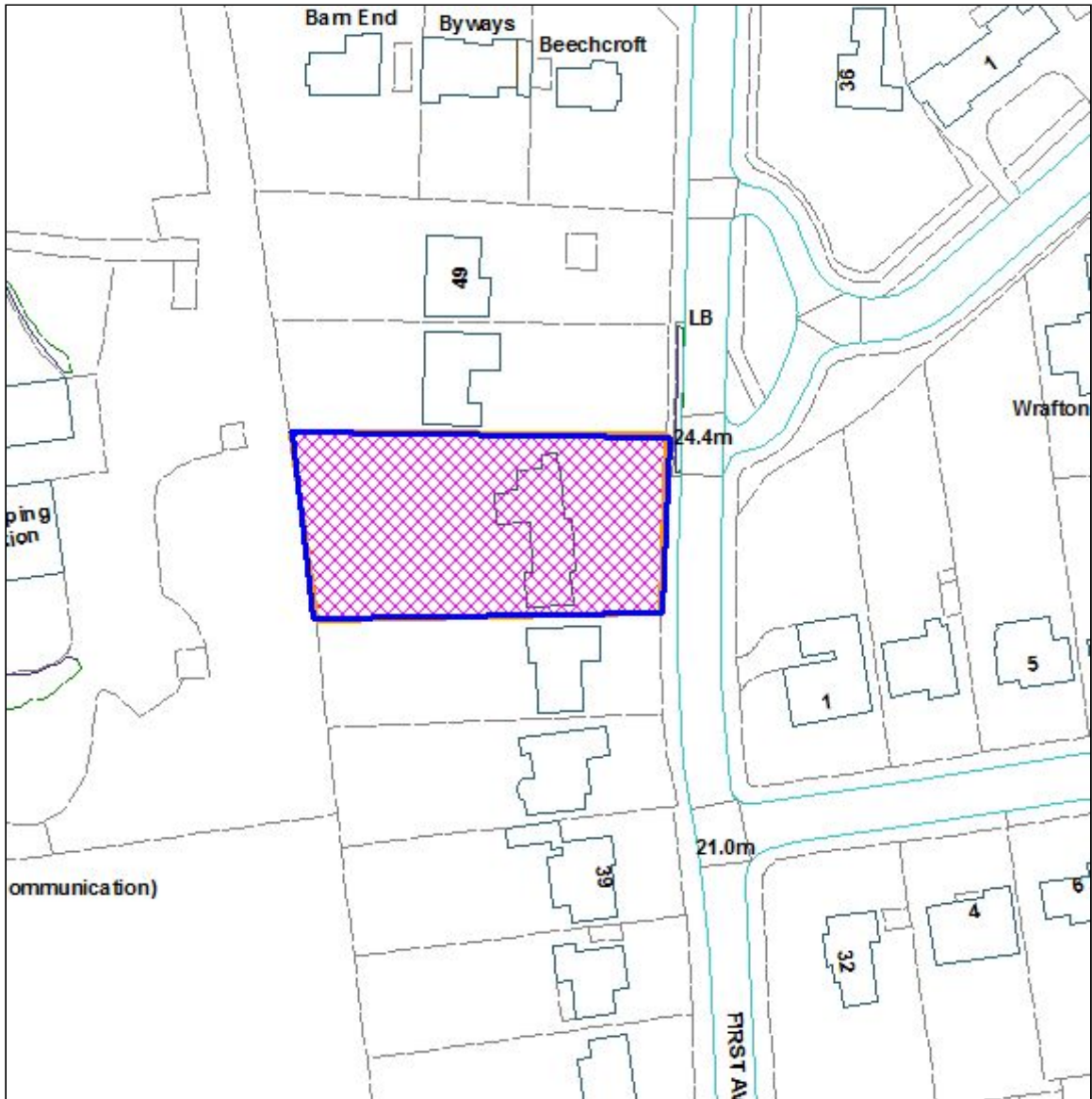
Recommendation – APPROVE

Site: 45 First Avenue Worthing West Sussex BN14 9NJ

Proposal: Demolition of existing dwelling and attached garage and erection of two detached dwellings with integral garages.

Applicant: Mr & Mrs Wheatland  
Case Officer: Jo Morin

Ward: Offington



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The application has been called-in to Committee by Councillor Louise Murphy.

## **Site and Surroundings**

The application relates to a detached house with attached double garage occupying a wider than average plot on rising ground on the west side of First Avenue. The plot is roughly rectangular in shape measuring (maximum) 61 metres deep x (maximum) 30.4 metres wide. The existing dwelling dates from the early 1960's. It is positioned approximately 15 metres back (west) from edge of the public highway with landscaped gardens to the front and rear. There are a number of mature trees in the front and rear gardens which are the subject of Tree Preservation Order No. 31 of 2003. (This updated an earlier TPO No. 14 of 1985 although both are valid.)

The road is located within an outer residential suburb of the town and is primarily made up of detached houses occupying spacious plots with mature landscaping and numerous trees, including street trees, contributing to its attractively verdant, low density character. The adjoining property to the north (No. 47) consists of a detached 2-storey house dating from the mid-1980's sited on notably higher ground than the application property. It is set substantially further back (west) into its plot than the application property with a number of large trees on the deep frontage also subject of the TPO No. 31 of 2003. Adjoining to the south, No. 43 consists of a detached, gable-fronted house sited on marginally lower ground than the application property. The forward-projecting gable element of this dwelling extends further forward (east) in its plot than the front of No. 45, although the main 2-storey body of the dwelling occupies a similar building line to No. 45. Nos: 43, 45 and 47 are all well screened from the road by mature hedge planting on their front boundaries.

The site adjoins the wooded grounds of the Southern Water Pumping Station to the rear (west); roughly 1.1 hectares in area with many of the trees subject to a separate Tree Preservation Order (No. 52 of 1990).

## **Proposal**

Full permission is sought to demolish the existing dwelling and sub-divide the plot to construct 2 no. detached, 2-storey, 4-bedroom houses with integral garages. The proposed dwellings are both similar in style but differ in their detailed design. Each would be 10.6 metres wide and (maximum) 14.6 metres deep. The southernmost dwelling (on Plot 1) would have a hipped roof. It would have a stepped front elevation with the integral garage projecting forward at ground-floor and a cat-slide roof extending over the garage at first-floor with a front dormer. The main roof would have a short north-south ridge 8.8 metres high. The submitted site plan shows the dwelling on Plot 1 would be sited 2.4 metres from the southern site boundary set back (west) from the back edge of the pavement by a (minimum) 13 metres. The northernmost dwelling (Plot 2) would have an identical footprint 10.6 metres wide and (maximum) 14.6 metres deep, but with a taller hipped roof having a short north-south ridge 9.5 metres high. It would also have a stepped front elevation with a 2-storey front-projecting gable feature to the south. This dwelling would be positioned a minimum 3.2 metres from the northern side boundary with the front-projecting gable feature sited some 20 metres from the front boundary.

The dwelling on Plot 1 would be served by the existing vehicle access from First Avenue, on the south side of the frontage. A new vehicle access from First Avenue would be formed to serve the dwelling on Plot 2. This is shown sited on the front

boundary some 10 metres south of the northern site boundary. The frontages of both new dwellings would each be laid out with drives and a short turning area. The dwellings would have overall rear garden depths varying between 24-29 metres deep.

The application is accompanied by a Planning and Design Statement, an Arboricultural Report and Statement by Phillip Ellis Tree Care Consultant, a Bat Emergence Survey Report by Arbeco Ecology, a Badger Survey Report by Arbeco Ecology and a copy of pre-application correspondence with WSCC Highways.

### **Relevant Planning History**

An earlier application for demolition of the existing dwelling and garage and erection of a pair of detached houses with integral garages and associated landscaping (AWDM/0536/17 refers) was withdrawn.

### **Consultations**

**West Sussex County Council:** The Highway Authority has raised no objection commenting:-

*“West Sussex County Council was consulted previously on Highway Matters for this location under planning application AWDM/0536/17 for the demolition of 45 First Avenue and erection of a pair of detached houses. While initial concerns were raised with regard to visibility at the proposed site access point these were removed after consultation with the applicants transport consultant. The additional supplementary information and plans demonstrating visibility at the proposed site access point have been submitted in support of this application. It is noted that AWDM/0536/17 was later withdrawn by the applicant. This application seeks the demolition of 45 First Avenue and erection of two detached dwellings with integral garages.*

#### Access & Visibility

*Both plots would gain access to the maintained highway network via dropped crossing point of access onto First Avenue, which is an unclassified residential road subject to a 30 mph speed limit.*

*Plot 1 would be served via an existing dropped crossing. Given there would be no net change to the vehicular activity at this point of access, no highways concerns would be raised to this. Plot 2 would be accessed via a new point of access. The applicant has previously demonstrated that available visibility at this access point was acceptable to the Local Highways Authority. As such no highways concerns would be raised.*

*The proposed access works must be implemented under licence to a specification obtained from WSCC Highways.*

#### Parking

*Each plot will be provided parking in the form of a garage and frontage hardstanding space. I note the proposed garages accord with WSCC recommendations for internal size (3 x 6 metres), as such they would be considered adequately sized to*

*also accommodate cycle parking. The proposed parking and turning provisions would be considered adequate for dwelling of this size in this location.*

### Conclusion

*The Local Highway Authority does not consider that the proposal would have 'severe' impact on the operation of the highway network, therefore is not contrary to the National Planning Policy Framework (paragraph 32), and that there are no transport grounds to resist the proposal."*

Conditions relating to the provision of the new access, parking and turning, and use of the garages for parking (vehicles and cycles) are recommended if the Local Planning Authority is minded to grant planning consent.

The **County Ecologist** initially raised holding objection, commenting as follows:-

*"Further information, (pertaining to badgers), is required to allow a suitable determination.*

### Badgers

*There is anecdotal evidence from an informed third party that an additional (fourth) badger entrance hole has opened up on the application site immediately adjacent to the planned footprint of the proposed demolition and build. Additionally, the sett extent hasn't been established as there is evidence of additional sett entrances on the neighbour's property (no.43) and possibly the Southern Water site to the west, making this a substantial urban badger sett. Further information is therefore required to:*

- *Establish the extent of the sett*
- *Assess the potential new sett entrance near the proposed building footprint*
- *Re-assess the mitigation in the light of this information*

### Bats

*The surveys are compliant and the mitigation proposed is appropriate and proportional. I would judge that Natural England would grant a European Protected Species licence based on the outline mitigation/compensation proposed. I would recommend an informative on any future approval reminding the applicant of their duties to secure a licence prior to the building's demolition or risk prosecution."*

Following submission of an Up-dated Badger Survey Report, the following further comments have been received:-

*"Additional badger survey information has now been provided to the LPA. A 14-hole, active, main sett has been recorded within the three properties of 43 First Avenue, 45 First Avenue and the Southern Water land. A disused annex sett (single hole) was recorded in the front garden of 47 First Avenue. Fig 6.1 of the Badger report appears to indicate that the construction footprint will be at 11.5m from the nearest active sett entrance (A6).*

*The badger report promotes a non-licensed precautionary method statement to be followed throughout the development to ensure that the works are undertaken in line with the legislation protecting badgers. However, due to the proximity of the*

*development and the requirement for a boundary fence, (that will be erected through the centre of the sett, running immediately adjacent to active entrance A7), I remain unconvinced that these works can be implemented outside of the licencing regime.*

*I have requested a view from Natural England (05/06/2018). However in the interests of expediency and subject to their later response, (should they choose to respond), and if the LPA is minded to approve, I recommend a condition is imposed with the aim of securing a badger licence prior to the implementation of the development.*

*My view regarding the site's bat interest remains unchanged.*

**Recommended Condition**

*No development or any preparatory work shall take place unless and until a licence to interfere with a sett has been secured from Natural England. In the unlikely event that a licence is not required, a detailed badger mitigation plan supported by up to date survey information, as appropriate, shall be submitted to and approved in writing by the Local Planning Authority. The works shall thereafter not be implemented other than in complete accordance with the approved details.”*

**Southern Water** has raised no objection, commenting as follows:-

*“The exact position of a public water main (crossing the site to the rear) must be determined on site by the applicant before the layout of the proposed development is finalised. No excavation, mounding or tree planting should be carried out within 6 metres of the public water main without consent from Southern Water. No new soakaways should be located within 5 metres of the water trunk main and all existing infrastructure, including protective coatings and cathodic protection, should be protected during the course of construction works.*

*The site is located in the vicinity of the Broadwater Public Water Supply Abstraction (Groundwater Source). This is critically important public water supply with extensive shallow ‘adits’. The close proximity of the source and sensitivity of the public water supply means that careful consideration must be given to the protection of the public water supply. Therefore, Southern Water would prefer that surface water from the proposed development to be disposed to the nearest public surface water sewers to avoid risk of contamination of the groundwater water supply. 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.*

*Due to the vibration and noise generated by water boosters and pumping stations, no habitable rooms should be located closer than 15 metres to the boundary of a proposed site for this apparatus.*

*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*

*In the event of approval Southern Water requests an informative advising the applicant a formal application for a connection to the public sewerage system is required in order to service the development.”*

**Adur & Worthing Councils:**

The **Council’s Tree and Landscape Officer** has no objection providing the recommendations within the submitted Arboricultural Report are followed.

The **Contaminated Land Officer** recommends the full contamination condition.

The **Environmental Health Officer** comments that as the property lies within 300m of the Worthing Air Quality Management Area, it is recommended that the development incorporate electric vehicle charge points within the garages. Installation at the construction stage is more economical and less intrusive than a retro-fit and prepares the property for future changes in the vehicle mix, whilst encouraging the uptake of electric vehicles. Where this is not possible then an electricity connection point capable of taking a 7kW charge point should be installed within the garages.

The **Council’s Engineer** comments as follows:-

*“The proposed site lies within flood zone 1 appears to be unaffected by surface water flooding, and has no known history of flooding.*

*The applicant has indicated the intention to use soakaways, which would be appropriate for the development.*

*The applicant will need to assess if the use of soakaways is viable on this site. The proposed location for any soakaways will need to be more than 5m from existing or new structures, and there will need to be a soakage test undertaken at each location to ascertain if a soakaway will adequately empty. There appears from the drawings to be sufficient area to adequately site soakaways, both in the front and back gardens, to deal with roof and parking drainage.*

*Therefore 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 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 permeable paving designs, along with the rainfall calculations with the additional rainfall quantities appropriate for climate changes, as required under planning policy.”*



The **Waste Services Officer** comments that the new properties can have a standard service.

## **Representations**

18 letters or emails of objection have been received from (amongst others) the residents of Nos. 33, 36, 37, 38, 39, 46, 47, 49, 51, 83 First Avenue; 49, 51 Longlands; 3 Second Avenue; Chalk Down House, and Beechcroft, Fifth Avenue raising the following concerns (which have been summarized):-

- My view has not changed since the earlier application. The planning policy states that the right homes (type, size, tenure and design) to be built in the right location in the most sustainable and accessible locations. The proposal would be an overdevelopment of the plot and out of character with the immediate location;
- A successful application would set a serious precedent for the development of other 1.5 plots in the Charmandean area and a change in tone of this 1930s estate on the edge of the National Park. Concerned this will be the 'thin end of the wedge' and the application should be blocked now before an avalanche begins. Who will be next to be seduced by the profit that can be made.
- A precedent will be set which will result in a far higher building density and loss of character for Charmandean as well as access problems at the A27 junction on First and Third Avenue and potential consequences for property values.
- The design, appearance and materials appear to be out of character with the traditional brick houses of First Avenue. The development will add further traffic, noise and disturbance to this area which has already been impacted by development at Worthing College and the Pumping Station at Hill Barn Lane.
- The submitted documentation states these [properties are needed to provide additional family accommodation but I would suggest that the primary aim of the development is for commercial profit and it will be priced such that the average family will not be able to afford one of the new properties; The reason given for the development is misleading. The proposed two dwellings are completely independent of each other, driven by a desire for maximum personal financial gain.
- I am aware of at least one badger sett in the rear garden and understand that the 'Protection of Badgers Act 1992' has strict regulations over interference or damage to existing setts.
- I am concerned that the development of the site will impact on the many bats in the near location. Whilst the impact on bats can potentially be mitigated to this site the submitted Arbeco report does not consider the implications to bats living nearby and an additional report should be prepared to this effect setting out what other measures will be required;
- I am concerned that on an estate of this calibre it is proposed to remove a large desirable house and replace it with two smaller (and therefore cheaper) houses which will reduce the high quality of the estate. If Worthing wants to have an 'executive' state for senior personnel of local industry to live in then cramming in smaller houses will damage the attractiveness of the estate. The original design has served Worthing well and there is no good

reason to change it. It would lead to the loss of a balanced range of housing across the town making it harder to attract larger employers.

- Planning Policy Statement (PPS3) specifically restricts back garden development as it is no longer considered brownfield land. There is no justification to provide large individual properties by 'garden grabbing'.
- The character and open area of the area will be compromised by the development; creating a cramped and overdeveloped site and changing the streetscene dramatically; this is far from a modest form of development. It is large and cramped for the site by building two properties where one now exists..
- The status of the area as a Residential Area of Special Character would be threatened by the development;
- We recognize the requirement for affordable housing but this is not an example.
- No two houses in this street are of the same design or exact footprint which contributes to the unique character of the area. All the houses along this stretch were designed with separate garages. A small number of houses have extended the area around the garage and only in these circumstances do you see an integral garage. This type of extension is an understandable response to the need for additional family accommodation not the demolition of an existing dwelling and creation of 2 separate dwellings.
- There assertion that the two plots created are broadly similar in width and area to those adjoining to the south and within the range of plot sizes found in the near vicinity is simply not correct. The plots at No.47 and 49 have frontages some 50% greater than those of the 2 plots created.
- The siting of the dwellings is of concern as there should be no advancement of the building line from the existing property. The siting has no doubt been influenced by concerns about the badgers sett. The protection of existing bat flight paths is paramount and the erection of properties with different dimensions and locations must be a negative factor,
- A significant development of this type should have been publicised by a site notice.
- The additional access is something that should be avoided as 'in and out' driveways have not been received positively; why should the creation of an additional driveway be treated differently.
- The suggestion that the developer will live in one of the houses for 3 years is not an endorsement for long term residency but an acknowledgement of the requirements for self-build.
- The effect on the residents on immediately adjacent properties should not be underestimated. The inconvenience in terms of dust, noise, commercial traffic and pollution during demolition coupled with the long term development will be very significant. The only person to benefit from this proposal is the applicants themselves.
- The plot is not big enough to take 2 x 4-bedroom houses and would look out of keeping in Charmandean which comprises of 4-6-bedroom houses with a generous amount of space between each one. The design is too dense for the size of plot. The development will 'stick out like a sore thumb' in the Charmandean area.
- The placing of 2 driveways right opposite Longlands is dangerous and could cause accidents.

- There will be a lack of privacy, light and increased noise to adjacent properties.
- Having looked at the supporting documentation I do not recognize the positioning of trees and surrounding properties are portrayed. I do not agree with the positioning, dimensions, plans, elevations or heights of any part that relates to 47 First Avenue and would but the developer to strict proof prior to any successful application – I have made this position known to the Planning Officer and the fact that this makes further specific objection almost impossible. It is noteworthy that the position and design of No.47 First Avenue has changed compared to the earlier withdrawn application. The positioning and size of protected trees is wrong.
- It is obvious the proposed 2 properties have been shoehorned into this plot that is only 1.5 times the usual plot width. The 2 metre gap between the full-height double-storey properties is totally out of character with the spacious feel of the road and will almost seem if the 2 properties are linked together. The resulting development will provide the 2 smallest plots in the road – once this precedent has been set the whole character of the road will be thrown into doubt.
- There is no shortage of this type of property in the area. What is needed is 'starter homes' which too would be out of character with the area.
- The density will be almost double that existing giving a saturated look and will be a visual blight on the street view and amenity of First Avenue.
- There will be significant loss of light to the ground-floor front (east) elevation of No.47. The drawing makes reference to a 45 degree line of sight from the centre of the ground-floor window but I have been unable to ascertain whether this has an impact of direct sunlight or visual impact. The gap for sunlight between the north-east corner of Plot 2 and the trees (in front of No.47) is 10 degrees. This is not as represented in the developers drawing as the trees have been 'creatively' inserted on the plan. If the 45 degree arc refers to the impact on visual amenity then it should be taken from the southern facing aspect which will be looking directly at the new development from just a few metres away. If the development is allowed to proceed then part of the outlook from the bay window will be straight at the northern façade of Plot 2 and will in fact look straight at the en-suite window.
- The tree as situation will not serve to screen the proposed development, looking south from No47 the proposed dwelling will merely serve to obstruct sunlight and plunge the lounge into darkness. The group of trees T5, T6 and T7 are large as shown in the photos taken by the Planning Officer.
- The supporting documentation suggests there is a continuous hedge boundary separating the development from the southern boundary of No.47. This is not the case and merely serves to mislead the developer's case. The north elevation of Plot 2 will completely block off a gap where natural light flows into No.47. The only time when sunlight will shine into the lounge window will be in the summer when the sun is high enough not to be obscured by the roofline of Plot 2.
- There are 2 windows in the north elevation of Plot 2 which due to the difference in elevations will look into the lounge of No.47 and the roof window looking up into the bedroom. These windows should not be allowed in any form. Ventilation could be adequately served through an extractor fan whilst light provided through a light tube. I do not want to be given a view

into a neighbour's bathroom. Non opening obscured windows would not be an adequate solution.

- The chimney outlet on Plot 2 would result in fumes carried on a southerly wind being carried into the bedroom at No.47 and would be detrimental to health.
- A potting shed to the south side of No.47 has existed for some 11 years. The glass façade is partially obscured by a tree the developer has allowed to grow to hide it. If Plot 2 were built there would be no sunlight entering the shed rendering it useless.
- The information within the Highway Agency report is confusing which I have expressed to the Planning Officer. It seems the development fails the highways criteria as the driveway for Plot 2 fails to address the matter of the trees abutting the highway in front of No.47. The Highways Authority should give greater clarity in this regard rather than relying on assertions of the developer that cars coming south will hug the eastern side of the road allowing the development to comply with the regulations. The Highways report makes no mention of the fact that First Avenue is a 'rat-run' from A27 to Worthing College resulting cars speeding up and down First Avenue. Very little is mentioned of the exit of Longlands to First Avenue which means people existing from the driveway of Plot 2 will have to contend with speeding cars.
- The submitted state states that each property will have adequate parking and turning facilities in their front gardens. The plan shows a hammer head of just over 1 metre. Good luck if that works.
- As No.47 is set back quite some way in its plot a far greater value is placed by the occupants on the maintenance and use of the front garden. Whilst the development of Plot 2 may not overshadow the rear garden of No.47, the one part of the front garden that is not shaded by trees would never see sunlight again.
- The Council should instruct its own experts on the matter of the badgers and bats on the site and it is doubted the presentation of facts in the submitted report can be relied upon 100%.
- Documentation submitted with the report implies that prior to its withdrawal in 2017 the development as then presented did not adequately respect the spacious character of development in this road as long ago as 2013. This was reiterated by the Planning Officer in 2017 giving reference to the siting, size and bulk of the development impacting unacceptably on both adjoining dwellings. I do not believe the developer has altered the overall scale and density of the development for this no longer to be the case. The level of reductions in width is simply unclear but should be put to strict proof. It is to be expected that any documentation provided by the developer will only serve to further his case but the application and supporting documents are so misleading the application should be dismissed immediately.
- The proposed development will affect the wildlife that comes through First Avenue. I have seen many badgers entering the garden and seen them use neighbouring properties as a conduit to and from the park between Second Avenue and Fourth Avenue. There has already been a loss of trees and vegetation with recent development at Worthing College and Hill Barn Lane which has had a detrimental impact on local wildlife
- The proposal will result in the total overbearing of the principal living area of my property. The plans do not show the true extent of my property and are

therefore wholly misleading, particularly as all of my extension is single-storey with a glass roof.

- The plans do not show that the proposed development is on much higher ground and will tower over my house and be overlooking and overbearing in nature. The existing single-storey garage adjoining my property would be replaced by a dominant 2-storey brick wall and roof, protruding approximately 4.5 metres past the back of my house little more than 2 metres from the dividing fence totally overshadowing my main living space.
- It is suggested that as the development is to the north of my property it would not give rise to a loss of light or overshadowing, this is clearly wrong. Two bathrooms at ground and first-floor on the north side of my property would be plunged into darkness.
- A door and window opening from a ground-floor utility (in the side of Plot 1) would look straight into my kitchen. There is an additional window proposed in the roofspace with no restrictions. Due to the higher nature of the ground the rear door in the rear of the property (Plot 1) will look into my garden.
- The presence of solar panels is entirely out of keeping with the locality.
- The proposed development is completely out of character as each one of the one hundred or so detached houses in First Avenue sits in a comfortably sized plot with space around it giving a spacious feel. Every other house in the road is separated from its neighbor by a large distance or at least a single-storey garage. There is nowhere on the road where 2 properties have been squeezed into one plot. At best it could be called a 1.5 size plot which is not substantial enough to accommodate 2 large family houses. The developed area of the plot will increase from 12.67% at present to 24.64% - almost doubling.
- There is no reference to the provision or siting of soakaways for each plot which is a concern for Southern Water and could cause interference with the badger sett.
- There is concern about the siting of the second driveway as this is opposite the busy and narrow junction with Longlands. A highway safety report should be commissioned taking account of the increasingly busy and dangerous conditions resulting in 'Speedwatch' requiring a monitoring station. Another exit at this point would increase danger for pedestrians and cyclists.
- The applicants appear to be professional property developers as sole directors and shareholders of KAL Homes Ltd and this company seems part of the application process.
- The proposal seeks to ride roughshod over pre-existing and long established protected species that occupy the site, namely badgers, several species of bats and stag beetles. The previous application was accompanied by an Arboricultural report based on site inspection in February 2017. The applicant denied at Section 13 (of the forms) the presence on site of protected species despite knowing very well of a long standing badger sett. The applicants also failed to disclose or make reference to the presence of several species of bats. The current application does not acknowledge the obvious adverse effects that will be caused to land adjacent to or near the application site in respect of protected and priority species and important habitats. The submitted Arboricultural report, Badger Survey report and Bat Emergence Survey report are commissioned and paid for by the applicants and both individually and collectively seem predicated on the proposed development being both desirable and a fait accompli.

- The Arboricultural report is dated 12 January 2018 but based on a site inspection of 8 February 2018. The report includes photographs taken in 2017 [submitted as part of the previous application]. The report omits to include 2 existing trees – an Amelanchier Lamarkii in the centre of the rear garden, and a young beech tree on the southern boundary between Nos. 43 and 45. Any proposals for the future of these trees is not reported. No mention is made of the mutilation of a mature Copper Beech (T.10) understood to be a protected tree other than a recommendation to ‘reshape crown to balance’.
- There is a long established badgers sett in the rear gardens of No’s 43 and 45 together with the Southern Water site to the rear. Since No. 45 was acquired by the applicants there appear to have been systematic efforts to discourage the badgers’ presence by habitat clearance and occasional blocking/filling in of the entrances. The sett remains very active and comprises approximately 9 entrances of which at least 4 are present in the garden of No. 45 as confirmed by a visit to No. 43 by the West Sussex Badger Trust in April 2018.
- The submitted Badger Survey Report based on a field survey on 17 May 2017 is hopelessly out-of-date and at odds with standing advice set by Natural England. No attempt has been made to establish the full extent of the sett, or in the case of No. 45 to disclose the entrance to the sett in the centre of the rear garden. There is no doubt that if the development were to proceed it would have a substantial effect on the sett by damage to the sett and disturbance through works, the erection of a substantial fence through the centre of the plot and the additional human activity/influence. These impacts can be avoided by rejecting the overdevelopment of the site and leaving the badger sett in peace.
- The Bat Emergence Survey Report prepared by Arbeco suggests 45 First Avenue was confirmed as a bat roost in March 2017 even though the applicants denied the presence of protected species in their 2017 application. The surveys undertaken in June, July and August 2017 seem well out-of-date and not compliant with Natural England Guidance. No surveys have been undertaken at dawn nor a hibernation roost survey, a mating roost survey, a swarming roost survey or any analysis of the various species bat foraging in the tree lines/hedgerows. Two important species of bat are recorded on the site – Serotine and Barbastelle. The Barbastelle is a UK Biodiversity Action plan Species which means it is a conservation priority on a local and national scale.
- The development will result in confirmed – and probably irreparable damage inflicted upon the richly diverse local environment and to the protected species of badgers, bats and stag beetles. The presence of protected species is a material planning consideration and NPPF is clear that pursuing sustainable development includes moving from a net loss of biodiversity to achieving net gains for nature and that a core planning principle should be that planning contributes to conserving and enhancing the natural environment and reducing pollution. Section 40 of the Natural Environment & Rural Communities Act 2006 provides that every public body must in exercising its functions have regard so far as is consistent with the proper exercise of those function to the purpose of conserving biodiversity.

A representation has been received from the Badgers Trust acknowledging that the Badger Survey Report prepared by Arbeco (August 2017) is generally in accordance with Natural England guidelines but cannot be considered to be current. It is reported that the existence of an additional sett entrance at the site – only a few metres west of the proposed development footprint – is not referred to in the August 2017 document. It is essential a revised independent survey is prepared that fully reflects the current badger ecology and that Natural England is consulted as appropriate to the 2015 Guidelines. The Eurasian Badger is protected by the 1992 Badger Protection Act. Additional protection and habitat conservation is provisioned under Schedule 6, 1981 Wildlife and Countryside Act.

Following submission of the Up-dated Badger Survey, the following further representation has been received from a neighbouring resident:-

- The Updated Report is dated 16 May 2018 based on a visit said to have been made on 9 May 2018.
- A long-standing entrance to the sett in the garden of No. 43 has been omitted and the positioning of other entrances to the sett within No. 43 appear to have been changed.
- Arbeco claim not to have been able to access No. 43 First Avenue which is a staggering omission given the purpose of the further work proposed by WSCC and the Badger Trust. A professional would have sought to make appointments in advance with owners of adjoining properties in order to complete a full survey. This single-minded disregard for other interested third parties appears to support the view that Arbeco cannot and should not be regarded as independent.

### **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; 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.

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

Worthing Core Strategy 2006-2026 (WBC 2011): Policy 7, 8, 9, 13, 15, 16, 17

Worthing Local Plan (WBC 2003) (saved policies): RES7, H18, TR9

Supplementary Planning Document 'Space Standards' (WBC 2012)

Supplementary Planning Document 'A Guide to Residential Development' (WBC, 2013)

Worthing Housing Study (GL Hearn 2015);

Worthing Strategic Housing Market Assessment Up-date (GL Hearn 2012);

Community Infrastructure Levy Charging Schedule (WBC 2015);

Supplementary Planning Guidance 'Parking Standards and Transport Contributions' (WBC 2005)

National Planning Policy Framework (CLG 2012)

## National Planning Practice Guidance (CLG)

### **Planning Assessment**

The Core Strategy, including the saved policies of the Worthing Local Plan, comprises the Development Plan here but the Government has accorded the National Planning Policy Framework (NPPF) 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 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 the Council cannot demonstrate a current 5 year supply of housing in respect of Objectively Assessed Needs (OAN) and the Council needs to assess the housing delivery strategy set out in the current Development Plan. A Housing Study has been published to this end (GL Hearn, 2015) and further work is being advanced as part of the new Worthing Local Plan. However, the emerging Local Plan is at an early stage and has no formal status in the determination of planning applications.

As such the proposal will principally be 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 by saved Worthing Local Plan policies H18; TR9, and RES7, Core Strategy policies 7, 8, 9, 13, 15, 16 and 17; the policies set out in National Planning Policy Framework and allied Practice Guidance; and the Council's SPDs on 'Space Standards' and 'Guide to Residential Development'.

The key considerations are:-

- The principle of residential development
- Impact on the character and appearance of the area including trees
- Impact on the amenity of future occupiers and neighbours
- Impact on ecology and biodiversity
- Access and parking

### **Principle of residential development**

The Core Strategy's housing provisions predate the NPPF and do not provide for the prescribed 5 year housing supply informed by an Objective Assessment of Housing Need (OAN). However, in terms of the contribution a net addition of one dwelling would make toward increasing the housing supply of the Borough is very marginal and therefore not in itself a determinative factor.

There is no objection in principle to the demolition of the existing dwelling. It dates from the early 1960s and has no particular architectural merit. The site is not



included in a conservation area, nor does the surrounding residential area have any designated special status.

In very broad terms the site can be considered sustainable to the extent that it lies within an established residential outer suburb within the built-up area. It is accessible, with several bus routes nearly along Broadwater Street West and Sompting Avenue/Upper Brighton Road, and local shops and other facilities reasonably close-by at Lyons Farm.

Policies 8 and 9 of the Core Strategy set out the general spatial strategy for new housing. Policy 8 states that within suburban areas such as this, only limited infilling will be supported, predominantly consisting of family housing. Policy 9 seeks to retain the existing housing stock unless the proposal results in a net increase in the family housing stock. The policy is approach is expanded upon in detail in the adopted SPD 'Guide to Residential Development'.

The NPPF at paragraph 53 allows Local Planning Authorities to set policies to resist the inappropriate development of residential gardens (defined as greenfield land), for example, where development would cause harm to the local area. To this effect, paragraph 4.23 of the Council's SPD makes it clear that new housing development should relate satisfactorily to its surroundings and the character of the area so that it fits in and does not have a significant negative impact on amenity. Whilst some types of development of garden land, such as tandem 'backland' development are specifically discouraged, paragraph 4.30 states that other types of backland/infill development, including the sub-division of a plot with its own street frontage can respond well to local distinctiveness: *"It can address the street and relate to the form and layout of the area. It is more likely not to intrude into the quite secluded garden area of the neighbouring gardens. However, it can also erode openness of the public realm"*.

Paragraph 4.33 goes on: *"Infill development requires sensitive design and good landscaping if new buildings are to be fitted successfully into small sites in established residential areas. Insensitive infilling that will negatively impact on areas character or amenity will be resisted."*

And paragraph 4.34: *"A backland or infill development should therefore contribute to the character of the existing locality. In broad terms, a proposal that fails to complement the local area in terms of design, density levels and layout will be refused."*

### ***Impact on the character and appearance of the area***

The surrounding area is made up of individual style C20 dwellings occupying spacious plots with mature landscaping contributing to the attractive character.

The majority of plots in the road typically have frontage widths in the range of 16 to 20 metres. The application property has a frontage width of 28.4 metres which is wider than average. The proposed new dwellings would each have a frontage width of 14.2 metres. Whilst narrower than average, the resulting plots would by no means be the narrowest in the road.

First Avenue has a low net residential density calculated at 11.2 dwellings per hectare (dph). The proposal development would also have a net residential density of 11.2dph. Although it is recognised that, particularly for small-scale development sites such as this, residential density in isolation is not an adequate measure of the acceptability of a development proposal, it is worth noting Council's above-mentioned SPD expects all new residential development to make the most efficient use of land (taking account of all other design and policy considerations).

The detached dwellings which make up the road are invariably 2-storey in scale and traditional in form and materials but within that broad definition exhibit a range of architectural styles and a diversity of detailed design with a plethora of features including double height bay windows, gables, tile-hanging, chimneys, decorative timber boarding and leaded windows.

The scale and massing of the proposed hipped-roof dwellings would be consistent with the broader character of dwellings within the road. They would have an identical footprint to each other and be similar in appearance but not identical reflecting the distinctive varied character of the road. Their materials, primarily consisting of brick elevations with tile-hanging to the upper floor on the front elevation and plain roof tiles with bonnets would harmonise with those of surrounding dwellings. A number of architectural details have been incorporated into the detailed design to add visual interest including a cat-slide roof with dormer, front-projecting gables, chimneys, bay windows, chimneys and exposed rafter feet.

The siting of the proposed dwellings, retaining a clear minimum gap of 2.4 metres to the south side of Plot 1 and 3.2 metres to the north side of Plot 2, would be consistent with the generally spacious character of development in the road. A limited gap of 2.2 metres would separate the 2-storey 'bulk' of the proposed dwellings from each other. However, the stepped ground levels and staggered siting of the dwellings from the back edge of the pavement and will help achieve a good sense of visual separation. Whilst the inclusion of integral garages may not represent the prevailing pattern of development, it is worth pointing out it is not unusual for other dwellings in the road to have attached or detached garages, or other single-storey elements, sited right up to a side boundary. Within this context it is considered the proposed dwellings would not result in an uncharacteristic cramped appearance nor appear at odds with the quality of architectural composition and detailed design from which the local area derives its attractive character.

Compared to the earlier withdrawn scheme (AWDM/0536/17 refers) the siting of the dwellings has been adjusted to allow for a bigger gap between the built development and north and south side boundaries involving a reduction in width of both dwellings by 650mm. The massing of both dwelling types has been adjusted to reduce their overall 'bulk' with enhanced detailing of the design incorporated including chimneys and exposed rafter feet. As originally submitted the chimney features were considered to have a slightly odd 'stubby' appearance and following discussion with officers an amended drawing has been received showing the height of the chimneys marginally increased by 300mm. The agent has confirmed the chimneys are not functional, being for decorative purposes only.

## ***Trees and hedges***

A number of trees on the site are subject to the TPO No.31 of 2003 whilst others are not. The protected trees include:-

- A Maidenhair tree within the lawned front garden (identified as T.3 in the submitted Arboricultural report by Phillip Ellis);
- A Beech tree within the front garden close to the northern boundary with No. 47 (identified as T.4 in the submitted report). This tree is protected as part of a group G.7 within TPO No. 31 of 2003 which straddles the boundary with No. 47.
- A Horse Chestnut, Copper Beech and 'Snake Bark' Maple within the western end of the rear garden identified as T.10, T.11 and T.12 in the submitted report. These trees form part of a larger group G.5 within TPO No. 31 of 2003 which extends northwards to include trees in the rear gardens of Nos: 47, 49 and 'Barn End' in Fifth Avenue.

Other trees identified on the site which are not protected, include 2 no. Pittosporum (identified as T.1 and T.2) in the front garden very close to the common boundary with No. 43; and 4 other trees (comprising Beech T.8 and T.9, Hornbeam T.13 and Purple Plum T.14) which form part of the group within the western part of the rear garden.

Only 1 tree (T.2) would be required to be removed to accommodate the proposed development - on Plot 1. This is the mature (unprotected) Pittosporum which is approximately 8 metres tall. The tree has an attractive shape and contributes to the landscaped setting of the existing dwelling and the distinctive verdant character of the road. It is, however, somewhat compromised by its close proximity to the existing garage at No. 45 and the north side of No. 43. It is not considered worthy of protection in its own right and the Council's Tree and Landscape Officer has raised no objection to its removal. A replacement flowering cherry is proposed within the front garden of Plot 1.

The proposed construction works are sited outside the Root Protection Areas (RPA) of all but one of the other remaining trees on the site (and the nearby TPO trees at No. 47). The driveway on Plot 2 will marginally encroach the RPA of the Maidenhair tree (T.2) which can be adequately protected in accordance with the measures outlined in the submitted Arboricultural Method Statement and Tree Protection Plan (included within the submitted Arboricultural Report).

Young trees and shrubs growing within the site adjoining the northern site boundary are shown as to be retained and will provide an element of screening between the proposed dwelling on Plot 2 and No. 47.

There is an existing privet hedge on the site frontage part of which will need to be removed for the proposed new vehicle access serving Plot 2. The submitted drawings show the removal of the existing hedging together with a replacement low level front wall to match the existing damaged wall with new laurel hedging planted behind.

### ***Residential amenity – effect on existing dwellings***

The affected properties are those to the north (No.47) and south (No.43).

No. 47 dates from the mid-1980s, as does its neighbor to the north (No. 49). It consists of a large, 2-storey, predominantly hipped-roof detached house with a front-projecting gable feature 'jettied' above a ground-floor bay window on the south side of the front elevation and an attached, front-projecting gabled garage to the north side of the front elevation. The ground floor elevations consist of brickwork with decorative 'Mock Tudor' boarding to the first floor elevations and plain-tiled roof with bonnet tiles to the hips. It is sited on higher ground than the existing house at No. 45 (by approximately 1.5 to 2 metres). It is sited at a slight angle to the boundary with the application site, the distance varying between 2.3 metres at its front (south-east) corner to 3.2 metres at the rear (south-west) corner. There is a 'potting' shed in the gap between the side of the house and the site boundary. There are no windows in the south side. A conservatory has been added to the rear on the south side of the rear (west) elevation. The siting of the dwelling (and its neighbour at No. 49) on the rear half of the plot is unusual in the road and was clearly influenced by the existence of the large trees on both site frontages included within TPO No. 31 of 2003 (and also TPO No. 14 of 1985 prior to that).

The neighbor at No. 47 has expressed concern about the accuracy of the submitted drawings specifically the siting of No. 47 in its plot and the positioning of trees, pointing out the positioning of No. 47 shown on the submitted site plan has changed compared to the plans submitted with the previous application AWDM/0536/17. It is true that the siting has altered and the siting shown in respect of the earlier submitted application was incorrect. However, it seems this error arose in part as a result of the positioning of No. 47 shown on Ordnance Survey incorrectly. There is no obligation on the part of an applicant to survey neighbouring properties when making a planning application. In this case, the distance of the south side wall of No. 47 from the southern site boundary has been verified by measurements taken on site by the planning officer. In response to the concern raised, the planning officer has verified a measurement (taken close to the site boundary within the garden of No. 45) from the adjacent front gable at No. 47 to the front site boundary.

This neighbor has expressed strong concern that owing to its forward siting in relation to No. 47 the dwelling on Plot 2 would have a severe impact on the receipt of sunlight and daylight to the ground-floor bay window in the front (east) elevation of No. 47 serving the living room. (The room in question is dual aspect, although the receipt of light to the rear has in part been compromised by the erection of the conservatory to the rear elevation.) The receipt of light to the front of No. 47 is undoubtedly impacted by the siting of the group of protected tall conifer and deciduous trees, the nearest of which is approximately only 5 metres from the front bay window. The window receives daylight from around the trees to the north and south. The receipt of both daylight and sunlight to the window from the south *will* be impacted by the bulk and siting of the dwelling on Plot 2. However, the submitted site plan shows that the siting of the dwelling on Plot 2 would not breach a 45° line taken from the mid-point of the bay window at No. 47. This is a standard 'rule of thumb' used to assess the effect of new development on receipt of daylight to neighbouring buildings. The highest part of the proposed hipped roof of Plot 2 would be sited some 8 metres from the northern site boundary and over 10 metres from a

line continued from the south side wall at No. 47. It is considered the bay window at No. 47 would continue to receive an adequate amount of daylight and sunlight over the hipped roof of Plot 2, bearing in mind the latter will be sited on markedly lower ground. The neighbor at No. 47 has questioned the accuracy of the street-scene drawing which shows the relative height of Plot 2 in relation to No. 47. However the applicant's agent has confirmed that this drawing is based on a survey of existing ground levels (undertaken in 2012) with access given by the neighbouring occupiers at that time.

Similarly the scale and bulk of the dwelling on Plot 2 will have an enclosing effect on the outlook from the ground-floor front bay window of No. 47. However, bearing in mind the hipped form of the proposed main roof combined with the difference in ground levels it is considered the impact will not be unacceptably overbearing. Openings in the north side of Plot 2 include 2 no. floor-to-ceiling windows at ground-floor serving the living room, a first-floor bathroom window and rooflight above (also serving the bathroom). The ground-floor windows will at a lower level relative to No. 47 and, the rearmost one in particular, screened by existing tree and shrub planting on the boundary. Nevertheless, it is considered pertinent to require these, along with the bathroom window, to be obscurely glazed with restricted opening to minimise the risk of mutual overlooking. The rooflight would be sited in the bathroom well above eye-line and it is considered unreasonable to require this to be fixed shut or obscure-glazed.

To the south of the site, No. 43 dates from the mid-C20 comprising a detached 2-storey house on slightly lower ground (approximately 0.5m) than the adjacent part of No. 45. The composition of the dwelling includes a front gable to the north side with cat-slide roof sloping down to a single-storey eaves height on this side with a modest-sized, centrally positioned dormer at first-floor. The dwelling has been enlarged by a conservatory to the north of the rear (west) elevation, which is not shown on the submitted site plan. The conservatory opens into the kitchen and forms part of the main habitable living area. There is a distance of 1.4 metres between the north side of No. 43 and the site boundary. There is a large clear-glazed kitchen window and two modest-sized obscured windows serving a bathroom at ground-floor in the north elevation of No. 43, and an obscure-glazed bathroom window within the dormer on the north side.

The conservatory at No. 43 extends beyond the rear of the existing single-storey double garage at No. 45 by 2-3 metres. The 2-storey element of the dwelling on Plot 1 would extend 4 metres further west than the existing garage, but is set further off the boundary at a distance of 2.4 metres. The scale and bulk of the proposed dwelling would result in an increased sense of enclosure and anyone sitting in the conservatory at No. 43 would certainly be aware of its presence. But it would not be unacceptably overbearing or oppressive, nor result in an unacceptable loss of light to the conservatory or the kitchen. Similarly, the ground-floor and first-floor bathrooms, which have a sole north-facing aspect will suffer some loss of daylight, but these rooms cannot be afforded the same level of protection as habitable accommodation.

Openings in the south side of Plot 1 include a back door (opening into a utility room) and en-suite bathroom window. There are 2 low-level rooflight windows serving this en-suite plus one other en-suite. It is considered pertinent to require the

ground-floor and first-floor openings to be obscurely glazed to safeguard privacy, with restricted opening to the en-suite window. However, as with Plot 2, the rooflights would be sited well above eye-line and it is considered unreasonable to require these to be fixed shut or obscure-glazed.

### ***Residential amenity – living conditions of future occupiers***

The gross internal floor area of the proposed dwellings would be 180sqm+ and well in excess of the minimum floor area of 106sqm set out in the Council's 'Space Standards' SPD. The main habitable accommodation would have an aspect either to the east or west, overlooking the front or rear gardens. The rear gardens (both over 20 metres deep) would be considerably in excess of the minimum rear garden area of 100sqm required for a large semi or detached house. Both new dwellings would provide a good standard of larger family housing.

### ***Ecology and biodiversity***

Paragraph 109 of the NPPF states that the planning system should contribute to and enhance the natural and local environment by (amongst other things) minimizing impacts on biodiversity and providing net gains in biodiversity where possible contributing to the Government's commitment to halting overall decline in biodiversity, including establishing coherent ecological networks that are more resilient to current and future pressures.

Paragraph 118 states that in determining applications local planning authorities should aim to conserve and enhance biodiversity and in doing should refuse planning permission where significant harm resulting from a development cannot be avoided, adequately mitigated or, as a last resort, compensated for.

### **Bats**

All UK bat species are protected under UK and European legislation. In England bats and their places of shelter or protection are protected under the provisions of the Wildlife and Countryside Act 1981 (and within European under Schedule 2 of the Conservation of Habitats and Species Regulations 2010). These pieces of legislation make it an offence to:-

- Deliberately, intentionally or recklessly disturb, capture, injure or kill a bat
- Obstruct, damage or destroy a place used for shelter or protection; and
- Damage or destroy a bat roost (breeding site or resting place).

The application is accompanied by a bat emergence survey report undertaken by a licensed ecologist (Arbeco), which, following 3 no. emergence surveys undertaken in June-August 2017 identifies the site as a confirmed bat roost and confirmed maternity roost for common pipistrelle bats. Common pipistrelle bats were recorded foraging and commuting in the garden of the property throughout the 3 no. emergence surveys and 'passes' by other bat species recorded (Serotine and Barbastelle).

The report concludes that, in the absence of mitigation, the proposed development work comprising the demolition of the existing property and construction to two replacement dwellings will result in the permanent loss of a maternity roost for

common pipistrelle bats, impacting on the favourable conservation status of this species in the local area and necessitating that the works be carried out under a European Protected Species Mitigation (EPSM) licence attained from Natural England in the event of planning permission.

The report includes an outline bat mitigation strategy which seeks to ensure any potential impacts to bats are adequately addressed and the favourable conservation status of the species in the local area is not affected. The proposed mitigation and compensation measures include the incorporation of bat tubes in the wall of each of the proposed new properties and provision of two tree-mounted bat boxes.

Notwithstanding the comments of the third parties, the WSCC Ecologist is satisfied that the bat surveys that have been undertaken are compliant and the mitigation proposed is appropriate and proportional. He considers it likely Natural England will grant a European Protected Species licence based on the outline mitigation/compensation proposed. An informative is recommended in the event of permission reminding the applicants of their duty to secure a licence prior to the commencement of demolition works.

### Badgers

In England, the Protection of Badgers Act 1992 makes it illegal to willfully kill, injure, take, possess or cruelly treat a badger or attempt to do so. This includes:-

- Interference with a sett by damaging or destroying it;
- Obstruction of access to, or any entrance of, a badger sett; and
- Disturbance of a badger when it is occupying a sett.

The legislation recognizes the fact that in some cases development would constitute an offence and allows licences to be granted to certain purposes permitted work which would otherwise be illegal. Natural England is the licensing authority.

An active urban badger sett has been identified in the rear garden of No. 45 First Avenue (which extends into neighbouring properties and the Southern Water Pumping Station to the east). A field survey of the sett was initially carried out in May 2017 and identified 3 active sett entrances in the wooded area in the west part of the rear garden of No. 45 with signs of recent digging and bedding outside one of the entrances. The survey also recorded a 'dung pit' on the rear lawn area and 'snuffle holes' present on the edge of the lawn and in the flower bed along the southern site boundary. Other evidence included badger footprints, badger guard hairs, boundary breaches, a latrine and a badger footpath.

The report concludes that the development, involving the demolition of the existing building, construction of 2 replacement dwellings and erection of a new boundary fence sub-dividing the rear garden has the potential to affect the badger sett indirectly through the potential to cause vibrations which may result in the collapse of tunnels if not properly mitigated for, which would be an offence under the Act.

Following anecdotal evidence (including from third parties and the Badger's Trust) that the application site included a fourth badger sett entrance closer to the proposed development footprint which was not recorded in the survey of May 2017, a holding objection to the application was raised by the WSCC Ecologist, requiring

further information to establish the extent of the sett, assess the potential new sett entrance near the building footprint and re-assess the proposed mitigation in the light of this.

An up-dated Survey Report (by Arbeco) has been submitted following a further field survey on 9 May 2018. This latest Report now identifies four entrance holes in the rear garden of No. 45 and 10 additional holes (six active) in the neighbouring garden of No. 43 and land to the rear (Southern Water) as the main sett plus a disused annex sett entrance in the front garden of No. 47 to the north. The up-dated Report indicates the proposed construction footprint will be 11.5 metres from the nearest active sett entrance. It goes on to recommend a non-licensed precautionary method statement is followed throughout the development to ensure the construction works are undertaken in line with legislation protecting badgers.

However, the WSCC Ecologist has expressed concern as to whether the works could be carried out outside licencing regime due to the proximity of the development to the nearest active entrance, and the positioning of the new boundary fence erected through the centre of the sett. He has recommended that a condition is imposed in the event of permission with the aim of securing a badger licence prior to the implementation to the development. The WSCC Ecologist has subsequently sought an informal opinion on the matter of whether a licence is required from Natural England, but in the absence of a definitive response, has verbally re-affirmed his view that a licence *will be* required. The recommended planning condition is therefore considered reasonable and necessary to mitigate the potential harm.

### ***Accessibility and parking***

The proposed development would involve the creation of an additional vehicle access (serving Plot 2). The existing vehicle access would serve Plot 1. The new access would be sited roughly opposite the junction of First Avenue with Longlands. In commenting on the earlier withdrawn application (AWDM/0536/17) the Highway Authority raised a concern regarding the effect of the existing street trees on visibility to the north from the proposed northern access. The subsequent email correspondence between the applicant's transport consultant and the Highway Authority has been submitted as part of the current application and demonstrates the Highway Authority was subsequently reassured on this point based on the particular context of First Avenue and the flexibilities and variables allowed for in the Government's technical document 'Manual for Streets'. As a consequence, no concern over visibility at the new access has been raised in respect of this latest application.

Each dwelling would be provided with a garage (of suitable dimensions to accommodate cycle parking) plus frontage vehicle hardstanding space. The parking and turning facilities are considered adequate for a dwelling of this size in this location.

The Highway Authority concludes that there are no grounds to resist the proposal. It would not have a 'severe' impact on the operation of the local highway network and therefore is not contrary to paragraph 32 of the NPPF.



## **Other issues**

The proposed development qualifies for CIL and is within the charging area. The adopted charging schedule stipulates that where permission is granted for a new development that involves the demolition of a building in lawful use, the level of CIL payable will be calculated based on the net increase in floor space. This means that when calculating the CIL liability the existing floor space of the building to be demolished will be deducted from the total floor space of the new development.

In addition, CIL regulations prescribe an exemption from paying a CIL charge for self-build housing.

The existing dwelling at No. 45 First Avenue is currently occupied by the applicants and in lawful use as a dwelling. A CIL form has been completed stating that the floor space of the existing dwelling at No.45 is the same as the proposed dwelling on Plot 1 (218.5sqm). On this basis, no CIL payment will be liable for Plot 1.

A self-build exemption form has been completed in respect of Plot 2 confirming the property will be occupied by the applicants as their sole or main residence for a period of 3 years from completion.

## **Conclusion**

The proposed infill redevelopment of this wider than average dwelling plot would make an efficient use of land within the built up area providing a net increase in larger family housing without detracting from the distinctive low density verdant character of the area. Notwithstanding the serious concerns expressed by third parties it is considered the development can take place without harm to neighbor amenity or, subject the mitigation measures recommended, to the notable ecology of the site, and as a result there are no substantive grounds to resist the proposal.

## **Recommendation**

**APPROVE** subject to the following conditions:-

1. Approved plans
2. Standard time limit
3. Agree external materials and finishes
4. Agree and implement tree protection measures during construction
5. Agree and implement hard and soft landscaping scheme
6. Agree and implement boundary treatment
7. Agree surfacing materials for driveways, paths and patios
8. Agree finished floor levels of dwellings
9. Remove 'permitted development' entitlements for extensions and alterations (including roof extensions)
10. Agree and implement surface water drainage details
11. Vehicle access to be provided prior to occupation
12. Use of garages restricted to parking of vehicles and cycle incidental to domestic use of property
13. Vehicle parking and turning provided prior to occupation
14. Full contamination condition

15. No development or any preparatory work shall take place unless and until a licence to interfere with a sett has been secured from Natural England. In the unlikely event that a licence is not required, a detailed badger mitigation plan supported by up to date survey information, as appropriate, shall be submitted to and approved in writing by the Local Planning Authority. The works shall thereafter not be implemented other than in complete accordance with the approved details.
16. Agree and implement surface water drainage
17. Agree and implement construction method statement
18. Hours of work
19. Ground and first-floor window door and window openings in side elevations of Plot 1 and Plot 2 to be obscure-glazed. Ground and first-floor window openings in side elevation of Plot 1 and Plot 2 to be fixed shut (except above 1.7m from floor)
20. No additional side windows in ground and first-floor of Plot 1 and Plot 2
21. Notwithstanding the details shown on the approved plan no consent for external plant (air source heat pump) without agreement of details
22. Agree and implement EV charging point in garages of Plot 1 and Plot 2

27<sup>th</sup> June 2018

Application Number: AWDM/0520/18

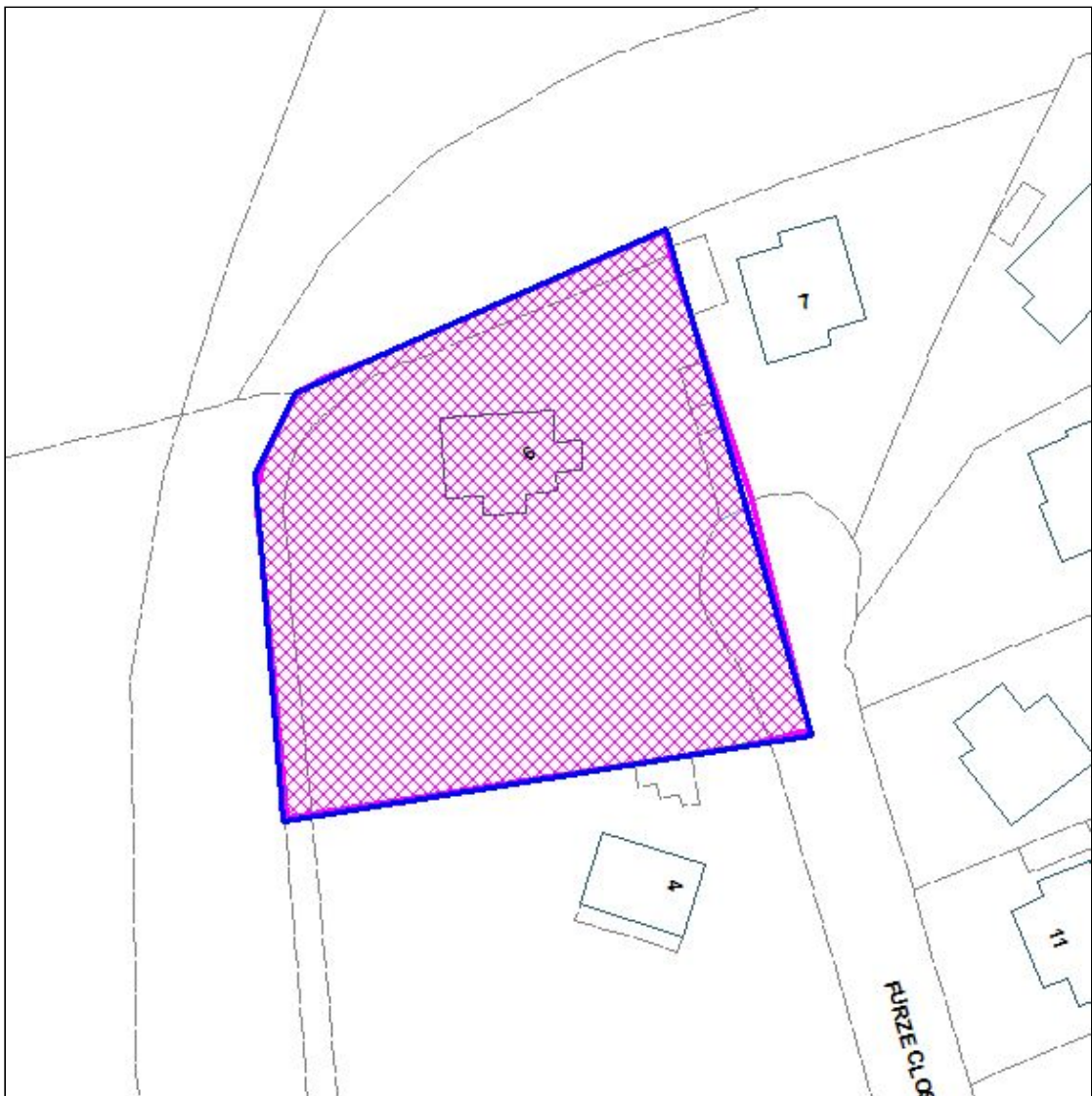
Recommendation – Approve

Site: 6 Furze Close Worthing West Sussex BN13 3BJ

Proposal: Retention of concrete apron in front of existing driveway together with 1.8m feather edge fence along eastern boundary of property. Proposed double hardwood driveway gates and side access gate. Proposed re-instatement of grass verge. (Part retrospective).

Applicant: Mr Matthew Godwin  
Case Officer: Linda Park

Ward: Salvington



Not to Scale

## **Proposal, Site and Surroundings**

The application relates to a detached house on the north-west corner of the head of Furze Close, in High Salvington. The site adjoins the boundary of the South Downs National Park and the Close has a semi-rural character, being an unmade, private road which is finished in a rough, gravel surface and is lined with narrow grass verges until the head of the Close is reached.

The application property is accessed via a driveway directly ahead as the head of the Close is approached (land levels rise gently in this direction). The boundary to the main garden runs southwards from the driveway, alongside the road. A low timber fence marking the boundary of the garden with the road has been replaced by a higher close-boarded timber fence (1.83m) which sits just forward of the old fence (which has not been removed) in relation to the road. Mature Leylandii trees and a large Hornbeam tree the subject of a Tree Preservation Order are situated behind the fences.

The application seeks permission to retain a 1.83m high close-boarded fence which has been erected alongside the road running southwards from the driveway, together with the installation of double hardwood gates across the newly installed driveway, and a side access gate.

The double gates would be constructed from hardwood and would be a maximum of 1.99m high in the centre and would have a curved shape to the top, reducing to 1.75m high at the edges. The single gate alongside would be 1.655m high, with a matching curved top detail. It is also proposed to retain the concrete apron in front of the existing driveway and to reinstate a grass verge alongside this on the outside of the new fence, to line through with and match the grass verges lower down in the Close.

The applicant has provided photographic evidence of the position of the previous fence and grass verge, the latter of which extended no further than the proposed position of the new grass verge; however, the newly erected fence is positioned further forward towards the road than the original fence (which is still in situ behind the new fence). The applicant states that the new grass verge would be no wider (and possibly narrower) than the previous grass verge which had existed for over 50 years whilst the applicant's family has lived in the property.

To prevent further damage to the grass verge and prevent people parking on it, the applicant proposes to install either stones or timber sleepers along the edge of the reinstated grass verge.

The applicant has submitted 'Appendix 1' and 'Appendix 2' to explain the application in more detail. Appendix 2 explains the reasons behind the project, stating that the whole project has been made necessary by the actions of a neighbour following a boundary dispute (relating to a different boundary than that the subject of this application), including the destruction of their hedge and grass verge by moving the blocks marking the border of the verge back towards the previous fence and cutting back their trees so that they could park their cars where the grass verge was.

Appendix 2 explains that once cut back, the trees (mature Leylandii) were full of 'holes' which allowed people to see more into the garden from the road than had previously been possible. The applicant explains that this loss of privacy was not acceptable to their family and they were informed that the trees were unlikely to grow back so low down; therefore it was decided to erect a 6-foot-high fence to restore privacy to the garden.

The applicant includes various photos showing where the original 'boundary' and blocks on the outside of the grass verge were located prior to the actions of his neighbour. He states that his father has lived in the property for over 53 years and does not want to move despite the problems he has had to deal with over the years since the current neighbour moved in. Therefore, the retention of the fence and erection of the gates would go a long way towards making him feel more secure in his own home.

## **Consultations**

### ***South Downs National Park Authority***

No comments.

### ***West Sussex County Council Highways:***

Furze Close is a private road; therefore the works proposed would not materially impact upon the operation of the maintained highway network.

No highway safety or capacity concerns would be raised pertaining to the impact this proposal would have upon the maintained network.

## **Representations**

Responses have been received from residents of No's 1, 7, 8, 9, 10, 11, 12, Furze Close and Flat 41 Beach Residences, 123-125 Marine Parade; 'Dacha', 45 Mill Lane, and 19 Woodland Avenue, which object to the application on the following grounds:-

- The fence is much higher than the old one
- The fence totally spoils the nature of this semi-rural cul-de-sac
- Such a high fence is anti-social and inconsiderate and spoils and otherwise charming area of Worthing
- There is no need for such a high fence for noise abatement as the property is in a quiet Close
- The fence is totally out of character for the road and area and would set a precedent allowing anyone to erect a 1.8m fence on their property frontage where it meets the highway, instead of a 1m high fence and properly maintained trees or a hedge behind as is the general rule without planning consent. This would change the character of High Salvington.
- The fence has encroached onto the turning circle/hammerhead at the top of Furze Close by 1m – 1.5m and has been erected beyond the limits of the property frontage.

- This is an unadopted road but for at least 50 years there has been an established use of the hammerhead for delivery vans etc to safely turn around
- As proposed the reinstatement of the grass verge and chain link fence will dramatically reduce the turning circle and make it even more difficult to get out of my driveway
- The applicant parks a vehicle alongside the proposed alterations reducing the turning circle even further
- The occasional very large delivery vehicles already have to reverse down the road and then into the narrow Furze Road T-junction.
- The hammerhead is already used for residents parking and restricting it further will cause additional hazards from vans which do not have attendant staff to help them reverse safely
- The proposed plan seriously reduces the width of the road
- The road and turning circle access which has existed since 1983 often proved difficult for normal vehicle entrance/exit from the gate at No.9 Furze Close
- The proposal, if implemented, will make larger vehicle access (including emergency vehicles) impossible
- Fencing off 22 square metres of highway into your own private garden does I would suggest extinguish the right of way on that land, it is also a change of use from public highway to private garden
- To further fence off another 31 square metres of what is the turning circle will severely obstruct vehicle access to turn safely
- Should the application be passed anyone parking in the road will leave very little or no room for vehicles to pass or access or egress their driveways and force visitors to reverse all the way back down to Furze Road
- If all residents in Furze Close installed new fencing five feet into the road from their existing fences, and an additional grass verge protected by post and chain link fencing, there would barely be room for the newspaper boy's bicycle up Furze Close!
- The block plan is incorrect as the fence has been put up outside the property boundary, encroaching between 1 and 1.5m onto Furze Close.
- It would give the impression that the Council is not concerned with anyone living on an un-adopted street moving their property boundary forwards out into the road
- Using the existing verges as a guide to reinstate a new verge is not a realistic proposal as they are far wider than they should be.
- If permitted, it will leave any resident who lives on an un-adopted street free to make a land grab to increase the size of their private garden at the expense of other road users
- Passing the retrospective planning application now that you are aware of the true position of the fence and its implications would be an unlawful act and would leave no alternative but to take legal action to have my full rights of way, as evidenced in my title deeds, restored.
- It may have come over the top of the utilities preventing proper access for utility companies for maintenance work
- There is no provision for permeable/porous area or soakaway within the curtilage of the dwelling to disperse water
- The drainage solution put in place for the driveway is not fit for purposes, as all the rain water will still end up coming back under the fence and down the

road, negatively impacting again on residents of the Close who are responsible for maintaining the road.

- The application suggests the driveway gates will open outwards into the road, in breach of the Highways Act 1980.
- We have no problem with the height of the fence or the concrete apron but we are concerned to preserve the existing accessible boundaries for the sake of all other householders in the road.

**The High Salvington Residents Association (HSRA)** has objected on the grounds that the application would significantly alter the turning circle at the end of the un-adopted road. The position of the already erected fence is between 1m and 1.5m from the boundary of the property, and on top of this, the 22m long post and link fence would be a further 1.4m out from the newly erected fence. In total, this is 2.4m to 2.9m beyond the boundary of the property which would reduce the turning circle and make maneuvering difficult especially for emergency vehicles.

In addition, the driveway drains out onto the road instead of into a soak away. The general rule in un-adopted roads is that residents own up to their boundary but are responsible for up to the centre of the road outside their property – this does not give them the right to build on that land.

**Applicant's response to the representations** (Summarised for ease of reference):

- There are many other properties in and around High Salvington with fences and gates of a similar height, some of which border onto the corners of far busier roads than ours (photographic evidence submitted showing various examples). As such, no 'precedent' could be set.
- The reinstatement of the grass verge would soften the appearance of the fence and restore it to the state it had previously been in for over 50 years, prior to the occupant of No.7 illegally moving our boundary and destroying our frontage (for which we have gained legal advice that he has clearly 'trespassed and caused damage' and continues to do so).
- There are no safety issues attached to the presence of the fence as it in no way hinders or obstructs any drivers' views of the road.
- The fence has not encroached into the turning circle, the turning circle will not be reduced in any way, as the original property frontage was in a totally different position to where it has been in more recent years (please refer to photographic evidence) in Appendix 2) as well as the previous position being that in which it had stood for over half a century or more.
- The new fence has been moved further forward than the old fence; but only on what was originally grass verge – by no means has it encroached onto, or reduced the Highway.
- Photographic evidence submitted with the application fully substantiates this (as will looking on Google Earth which allows you to see how the Close looked up until 2009 and beyond, prior to Mr Potts' arrival in 2011).
- Our property legally owns what was the grass verge, and also owns the road as far as its midpoint (the centre).
- The proposed reinstated grass verge will protrude no further out into the road (in fact slightly less) than it ever did prior to Mr Potts' activities.

- There is more than adequate space to reverse out of the surrounding driveways even when a car is parked outside the new fencing and proposed grass verge – there is 8.3m available which is more than there is at the bottom of Furze Road (as evidenced in my photos).
- There is also plenty of turning space available to allow even the most incompetent of drivers to turn their vehicle around without any trouble.
- We are trying to do no more than restoring our frontage and grass verge to its original position as it has stood for decades and restoring our privacy levels to those that had existed (prior to Mr Potts having illegally moved our boundary and destroyed our verge after losing a previous boundary dispute).
- West Sussex County Council Highways have no issues with what we are trying to do.
- Once re-installed, the area of turning circle will be no less than it had remained for many, many years, during which, to my knowledge, no concerns or issues have been raised by any of the residents prior to now.
- The turning circle outside our property is greater than the width of Furze Road and parked cars here have incurred no complaints so how a larger available width between our restored frontage and the driveway opposite can be a 'parking issue' I fail to see.
- Other people do have a right of way to driver over part of the road that we own; however, I do dispute that such a right of way extends to them driving all over and parking on our frontage in order to destroy it.
- I am willing to extend the drainage channel on the driveway further into our property although I fail to see how it is an issue as water does not run down the road as claimed, and other driveways do not have any drainage channels so are potentially worse offenders.
- The claim that we have 'removed a public right of way to a depth of 3m' is false.
- Mr Potts has clearly canvassed the residents of Furze Close and beyond to object to my application backed up with totally false information.
- The fence does not come 'out into the road'.
- Commercial and public service vehicles have always managed to negotiate Furze Close more than adequately ever since we have lived here do I fail to see how restoring the verge to its original position would change this ability?
- Should permission be granted to reinstate the grass verge, the fence will no longer be 'against the public highway' as is claimed but will be 1.4m back from the highway and the edge of the verge where it meets the road will protrude no further out than it always has done.
- We are more than open to suggestions as to how we can soften the appearance of the fence and are hoping to make our frontage one that will add to the ambience of the Close not detract from it.
- The only vehicles that have had to reverse within the Close are the Council Refuse collection vehicles and the odd oversized delivery vehicle, for which any substantial increase in the turning circle would still not prevent this from being necessary.
- The claim that we have 'fenced off 22m of highway...' is inaccurate as the area we have fenced off never was highway, it was always grass verge and there is no less highway available with the new fence than there had been originally.
- The new concrete apron is constructed on what was originally privately owned grass verge and has not encroached onto the highway.



- If I was trying to misrepresent the position of the new fence in relation to the old one, then wouldn't I have removed the old one?
- The new driveway gates will open outwards to allow them to be closed again once a car is parked on the driveway, they will not open outwards into the road but onto the newly installed concrete apron.
- If other residents are so concerned about the current size of the 'turning circle' perhaps they might like to arrange for their rockery or verge to be removed as opposed to expecting us to sacrifice our own frontage.
- An ambulance driver recently stated that there was not insufficient turning space at the top of the Close (after the fence was in place).

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

Worthing Core Strategy 2006-2026 (WBC 2011): Policy 16  
 Worthing Local Plan (WBC 2003) (saved policies): BE1, H16, H18  
 National Planning Policy Framework (March 2012)  
 National Planning Practice Guidance

### **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; 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.

### **Planning Assessment**

There is no objection in principle to alterations to residential properties within the built-up area. The key considerations are the effects on the visual and residential amenities of the locality. Also of relevance are any effects on highway safety from the proposals.

### ***Visual Amenity***

The fence, whilst higher than the front boundaries of other properties in Furze Close which are generally characterised by hedges or lower brick walls, is not considered to be an unduly obtrusive or prominent feature within the Close due to its position at the top corner of the Close and therefore in a relatively 'tucked away' position, set against the backdrop of mature trees. The overall character of the Close since erecting the fence remains of a semi-rural nature due to its gravel surface and the presence of hedges, trees and grass verges.

The proposed driveway gates would continue the line of the fencing and are of an attractive hardwood design which is not considered to detract from the character or appearance of the area.

The loss of the grass verges around the top end of the Close (as shown in the Block Plan submitted with the application) is regrettable and has detracted from the semi-rural character of the area. The proposed reinstatement of the grass verge would help to soften the visual impact of the fence and reinstate what was previously an area of grass verge, which would enhance the semi-rural character of the Close.

The application originally proposed to install a white-painted chain-link fence on the outside edge of the re-instated grass verge. Officers considered that this would be out-of-keeping with the semi-rural character of the Close, and that the reinstatement of stones or timber sleepers on the outside edge of the grass verge (as is in place on some of the existing grass verges further south within the Close) would be more appropriate to this character. The applicant has agreed to amend the description of the application and to remove reference to the proposed white chain-link fencing within the supporting statement (Appendix 1).

The granting of permission for the fence would not set a precedent for any householders to erect a similar fence, as the visual impact of this fence has been considered on the particular merits and circumstances of the case, being set in a relatively 'tucked away' position which is not unduly prominent or obtrusive from public vantage points.

The provision of planting on the outside of the fence, or the staining of the fence in a dark colour have both been considered by Officers as possible ways of softening its visual impact (and the applicant has indicated that they would be willing to carry out planting if felt appropriate); however, it is considered that the timber fence being left to weather naturally to a silvered grey, in combination with a simple grass verge without planting, would be the most sympathetic treatment for the location, taking into account the characteristics of surrounding properties and the semi-rural character of the area, in accordance with Core Strategy Policy 16 and Saved Local Plan Policies BE1 and H16.

It should be noted that the South Downs National Park Authority has made no comments on the application. The fence is not located on the boundary of the property which adjoins the National Park and is not visible from the Park. As such, it would not affect the natural beauty or setting of the National Park.

### ***Residential Amenity***

The new fencing is visible from some of the neighbouring properties but does not result in any loss of residential amenity.

### ***Highway safety***

The objections from neighbouring (and other) properties raise various concerns about a reduction of the turning circle and encroachment of the fence onto the public highway. However, the fence is set back from the line of the original grass verge, and the proposed reinstated grass verge would be in-line with the other grass verges to the south of the application site, no further towards the road than the original grass verge at the application property.

Photographic evidence has been submitted which shows that there was previously a grass verge in this position and therefore, whilst the new fence has been erected further towards the road than the old fence, it is set back behind the original grass verge and the proposals do not appear to encroach onto the public highway or reduce the turning area available for users of the Close. This conclusion is supported by the comments from the Highway Authority, which raises no objection to the application on highway safety or capacity grounds pertaining to the impact this proposal would have upon the maintained network (the nearest part of this being Furze Road which meets the bottom of Furze Close).

Many of the other matters raised in the representations appear to stem from neighbour disputes over boundaries and access rights, which are not relevant planning matters and would need to be resolved as private matters through the legal system.

### **Recommendation**

### **APPROVE:-**

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

1. Approved Plans
2. Standard time limit
3. Grass verge to be installed in accordance with submitted plan in the first available planting season, left open or lined with timber sleepers or stones, and maintained in such a condition thereafter.

27<sup>th</sup> June 2018

Application Number: AWDM/0178/18

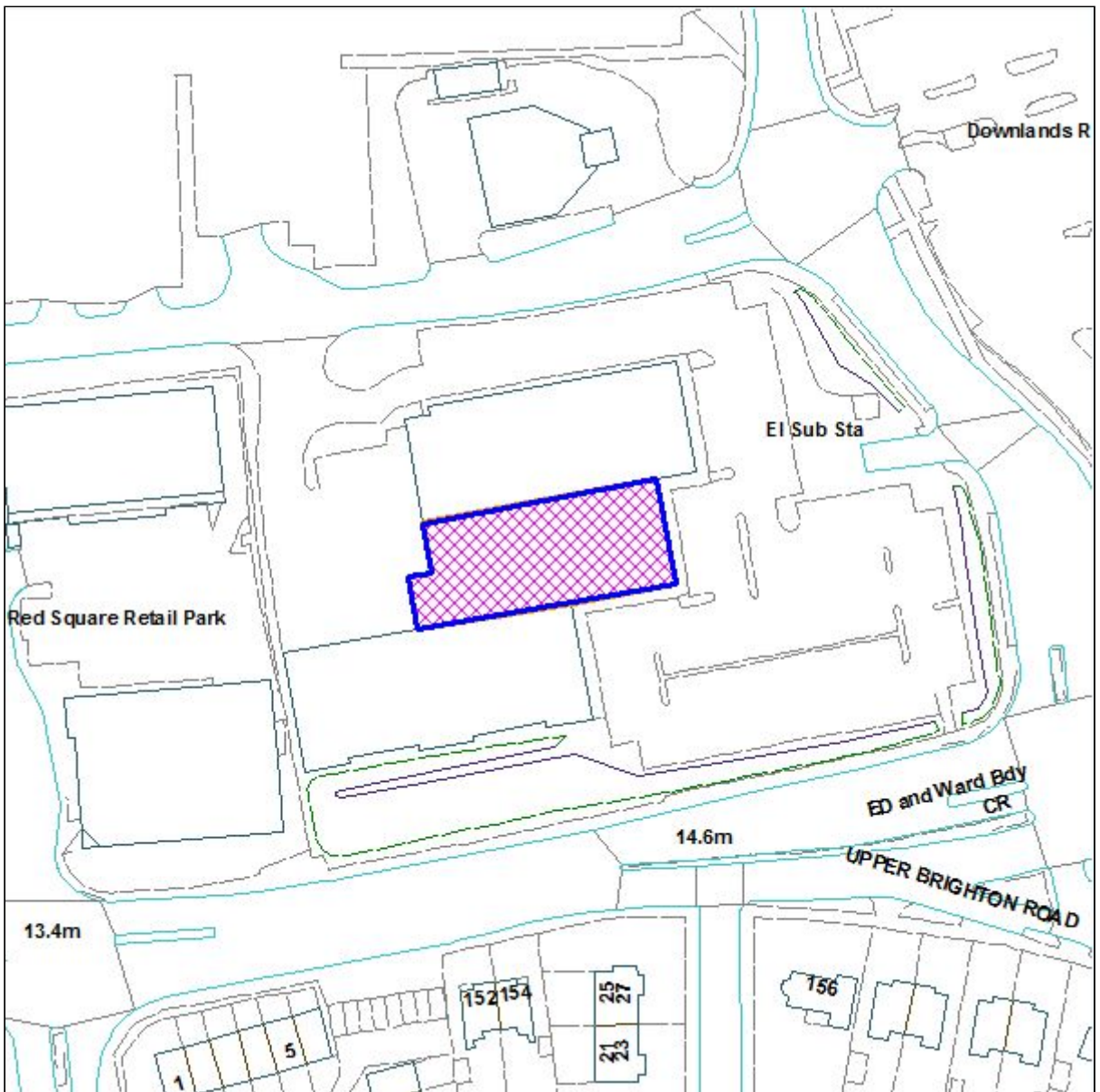
Recommendation – APPROVE  
subject to the completion of a  
legal agreement

Site: Unit B Lyons Farm Retail Park Lyons Way Worthing

Proposal: Change of use of the retail unit (A1) to use as a gym/health  
and fitness centre (D2) and installation of a mezzanine level.

Applicant: The Gym Limited  
Case Rebekah Smith  
Officer:

Ward: Offington



Not to Scale

## **Proposal, Site and Surroundings**

The application site relates to Unit B which is a vacant retail unit located within the long established Lyons Farm Retail Park. Unit B is the central unit of a staggered terrace of 3 retail units to the west of Lyons Way and to the north of the A27. It was previously occupied by Brantano, who, it is understood, vacated in March 2017. Unit B has an internal floor area of 882 sqm. Access to the site is from a roundabout junction to the north west of the site, also shared with Sainsbury's supermarket to the north. There is a service yard to the rear (west) of the building and customer parking, comprising of 145 spaces, which is shared between the three units located to the east and north sides of the building.

Permission is sought to change the use of the existing vacant unit B from retail (A1) to a gym/health and fitness centre (D2) and includes to installation of a 465 sqm mezzanine level. No external alterations are proposed. The applicant intends to operate over a continuous 24 hour period. The use would employ 15 full time equivalent posts at Unit B.

### **Extract from the Applicants supporting statement:**

#### *Proposal*

*The proposed occupier is The Gym, who aim to increase access to health and fitness activities to a wide demographic within the local community to encourage and improve health by providing a low cost and flexible gym membership option. The Gym provides a high quality but cheaper option for health and fitness activity.*

*The Gym requires a floorspace of between 1,100 and 2,500 m<sup>2</sup>. A large floor plate is required to accommodate the main gym equipment, whilst facilities such as male and female changing rooms, office, store, entrance lobby and refuse facilities, are required to facilitate the operation. The business model of The Gym is as a budget operator without destination facilities such as swimming pools, sauna, café, crèche which means that the facility needs to provide capacity for a sufficient number of members requiring the large floor size.*

*The operation includes a range of cardio vascular (rowing, running, cycling) and resistance (weights) equipment. It will provide a new facility for residents and employees that will complement nearby services and facilities. Music will be limited to provide low-level background music only.*

*The Gym will need to install a mezzanine floor to get the area to meet the business requirements. The proposed mezzanine is 465 square metres (GIA) and will provide an overall GIA of 1,347 square metres, which is towards the lower end of the business model requirements.*

*The site will continue to be accessed from the existing access points from the A27/Sompting By-Pass, which has pedestrian access on either side of the road to the site from the surrounding facilities and residential areas.*

*The site provides 145 parking spaces with a proportion of disabled parking spaces for visitors. The Gym members will have access and be able to make use of this provision.*

## **Consultations**

The **Highway Authority** has commented as follows:

### *Introduction*

*The site comprises an A1 retail unit, located in Lyons Farm Retail Park, Worthing. The retail unit, measuring a total of 882 square metres was previously occupied by Brantano, but has been vacant since March 2017. The retail park fronts onto the A27, Upper Brighton Road which accommodates a number of retail and commercial units. The site is accessed from Lyons Way a 'D' class road subject to a 30 mph limit. The Local Highways Authority (LHA) will only comment on the impact onto Lyons Way, for the impact on the A27 Upper Brighton Road this road is maintained by Highways England (HE). The Local Planning Authority (LPA) may wish to seek the advice from HE on the potential impact onto Upper Brighton Road.*

### *Access and Visibility*

*The site does have an existing vehicular access onto Lyons Way shared with other retail units. No modifications are proposed to the existing access arrangements. The access is considered to be of sufficient geometry to accommodate the anticipated level of vehicular activity. Sightlines along Lyons Way from the existing point are considered acceptable.*

*A review of the junction onto Lyons Way indicates that, there have been no recorded accidents within the last 3 years and that there is no evidence to suggest that the access and local highway network are operating unsafely.*

### *Capacity*

*Given the scale of the proposal and the existing permitted use a TRICS assessment and Travel Plan are not required. The LHA have run our own trip from the Trip Rate Information Computer System (TRICS) database. This assessment is based on the proposed and existing use. Based on the two uses it is considered that there will be no material increase in traffic movements over the existing use. In addition there are no known capacity and congestion issues within the immediate vicinity of the site. From a capacity perspective we are satisfied the proposal will not have a severe residual impact.*

### *Parking*

*The proposed parking is will include the existing layout at the site, 145 are stated as being available. There are a number of spaces at the front of the site. The LHA are not aware of that the previous use resulted in excess parking onto Lyons Road; it is considered unlikely that there would be an increase in on-street parking as a result of this proposal.*

### *Sustainability*

*The retail park has an existing bus service which serves the supermarket to the north. This is service operated by Compass Travel and links to Lancing, Sompting and into Worthing. There are footways in the immediate vicinity and there is a pedestrian crossing point over the A27 which links into Sompting. The site is*

*situated 1.8 miles away from Worthing train station, therefore it is considered sustainably located with vehicular access from Lyons Way. I have checked the most recently available accident records which reveal there have been no recorded personal injury accidents for pedestrians.*

#### *Conclusion*

*The LHA does not consider that the proposal would have 'severe' impact on the operation of the highway network, therefore is not contrary to the National Planning Policy Framework (para 32), and that there are no transport grounds to resist the proposal.*

*Any approval of planning consent would be subject to the following condition:*

#### *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.*

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

Following receipt of a parking layout plan and transport statement the Highway Authority provided the following additional comments:

#### *Comments*

*Car parking at the site accommodates 145 car parking spaces, including disabled car parking spaces. The applicant has provided an additional layout plan.*

*The existing car park caters for the three units adjacent, being occupied by Wren Kitchens, Boots and the proposed The Gym unit. No works are proposed to the car park and The Gym users would continue to utilise and share the car parking in line with the previous occupier of this unit. The car park does have a level of availability at present. The LHA acknowledge that the additional use is unlikely to result in a material increase in traffic movements and the nature of the use and opening hours would result in that usage distributed more evenly across the day than the former and existing retail uses.*

#### *Conclusion*

*The LHA acknowledges the additional information and clarity provided by the applicant. On that basis the proposals are considered acceptable and the LHA would be satisfied*

**Highways England:** No objection – we are satisfied that the development will not materially affect the safety and/or operation of the SRN.

**Adur & Worthing Councils:** The **Environmental Health** officer has commented as follows:

- *hours of demolition/construction/works - standard hours to apply;*
- *dust - appropriate suppression methods submitted prior to works (if necessary);*
- *noise - please may the proposed hours of use be provided;*

- *the premises shall not be occupied unless and until details of the air conditioning unit(s) and any other external plant (including siting, number, appearance, specification, noise emissions and hours of operation) have been submitted to and approved by the Local Planning Authority. In particular, any external plant and equipment shall be selected and installed so that it does not exceed a level of 45dB(A) with no tonal components at 1 metre from the facade of the closest sensitive receptor. the development shall not be carried out other than in full accordance with any such approval and the approved unit(s) shall be maintained in accordance with the manufacturer's instructions;*
- *noise from activities within the premises shall not exceed 45dB(A) before 07.00 hours and after 23.00 hours and 50dB(A) between 07.00 hours and 23.00 hours at 1 metre for the facade of the closest sensitive receptor;*
- *air quality - the applicant will need to follow the Air Quality and Emissions Mitigation Guidance for Sussex (2013) (<https://www.adur-worthing.gov.uk/environmental-health/pollution/air-quality-and-pollution/air-quality-and-planning/>). This states that where a major sized development is proposed a number of checklists should be followed in order to determine the likely impact on air quality. This includes an air quality assessment and an emissions mitigation assessment. The purpose of an emissions mitigation assessment is to assess the local emissions from a development and determine the appropriate level of mitigation required to help reduce the potential effect on health and/or the local environment. The intention of the guidance is to identify and ensure the integration of appropriate mitigation into a scheme at the earliest stage, so the damage costs on health can be mitigated.*
- *The emissions mitigation assessment must use the most up to date emission factors (<http://laqm.defra.gov.uk/review-and-assessment/tools/emissions.html>). The emissions assessment and mitigation calculator provides a formula to calculate the emissions resulting from a development and produces a cost for mitigation measures and/or compensation and a subsequent list of mitigation suggestions. Mitigation shall include consideration of the promotion of cycling and walking, public transport, car clubs, low emission vehicles and associated infrastructure, etc. A development such as this can have a major influence on public behaviour. For example by providing 7kW charge points in parking spaces, visitors can be assisted 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.*
- *light - no comments;*
- *contaminated land - precautionary (if groundworks).*

*Further to the previous e-mail concerning this application, please may we include a requirement for a management strategy to be submitted to and agreed by the LPA relating to the management of noise from patrons/staff accessing the premises. We would also recommend that any deliveries and recycling/refuse collections from the property are during daytime hours. Any external lighting should be installed in a manner which does not cause nuisance to neighbouring properties.*

## **Representations**

None received



## **Relevant Planning Policies and Guidance**

The National Planning Policy Framework 2012

Core Strategy policies 3, 6, 16, 19

Saved Local Plan policy: RES7, TR9 and H18

## **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; 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.

## **Planning Assessment**

### ***Principle***

The application site comprises an A1 retail unit (retail warehouse), which was formerly occupied by Brantano. It has been vacant since March 2017. The retail unit is situated within the Lyons Farm Retail Park located on the Upper Brighton Road (A27) to the north of Worthing. The site falls outside of Worthing Town Centre boundary as defined by the Core Strategy (2011).

The application proposes the change of use of this retail unit (A1) premises to use as a gym / health and fitness centre (D2) (882 square metres GIA) and installation of a mezzanine (465 square metres GIA).

In terms of the principle of the proposed use, there are two key issues to consider: (i) the potential loss of a large existing retail use (882 sq.m); and, (ii) the acceptability of the location to accommodate an alternative main town centre use (sequential assessment).

(i) It is acknowledged that there is no specific policy requirement contained within the Core Strategy in relation to safeguarding existing main town centre uses outside of the town centre. However, given that there is an identified need for retail provision with the Worthing Retail and Main Town Centre Uses Study (August 2018), for completeness the application could have been supported by marketing evidence to demonstrate that there is no longer a demand for a retail use at this

site. For clarity, the Worthing Retail and Main Town Centre Uses Study is an evidence base document which supports the preparation of the emerging Worthing Local Plan.

(ii) The NPPF defines retail development and health and fitness centres as a main town centre use.

Paragraph 24 requires LPAs to apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. Whilst the principle of a main town centre use (retail) at this location (outside of the town centre) has already been established, the proposal is seeking a change of use to another main town centre use and therefore the principle needs to be considered afresh on its own merits.

Policy 6: (Retail) of the Core Strategy is applicable. This Policy requires a sequential approach when considering proposals for new out of town uses.

The application is supported by a Planning Statement and Sequential Assessment (January 2017). It is understood that the prospective occupier has a number of operational requirements that need to be met which includes the need for a total floor area of between 1,100 and 2,500 sq.m. In addition, a large ground floor plate is required to accommodate the main gym use including the gym equipment, which needs to be laid out in a specific way. The sequential assessment considered four potential available sites which had the potential to meet the search parameters in terms of the minimum floor space and which are located in centre or close to existing centres. It is considered that the supporting information provides sufficient justification as to why each site is not sequentially preferable and therefore complies with Policy 6 of the Core Strategy.

It is considered that whilst the proposal will result in the loss of an existing large retail use, this is balanced against the extended period of vacancy of the unit and the benefits of providing an economic use of the site that will support the local economy, and that there is no policy justification within the Core Strategy to resist the loss of A1 use. It is recognised that the application satisfies the sequential impact assessment and that there are no alternative available sites. Therefore the principle of the proposed use is considered acceptable.

### ***Visual amenity***

No external alterations are proposed. There would be no significant harm to the visual amenities of the site or surrounding area.

### ***Residential amenity***

The proposed use would operate over a 24 hour period, where other nearby uses are not generally in operation between 23.00 and 06.30. No external plant or lighting is proposed as part of this application and the Environmental Health Officer has recommended a condition to control noise from within the premises. The impact of noise from vehicular and pedestrian movements from outside of the building needs to be considered in the context of the sites location within the established retail park and existing retail uses, the expected reduced demand for gym usage during the night, and its proximity to the A27 Upper Brighton Road and to residential uses, which are relatively well separated to the south of the

intervening A27. No objection has been raised from the Environmental Health Officer subject to a noise management strategy and limiting deliveries/ collection hours.

### **Air Quality**

The site lies within the Worthing Air Quality Management Area and, as a Major development, requires an assessment to determine the likely impact on air quality.

The applicant has provided an Air Quality Assessment which draws the following conclusions:

*Construction works have the potential to create dust, but since the development will only involve internal fit-out works, there will be a Negligible Risk of human health and dust effects and the effects will be 'not significant'*

*The assessment has demonstrated that the additional traffic generated by the development will not significantly affect air quality at existing properties along the local road network. The overall operational air quality effects of the development are judged to be 'not significant'.*

*An emissions mitigation calculation has been carried out in accordance with the Air Quality and Emissions Mitigation Guidance for Sussex (Sussex Air, 2014a). This calculation has determined that the development should incorporate mitigation measures to the value of £8,214.*

The applicant has agreed to make the above contribution towards air quality improvement schemes in the local area. Comments from the Environmental Health Officer on this matter are awaited and any update will be reported at the meeting.

### **Accessibility and parking**

The Highway Authority considers the site to be sustainably located, having regard to public transport links and pedestrian access. 145 car parking spaces exist which are shared with the other two retail units. The Highway Authority considers that the proposed use is unlikely to result in a material increase in traffic movements and that the traffic movements would be distributed more evenly across the day than the former and existing retail uses. No objection is raised by the Highway Authority or Highways England. Parking and access is considered acceptable.

### **Recommendation**

THAT THE DECISION IN THIS CASE BE DELEGATED TO THE HEAD OF PLANNING AND DEVELOPMENT TO SECURE A SATISFACTORY LEGAL AGREEMENT IN RESPECT OF DEVELOPMENT CONTRIBUTIONS TOWARDS AIR QUALITY MITIGATION MEASURES WITH A VIEW TO PLANNING PERMISSION BEING GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:

1. Approved Plans
2. Standard 3 year time limit
3. Use limited to Gym/Health and Fitness Centre only and for no other purpose within use class D2
4. Standard hours of demolition/construction/works

5. Noise from activities within the premises shall not exceed 45dB(A) before 07.00 hours and after 23.00 hours and 50dB(A) between 07.00 hours and 23.00 hours at 1 metre for the facade of the closest sensitive receptor
6. Noise Management Strategy to be agreed
7. Delivery/ collection vehicles limited to between 07.00 hours and 20:00 hours

27<sup>th</sup> June 2018

**Local Government Act 1972**

**Background Papers:**

As referred to in individual application reports

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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.