

Application Number:	AWDM/1058/24	Recommendation - APPROVE
Site:	Former 51 Old Fort Road, Shoreham-By-Sea, West Sussex	
Proposal:	Application to vary conditions 1 & 15 of approved AWDM/2007/21 to enable floor level of the ground floor living rooms to be set as built at 5.91 metres AOD and for the lower ground floor to be habitable	
Applicant:	Mr and Mrs David and Brenda Collins	Ward: Marine Adur
Agent:	Mr James Breckell	
Case Officer:	Hannah Barker	



Not to Scale

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This application was originally called in for determination by the Planning Committee by the local Councillor Joss Loader. The reasons given are in the interests of openness and transparency and given the application's history.

Members will recall the application was deferred at the last committee on 30th September 2024 for the following reason.

'The application is deferred in order for officers to seek an expanded comment from the Environment Agency to explain why it is now content to allow for the use of the flexible lower ground floor room for habitable purposes. Also officers will make the Environment Agency (EA) aware of the comments of 27th September by WSP and seek the EA view upon it. Likewise they will inform WSP of the EA response.'

The required consultation responses have now been obtained and are included below and attached as an appendix to this report. Please note that the terms 'basement' and 'lower ground floor' have been used in the consultation responses. For the avoidance of doubt, these are the same space .

Since the committee meeting the Council has also engaged an independent surveyor to check the floor levels of the completed building on site. The results are discussed under the heading 'Levels' below.

Responses

The Environment Agency - Comments dated 17th October 2024

The application was for the variation of condition 15 of approved AWDM/2007/21 to enable the floor level of the ground floor living rooms to be set as built at 5.91 mAOD and for the lower ground floor to be habitable and used for sleeping accommodation. Please find comments from us on pertinent aspects set out below:

Finished floor levels

The submitted Flood Risk Assessment (FRA) for application ref: AWDM/2007/21 offered a floor level of 6.15 mAOD (section 3.2). As this was the figure included in the FRA, we conditioned it as written.

However, the point is about the freeboard being offered. Ideally, we seek 600mm above the design flood level as specified in Flood Risk Standing Advice. For this site, the design flood level is 5.26 mAOD. A floor level of 5.91 mAOD is still offering sufficient freeboard so it is satisfactory from our perspective.

Use of the lower ground floor room

Our letter dated 17 September 2024 confirms that we do not agree that the lower ground floor should be used for sleeping accommodation, and this is specifically referenced within our wording for the variation of condition 15:

“The room on the lower ground floor (labeled as ‘flexible room’ on drawing no.058, revision A at Appendix C of the Flood Risk Assessment) shall not be used for sleeping accommodation.”

The original application confirmed that the lower ground floor was not intended to be used for habitable purposes (as per the letter dated 7 December 2021 from James Breckell Architects), and so we conditioned this also as stated at that time. [*see relevant extract from letter of 7th December 2021, below]

As there is agreement that the lower ground floor would not be used for sleeping accommodation (as noted from the Committee Report) when occupants would be most vulnerable to flood water impacts, from our perspective the risk to occupants has been addressed to an adequate degree.

We note that there is no single legal definition of “habitable room” as its use and meaning is subject to context. It is for the Local Planning Authority to determine whether the proposed use of the lower ground floor is acceptable. Our only stipulation in this regard is that it is not used for sleeping accommodation and we have made that position clear.

[*The letter of 7th December 2021 referenced in this planning condition stated:

‘The flexible room is not a bedroom. It is conceived as a ‘work from home’ room and is fully protected from flooding because of tanking above the flood risk level.’]

Letter from WSP as drainage consultants for the Local Planning Authority

We have been made aware of the letter from WSP dated 27 September 2024. This letter refers to matters concerning surface water flooding. The Town and Country Planning (Development Management Procedure) (England) Order 2015 came into force on 15 April 2015 and removed the Environment Agency as a statutory consultee in relation to surface water drainage. Therefore, we cannot offer any comments on the letter as it concerns matters that are not within our remit.

WSP - Comments dated 27th September 2024

For completeness, the WSP comments of 27th September, which were reported verbally at the previous Committee meeting, are also included below.

Following a review of the submitted information, we have noted that the site is located within Flood Zone 2 and 3 and is at risk of surface water flooding to the rear of the property of depths from 30-90cm. Therefore, the development is not safe for habitable accommodation within the basement of the property and is not in accordance with the NPPF and PPG.

Reason: To prevent flooding in accordance with National Planning Policy Framework paragraphs 165-175 by ensuring the satisfactory management of local flood risk, surface water flow paths, storage, and disposal of surface water from the site in a

range of rainfall events and ensuring the SuDS proposed operates as designed for the lifetime of the development.

WSP - Current comments dated 17th October 2024

We are happy to agree with the EA's comments that living space in the basement is acceptable but sleeping accommodation is not.

Representation

A further representation has also been received from resident of The Meadway making the following comments: -

- Nothing has changed materially so no need to change the conditions.
- EA and WSP are not competing, both are relevant and valid.
- Applicant's intended use is bedroom.
- WSP comments are limited.
- There are no comparable properties with a basement.
- The Council must enforce as necessary.
- The applicant's drawings are confusing and misleading.
- The Council need to decide regarding non habitable.
- Please uphold the original decision to protect future occupants.

Planning Assessment

WSP's updated comment of 17th October now states agreement with the Environment Agency's position, that use of the basement as living space is acceptable but sleeping accommodation is not.

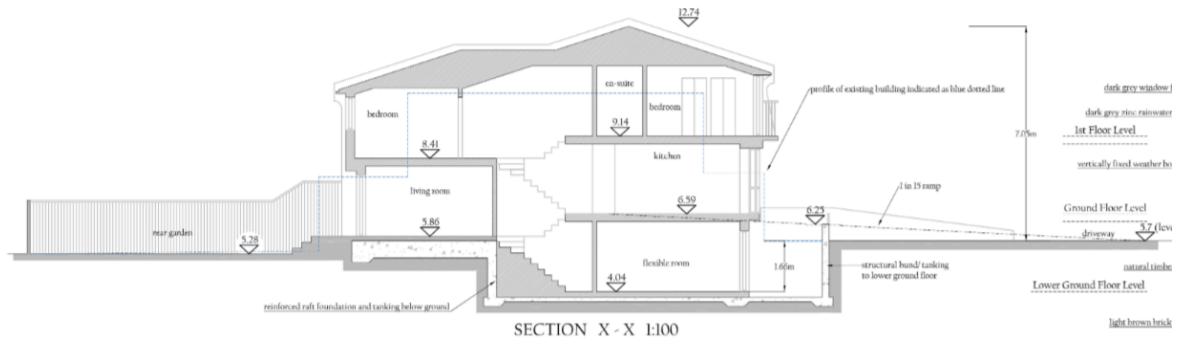
The expanded response from the Environment Agency, also dated 17th October reiterates that the lower ground floor/basement space should not be used for sleeping *"as this is when occupants would be most vulnerable to flood water impacts, from our perspective the risk to occupants has been addressed to an adequate degree."*

Levels

Since the committee meeting the Council has also engaged an independent surveyor to check the floor levels of the completed building on site, which are shown on the submitted cross-section drawing (below). The survey confirms that the ground floor levels are accurate but that the lower ground floor/basement is 0.18m lower than that shown on the plans, (a site measurement of 3.86m AOD compared with 4.04m AOD on the plan). An amended plan has been requested from the applicant, to reflect this 'as-built' basement level.

In consideration of this difference, it is noted that the approved planning condition is only concerned with the height of the ground floor and not the lower ground floor. The approved Flood Risk Assessment (FRA) for the development stated:

"The lower ground floor of each unit will be protected by higher levels around the perimeter of the units. This can be seen most easily in the proposed section drawing in Appendix C, there is no route for flood water to enter either unit."



Although 0.18m the difference in the level of the basement is not governed by the planning condition, the Environment Agency (EA) and WSP have been informed. The EA has repeated its advice of 17th October, i.e. *Our only stipulation in this regard is that it is not used for sleeping accommodation. Any response from WSP will be reported as an update.*

Summary

Subject to a satisfactory further response from WSP (assuming that the floor level of the basement does not make a difference to its recent views), the recommendation of approval remains the same as previously.

The Committee report of 30th September and recommendation, including the revised wording to condition 11 (originally numbered condition 15 in the 2022 planning permission), is reproduced below and the application remains recommended for approval accordingly.

The first part of the condition will need to refer to the awaited amended plan which will show the as-built floor level of the basement; this is indicated in square brackets, which have been added to condition 11 in the list of conditions at the end of this report. The second part of the condition includes the prohibition of use for sleeping accommodation, in accordance with the EA's advice.

This wording no longer prohibits use of the basement for habitable uses. These may include use as a 'work from home space', as stated in 2022 (agent's letter 7th December 2022), or for other domestic activities as long as none of these involve use as sleeping accommodation.

Committee Report 30th September 2024

Proposal, Site and Surroundings

This S.73 application relates to a pair of semi detached dwellings at 51 Old Fort Road. The planning permission to which it relates is for “Demolition of existing chalet bungalow and construction of a pair of semi detached 3 storey, 3 bedroom houses (including lower ground floor below existing ground level” AWDM/2007/21. This was approved by members in March 2022.

Following this members considered and approved AWDM/1698/22 which sought amendments including changes to windows, materials and greater details of the basement and addressed some conditions (drainage and construction management). AWDM/1119/23 was a delegated approval, also to amend the proposed materials.

The dwellings have recently been completed and are being marketed. The current application seeks two things:

Firstly to allow the basement at lower ground floor level to be used for habitable space but not for sleeping, this would involve a change to the wording of condition 15 of the planning permission (below in bold font); it is noted that the letter of 7th December 2021 referenced in that condition, confirmed that the room would not be used for sleeping but as a ‘work from home’ room.

Secondly, to regularise a discrepancy between the floor level of part of the (split-level) ground floor as built, and the level stipulated by condition 15.

Condition 15 states: -

The development shall be carried out in accordance with the submitted Flood Risk Assessment (ref: 11726, Second issue dated 8 December 2021, by GTA Civils & Transport Ltd) and the following mitigation measures it details:

- *Finished floor levels for the ground floor shall be set no lower than **6.15 metres** above Ordnance Datum (AOD) (Section 3.2 of the Flood Risk Assessment).*
- ***The room on the lower ground floor (labelled as a ‘flexible room’ on drawing no 058 Rev A at Appendix C of the Flood Risk Assessment) shall not be used for habitable uses and/or for sleeping accommodation.***

These mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the scheme's timing/phasing arrangements. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

*Note: The non-habitable use of the flexible room is confirmed in the submitted letter dated 7 December 2021 from James Breckell Architects.**

Reason: *To reduce the risk of flooding to the proposed development and future occupants in line with the Planning Practice Guidance (PPG) to the National Planning Policy Framework (NPPF) for Flood Risk and Coastal Change.*

The ground floor level of the semi detached houses as built, is at its lowest point 5.91 AOD rather than the stipulated 6.15 AOD. This is shown on the submitted plans. As mentioned, the applicant seeks consent to retain this as built level and also to be allowed to use the basement rooms (1 room per dwelling) for habitable use but not to include sleeping.

This application originally proposed to include sleeping within the basement but this part of the proposal has since been removed.

This application will also involve amendment to condition 1 (list of approved drawings), to include the drawing of the as built floor level.

Consultations

Environment Agency: - We confirm that the lower level of 5.91m AOD [at the ground floor] is satisfactory. We are also satisfied that Condition 15 could be varied as follows.

Condition

The development shall be carried out in accordance with the submitted Flood Risk Assessment and the following mitigation measures it details:

- **The room on the lower ground floor (labelled as ‘flexible room’ on drawing no.058, revision A at Appendix C of the Flood Risk Assessment) shall not be used for sleeping accommodation.**
- **Clear internal access is provided from the lower basement to the upper floors.**

The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

Reason: *To reduce the risk of flooding to the development and future occupants.*

Representations: - 2 representations have been received objecting to the proposals. Owner/occupier of 45 and 49 The Meadway.

- Residents were assured that the basement would not be used as bedrooms.
- This space has been marketed as such.
- The construction of the lower ground floor has resulted in serious damage to neighbouring properties.
- Attempt to upsell the properties.

- Overdevelopment of the site, 2 properties on such a small site, increased noise and disturbance to local neighbourhood.
- The examples given by James Breckell are not comparable as the unique position and terrain on the Old Fort Road and proximity to the foreshore should always be considered. The basement is lower ground floor.
- The law states that non habitable space means space in a structure that is unsafe or unsuitable for living, sleeping, eating or cooking and which does not comply with the standards of fitness for occupancy.
- The Council should not overrule the judgement of the Environment Agency and would be a dangerous precedent.
- We must put people's lives first over any commercial gain.
- Properties have been built other than in accordance with planning permission.
- Planning permission would not be agreed without condition 15 and the applicant agreed to no habitable or bedrooms.
- Nothing has changed to allow the condition to be changed.
- Water would flood the basement area and no pump would assist.
- Planning and Building Control should check what has been built.
- Different flood levels throughout the application.
- There has been overwhelming wilful intent to circumvent planning in order to produce 4 bed properties.
- The condition should remain to protect future residents.

Relevant Planning Policies and Guidance

Adur Local Plan 2017 Policy 15

'Supplementary Planning Guidance' comprising: Development Management Standard No.2 'Extensions and Alterations to Dwellings'

National Planning Policy Framework (December 2023)

WSCC Guidance on Parking at New Developments (Sept 2020).

Relevant Legislation

The Committee should consider the planning application in accordance with:

Section 70 of the Town and Country Planning Act 1990 (as amended) provides that 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

Principle

The principle of the semi-detached development has been accepted and the scheme has been constructed. The key considerations here are the use of the basement as habitable accommodation in terms of flood risk. Also the flood risk implications of the

part of the ground floor level being below that required in the planning condition no.15. as set out above. The only change to the approved plans is to the drawing which shows the ground floor height (condition 1 is the list of approved plans and would need to be amended to include this). The change does not affect the height of the building or approved details such as the position, size and height of windows.

There are no other changes to the approved plans.

Flood risk

The proposal has been amended to request the removal of non habitable from the planning condition but to retain non sleeping. The lower ground floor space could therefore be used as a home office, living room or playroom for example. No one would be able to sleep in this space therefore protecting the risk to life should a flood occur when occupiers are asleep.

This is in line with other planning conditions which have been attached to similar applications to limit the use of areas of the building at risk of potential flooding. The applicant's agent has submitted two examples of similar conditions. AWDM/1398/22 a new dwelling in Old Salts Farm Road Lancing had a condition attached which stated that all sleeping accommodation must be at the first floor level or above. Also AWDM/0881/21 a new dwelling in Fishermans Walk Shoreham with a condition attached which stated no sleeping accommodation to be located at ground floor. Both were examples where the Environment Agency had recommended the conditions.

It is therefore not unreasonable to accept that this condition could be varied to be just non sleeping; this would still protect the future occupants from the risk of flooding. There is a means of escape from the basement in the event of a flood. The Environment Agency has advised that they are in support of such a variation and this is set out in their comments above.

With reference to the floor level of the ground floor being a minimum of 5.91 AOD and the request that the requirement of 6.15 AOD is removed from the condition. The Environment Agency has confirmed that they are satisfied with the as built floor level and that this can be removed from the condition. The following advice has been given from the Environment Agency to justify this stance.

"The original FRA for application ref: AWDM/2007/21 offered a floor level of 6.15 mAOD (section 3.2) – as that was included in the FRA, we conditioned it as written. However, the point is about the freeboard being offered. Ideally, we seek 600mm above the design flood level as specified in Flood Risk Standing Advice. For this site, the design flood level is 5.26 mAOD. A floor level of 5.91 mAOD is still offering sufficient freeboard so it is satisfactory from our perspective."

The floor height remains sufficient to protect from risk of flooding.

It should be noted that the Environment Agency as a national body of expertise can allow for conditions to be varied if in their expert opinion this is deemed acceptable. The reasoning above would justify such a variation in this case.

The previous, relevant conditions and the varied conditions in question (condition 1 and the previous condition 15, now numbered as **condition 11**) are set out below. For clarity, officers have added the words 'at any time' concerning the sleeping prohibition in condition 11 and have added the plan which shows the as built floor levels, to this condition and to the list of approved plans in condition 1.

Recommendation

Approve subject to the following conditions: -

1. Approved plans [***including the awaited amended floor level drawing***]
2. Materials as set out in approved plans.
3. Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 2015, as amended, (or any order revoking and re-enacting that Order with or without modification), the proposed dwelling shall not be extended or altered by means of any development as set out within Classes A, AA, B, C, D and E of Part 1 of the Schedule to that Order.

Reason: *In the interests of amenity and the environment having regard to the nature of the site and policy 15 of the Adur Local Plan.*

4. The windows in the east and west side elevation of the dwellings hereby permitted shall at all times be glazed with obscured glass. No additional openings other than those hereby approved shall be inserted in the building. The privacy screens shown on the approved plans shall be installed prior to occupation and shall remain in place at all times unless otherwise approved in writing by the Local Planning Authority.

Reason: *To prevent overlooking and to comply with policy 15 of the Adur Local Plan.*

5. The dwelling shall be constructed and fitted out so that the potential consumption of wholesome water by persons occupying the dwelling will not exceed 110 litres per person per day. The dwelling shall not be occupied unless the notice for that dwelling of the potential consumption of wholesome water per person per day required by the Building Regulations 2010 (as amended) has been given to the Local Planning Authority.

Reason: *In order to set a higher limit on the consumption of water by occupiers as allowed by regulation 36 of the Building Regulations 2010 and to increase the sustainability of the development and make efficient use of water in accordance with policy 18 of the Adur Local Plan.*

6. The sustainability and energy efficiency measures referred to in the Design and Access Statement submitted with AWD/2007/21 shall be installed before the dwelling hereby approved is occupied.

Reason: *In the interests of amenity and sustainability having regard to policies 15, 18 and 19 of the Adur Local Plan.*

7.

The existing trees to the north of the site within the adjacent garden shall be protected for the duration of construction works and shall not be damaged, destroyed, uprooted, felled, lopped or topped.

Reason: *In the interests of visual amenity and the environment and to comply with policies 15 and 30 of the Adur District Local Plan.*

8. No part of the development shall be first occupied until such time as the vehicular access serving the development has been constructed in accordance with the details shown on the drawing titled Proposed Site Plan and numbered 04A.

Reason: *In the interests of road safety and to comply with Policy 15 of the Adur Local Plan.*

9. 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. The parking area shall be edged with raised blocks to abut the pavement to create a barrier to limit the amount of gravel overspill onto the public highway.

Reason: *To provide car-parking space for the use and to comply with Policy 15 of the Adur Local Plan.*

10. No part of the development shall be first occupied until covered and secure cycle parking spaces have been provided in accordance with the approved plan. Reason: provide alternative travel options to the use of the car in accordance with current sustainable transport policies.

11. **The development shall be carried out in accordance with the submitted floor levels shown in drawing [406/20, dated August 2024 insert amended drawing number and that this updates that of the Flood Risk Assessment] and the following mitigation measures it details:**

The room on the lower ground floor (labelled as 'flexible room' on drawing no.058, revision A at Appendix C of the Flood Risk Assessment) shall not be used at any time for sleeping accommodation.

Clear internal access is provided from the lower basement to the upper floors.

The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

Reason: *To reduce the risk of flooding to the development and future occupants.*

12. Prior to installation details of the proposed air source heat pumps and the associated acoustic information shall be submitted to and approved by the Local Planning Authority, and shall be installed in accordance with such approved details and remain in place and maintained at all times unless otherwise approved in writing by the Local Planning Authority.

Reason: *In the interest of residential amenity and to accord with Policy 15 of the Adur Local Plan.*

13. Work shall be carried out in accordance with the drainage and soakaway and technical plans hereby approved and details contained in the email from Simon Dent Associates dated 29th November 2022. These shall be complied with at all times unless otherwise approved in writing by the Local Planning Authority.

Reason: *To ensure adequate drainage and to comply with the National Planning Policy Framework and policy 36 of the Adur Local Plan.*

14. In addition to the approved plans listed above the following plans approved under AWDM/2007/21 shall be complied with at all times: -

Existing and Proposed Block Plan 02 - received 8th November 2021

Existing Digital Survey 03 - received 8th November 2021

FRA - received 13th December 2021

Height Comparison Plan 08 - received 9th December 2021

Proposed site plan 04D - received 10th February 2022

Existing and Proposed Location Plans 01 15th August 2023

Existing and Proposed Block Plan 02 15th August 2023

Proposed Elevations 05C 15th August 2023

Reason: *For the avoidance of doubt and in the interests of proper planning.*

Informatives

1. The developer should be aware that pulverised fuel ash (PFA) has been identified on Shoreham Beach. This is a potentially contaminative material, which can present as grey and ashy in nature or as small, black, coal-like deposits. It is the responsibility of the owner and developer to establish the extent of such material on the site and to carry out appropriate remediation where necessary.
2. The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.
3. The applicant is advised to contact the operator of the street lighting pole to organise the moving/relocation works.

4. The applicant is advised that in addition to obtaining planning permission they must also obtain formal approval from the highway authority to carry out the site access works on the public highway. The granting of planning permission does not guarantee that a vehicle crossover licence shall be granted. Additional information about the licence application process can be found at the following web page:
<https://www.westsussex.gov.uk/roads-and-travel/highway-licences/dropped-kerbs-or-crossovers-for-driveways-licence/>
Online applications can be made at the link below, alternatively please call 01243 642105.
<https://www.westsussex.gov.uk/roads-and-travel/highway-licences/dropped-kerbs-or-crossovers-for-driveways-licence/vehicle-crossover-dropped-kerb-construction-application-form/>
5. Due to changes in legislation that came into force on 1st October 2011 regarding the future ownership of sewers it is possible that a sewer now deemed to be public could be crossing the above property. Therefore, should any sewer be found during construction works, an investigation of the sewer will be required to ascertain its condition, the number of properties served, and potential means of access before any further works commence on site. The applicant is advised to contact Southern Water Developer Services, Southern House, Yeoman Road, Worthing, West Sussex, BN13 3NX (Tel 0330 303 0119) or www.southernwater.co.uk or email developerservices@southernwater.co.uk
6. A formal application for connection to the public sewerage system is required in order to service this development. The applicant is advised to contact Southern Water Developer Services, Southern House, Yeoman Road, Worthing, West Sussex, BN13 3NX (Tel 0330 303 0119) or www.southernwater.co.uk or email developerservices@southernwater.co.uk
7. Infiltration rates for soakage structures are to be based on percolation tests undertaken in the winter period and at the location and depth of the proposed structures. The percolation tests must be carried out in accordance with BRE DG365, CIRIA R156 or a similar approved method and cater for the 1 in 10 year storm between the invert of the entry pipe to the soakaway, and the base of the structure. It must also have provision to ensure that there is capacity in the system to contain below ground level the 1 in 100 year event plus 40% on stored volumes, as an allowance for climate change. Adequate freeboard must be provided between the base of the soakaway structure and the highest recorded annual groundwater level identified in that location. Any SuDS or soakaway design must include adequate groundwater monitoring data to determine the highest winter groundwater table in support of the design. The applicant is advised to discuss the extent of groundwater monitoring with the Council's Engineers. Further detail regarding our requirements are available on the following webpage:
<https://www.adur-worthing.gov.uk/planning/applications/submit-fees-forms>
A surface water drainage checklist is available on this webpage. This clearly sets out our requirements for avoiding pre-commencement conditions, or to discharge conditions.

8. Under current legislation and guidance SUDS rely upon facilities which are not adoptable by sewerage undertakers. Therefore, the applicant will need to ensure that arrangements exist for the long term maintenance of the SUDS facilities. It is critical that the effectiveness of these systems is maintained in perpetuity. Good management will avoid flooding from the proposed surface water system, which may result in the inundation of the foul sewerage system.
9. All Planning Applications for both domestic and non-domestic premises that have been granted approval for new development or conversions will require a new, or amended property address for the proposed development. Developers will be required to submit a Street Naming and Numbering Application to the Street Naming and Numbering Department upon commencement of works to enable the new development to be officially addressed in compliance with the British Standard of Addressing; known as BS7666. Developers are invited to complete their Street Naming and Numbering Application via the following link to the councils' website: www.adur-worthing.gov.uk/naming-and-numbering Information and guidance regarding the Fees for the service provided are also available at this location. Alternatively, please do not hesitate to contact the Street Naming and Numbering Department via the following methods should you have any queries; Street Naming and Numbering, Adur & Worthing Councils, Portland House, 44 Richmond Road, Worthing BN11 1HS. Telephone Number: 01903 221479. Email: llpg@adur-worthing.gov.uk.