

Arun District Council

REPORT TO:	Planning Committee – 14 December 2023
SUBJECT:	Decision on Y/52/23/PL
LEAD OFFICER:	Neil Crowther, Group Head of Planning
LEAD MEMBER:	Councillor June Hamilton, Chair of Planning Committee
WARDS:	All wards potentially affected
CORPORATE PRIORITY / POLICY CONTEXT / CORPORATE VISION: The recommendations supports:- <ul style="list-style-type: none">• Delivering the right homes in the right places;• Supporting our environment to support us;• Fulfilling Arun’s economic potential.	
DIRECTORATE POLICY CONTEXT: The decision on Y/52/23/PL, the proposals will help to enhance the quality of the natural and built environment, protect the district’s natural and heritage assets and to promote economic growth in a sustainable manner, striking a balance between the need for development and the protection of scarce resources.	
FINANCIAL SUMMARY: The decision reached on application Y/52/23/PL has the potential to expose the Council to risk from an award of costs at any future appeal. The decision also puts at risk the ability to secure essential infrastructure (should any appeal be allowed).	

1. PURPOSE OF REPORT

- 1.1 At Planning Committee on 15 November 2023, the Committee resolved to refuse planning permission on application Y/52/23/PL for 4 reasons. At the meeting, the proposed reasons for refusal were read out but officers were not asked to provide advice on these before a vote was taken. This process was contrary to paragraph 12.7 of the Planning Protocol contained within the Council’s Constitution relating to instances where the Planning Committee makes a decision contrary to the officer’s recommendation (whether for approval or refusal or changes to conditions or S106 obligations), which states: “The officer(s) should also be given an opportunity to explain the implications of the contrary decision should one be made.”
- 1.2 This report is required because the reasons for refusal need to be considered fully with the benefit of the advice of officers to provide clarity to the applicant for any future appeal proceedings and to minimise any potential risk to the Council.
- 1.3 The Committee are asked to consider the advice in this report and agree what (if anything) they wish to do considering this advice.

2. RECOMMENDATIONS

2.1 That Planning Committee confirm the following by way of clarification in respect of the decision made on Y/52/23/PL.

i. Reasons for refusal 1 & 2 are withdrawn.

ii. Reason for refusal 3 is withdrawn.

iii. Reason 4 should have read.

The design of the proposed houses would be incongruous with the established character of this semi-rural edge of settlement location which forms a buffer to the hamlet of Bilsham. They would introduce an urban built form to the edge of settlement location and not reflect the established character of the area. This would result in substantial harm to local character in conflict with Arun Local Plan policies D DM1 & LAN DM1, and policy H4 of the Yapton Neighbourhood Development Plan 2011-2031. The harm identified clearly and demonstrably outweighs the benefits of the application including its contribution to the Councils Housing Land Supply shortfall.

iv. Additional reasons for refusal should have included

In the absence of a signed Section 106 agreement, the development fails to make any affordable housing provision and is thereby contrary to the aims and objectives of the NPPF and policy AH SP2 of the Arun Local Plan.

In the absence of a signed Section 106 agreement, the development will not provide the highway improvements necessary to deliver the development & mitigate any residual harm to the local and strategic road network and is thereby contrary to ALP policies T SP1, T DM1 and the NPPF.

In the absence of a signed Section 106 agreement, the development will not provide the contribution required to mitigate the additional cost of transporting to secondary school pupils to the nearest school and is thereby contrary to ALP policy INF SP1 and the NPPF.

3. EXECUTIVE SUMMARY

3.1 It is essential to note that the purpose of this report is for the Council to explore that decision with the benefit of officer advice. That might involve amending, adding and withdrawing certain elements from the agreed reasons for refusal. Doing this will provide improved clarity for any future appeal and will consequently reduce the risk of costs being awarded against the Council for unreasonable behaviour. The purpose of this report is not to review the decision for a different decision to be reached.

3.2 It is also essential to note that the decision taken in response to this report cannot change the decision notice. However, it can provide much needed clarity, detail and certainty for both the Council and the applicant for any future appeal. The earlier the Council does this, the better because it can reduce the risk of any costs award.

3.3 This report is in no way critical of the Committee in what was suggested in considering the refusal reasons for Y/52/23/PL. The role of officers is to provide advice and guidance for the Committee the robustness of decisions can be affected if this advice is not able to be given.

4. DETAIL

4.1 Application Y/52/23/PL was refused planning permission at the Committee on 15 November 2023 (contrary to the recommendation of officers) for the following reasons.

1. The development sits outside the Built-Up Area Boundary of Yapton and does not confirm to the exceptions criteria of Policy H1 of the Yapton Neighbourhood Development Plan 2011-2031. The proposal would therefore be in conflict with policies H1 & BB1 of the Yapton Neighbourhood Development Plan 2011-2031 and policies C SP1 & SD SP2 of the Arun Local Plan.
2. The development would result in the loss of Grades 1 & 2 agricultural land contrary to policy SO DM1 of the Arun Local Plan, policy E1 of the Yapton Neighbourhood Development Plan 2011-2031 and paragraph 174b of the NPPF.
3. The application fails to provide an acceptable Flood Risk Assessment (FRA), Drainage Strategy & supporting information, contrary to the NPPF paragraphs 167 & 169, and policies W DM2 & W DM3 of the Arun Local Plan.
4. The proposal by nature of its design fails to reflect the rural character of Yapton and Bilsham, contrary to policy D DM1 of the Arun Local Plan and policy H4 of the Yapton Neighbourhood Development Plan 2011-2031.

4.2 The Council's Constitution provides clear guidance for Planning Committee within the Planning Protocol on the process that should be followed when the Committee are seeking to reach a decision contrary to the recommendation of officers. Paragraph 12.5 sets out a suggested process which includes having a short deferral for officers to review what has been proposed and provide advice to the Committee on what has been suggested. Another potential option is also to defer the application to another meeting so that the suggested reasons for refusal can be reviewed and professional advice obtained. Para 12.7 states that officer should be given an opportunity to advise and explain the implications of the proposed decision.

4.3 At the meeting on 15 November 2023, following debate, the proposed reasons for refusal were proposed. These were seconded, and a vote immediately taken without further debate and without officers being asked for their advice or there being an opportunity for officers to offer advice.

4.4 The purpose of this report is to provide the Committee with the advice that would have been provided at the meeting on 15 November and for the Committee to clarify the position of the Council with the benefit of that advice. In summary, the concerns relate to the following;

- There is no reason for refusal that relates to the lack of infrastructure (e.g. affordable housing, Comet Corner highway improvements scheme, and education transport contribution) in the absence of a completed s106 agreement to deliver it. This could potentially make it very difficult to secure necessary infrastructure at a future appeal.
- The previous planning permission on the application is a material consideration that must be afforded substantial weight in the decision-making process. In agreeing to reasons for refusal 1 and 2, the Committee do not appear to have given weight to this consideration.
- The reasons for refusal should contain more detail on what it is that is the planning harm is caused by the proposals. As worded, the reasons are largely a statement of fact and do not outline the harm caused by the policy conflict.

4.5 In response to each of these points, officer advice is set out below;

- Reasons for refusal around the infrastructure required should be added. A resolution in response to this report must state the infrastructure required and that there is no completed s106 agreement (at the time of the decision) that would deliver this infrastructure. Failure to include these could result in significant infrastructure not being able to be secured at a future appeal.
- Further text that adds essential content around the specifics of the harm caused due to non-compliance with policy is required for reason for refusal 4.
- In the absence of an objection from the Council's Drainage Engineers, reason for refusal 3 should be withdrawn.
- If the previous application was afforded substantial weight as a material consideration (as it must) then it would be exceptionally difficult to justify refusal 1 & 2. Further, the Neighbourhood Plan process in respect on policy BB1 will be outlined below which reduces further the robustness of these reasons.

4.6 I will deal with each of these issues in turn.

Absence of Essential Infrastructure Reason for refusal.

4.7 Officers consider it essential that the following reasons for refusal were added to those proposed by the Committee. As stated above, it is not possible to amend these reasons now, but this report can make it clear what the Council's position is on this matter. Because there is no completed s106 agreement to secure essential infrastructure, officers suggest that the following should have been added.

In the absence of a signed Section 106 agreement, the development fails to make any affordable housing provision and is thereby contrary to the aims and objectives of the NPPF and policy AH SP2 of the Arun Local Plan.

In the absence of a signed Section 106 agreement, the development will not provide the highway improvements necessary to deliver the development & mitigate any residual harm to the local and strategic road network and is thereby contrary to ALP policies T SP1, T DM1 and the NPPF.

In the absence of a signed Section 106 agreement, the development will not provide the contribution required to mitigate the additional cost of transporting to secondary school pupils to the nearest school and is thereby contrary to ALP policy INF SP1 and the NPPF.

- 4.8 Failure to include reasons for refusal on infrastructure could potentially make it difficult to secure at a future appeal. The Council clearly must ensure that this is avoided and the only way to do this now is to agree the text above the clarify that this is part of the Council's position and that it will form part of any future appeal should there be one.

Reasons for Refusal 3 & 4

- 4.9 It is perfectly acceptable that the Committee came to a view that the application was unacceptable on the grounds that the design was not acceptable and that issues around flood risk had not been satisfactorily addressed. The issue with the decision is that the reasons for refusal do not contain any text that sets out what aspects of the proposals are unacceptable, what the harm caused is and how they are contrary to the policies listed. Based on the debate at the Committee, Officers therefore suggest that reason for refusal 4 should have read;

The design of the proposed houses would be incongruous with the established character of this semi-rural edge of settlement location which forms a buffer to the hamlet of Bilsham. They would introduce an urban built form to the edge of settlement location and not reflect the establish character of the area. This would result in substantial harm to local character in conflict with Arun Local Plan policies D DM1 & LAN DM1, and policy H4 of the Yapton Neighbourhood Development Plan 2011-2031. The harm identified clearly and demonstrably outweighs the benefits of the application and the presumption in favour of sustainable development set out in the NPPF.

- 4.10 As officers stated at the meeting, it was likely that issues around surface water drainage and flood risk would be addressed to the satisfaction of the Council's Drainage Engineers. Since the meeting the Council's Engineers have confirmed that they raise no objections to the revised proposals. As stated in the officer report, the comments from the LLFA can be dealt with through planning conditions. Therefore, in light of the Council's Engineers comments, officers would recommend the withdrawal of this reason for refusal. If the Committee wished to pursue this as a reason for refusal, the officers would suggest additional wording, but this would be on the basis that defending this reason for refusal would require alternative evidence to be provided that would contradict the Council's Engineers.

Reasons for Refusal 1 & 2

- 4.11 As stated above, the previous planning permission Y/3/22/OUT must be afforded substantial weight in the decision-making process. Officer advice is that it cannot be afforded anything other than substantial weight. The decision taken on reasons for refusal 1 & 2 does not appear to take this into account and officers consider that these reasons would be exceptionally difficult to sustain at any future appeal. Further, the risk of a costs award against the Council would be significant because it would be unreasonable not to afford this substantial weight. Planning permission Y/3/22/OUT was granted permission at Planning Committee in August 2022 with the decision notice dated January 2023 following completion of the s106 agreement. For the reasons below, there has been no change in circumstances to justify a different decision to that taken on Y/3/22/OUT.

4.12 Reason for refusal 1 quotes policies BB1 and H1 of the Neighborhood Plan. Officers consider that it will be exceptionally difficult to make a case that the proposals would be contrary to these policies for the following reasons;

- i. The contrary decision taken on Y/3/22/OUT in January 2023 outlined above.
- ii. The fact that the recently made Neighbourhood Plan undertook to review the Built Up Area Boundaries and did so by including sites that had obtained planning permission. However, it appears that these boundaries were set in 2021 and were not revisited or updated nor was the policy wording amended to include flexibility. The decision on Y/3/22/OUT (January 2023) pre-dates the Examiners Report (May 2023) and the Regulation 19 Plan (June 2023). If the BUAB in the Neighbourhood Plan were up to date at the time of being made, and therefore afforded weight, then planning permission Y/3/22/OUT should clearly have been incorporated within the BUAB in the same way as all other permissions before the making of the Plan.

4.13 Officer advice is that the weight that can be afforded to these BUAB's in the context of this decision is very limited and the recently made NP is consequently not a sufficient change in circumstance to justify a decision that differs to that taken on Y/3/22/OUT. The BUAB is the same as when Y/3/22/OUT was determined and, to be consistent and up to date, the BUAB should include this decision.

4.14 Officer advice on this is clear and unambiguous. These reasons for refusal are not considered to be robust and it is not considered that they could be sustained at any future appeal. Further, if this reason for refusal is retained, officers consider that the risk of a costs award against the Council would be high.

4.11 Consequently, the same comments equally apply to proposed reasons for refusal 2 in relation to the loss of Best and Most Versatile Land, on the basis that the outline permission already granted by the Council under Y/3/22/OUT would equally, result in the permanent loss of this agricultural land. There has been no change in circumstances to justify a different conclusion on the same issue.

5. CONSULTATION

5.1 None

6. OPTIONS / ALTERNATIVES CONSIDERED

6.1 n/a

7. COMMENTS BY THE GROUP HEAD OF FINANCE/SECTION 151 OFFICER

7.1 No comments.

8. RISK ASSESSMENT CONSIDERATIONS

8.1 The purpose of this report is to attempt to reduce the potential for a cost award against the Council at a future appeal on the basis that the Council's decision was unreasonable.

9. COMMENTS OF THE GROUP HEAD OF LAW AND GOVERNANCE & MONITORING OFFICER

9.1 The Planning protocol is part of the decision-making framework for planning determinations and this report is intended to ensure robustness in the decision-making process.

10. HUMAN RESOURCES IMPACT

10.1 n/a

11. HEALTH & SAFETY IMPACT

11.1 n/a

12. PROPERTY & ESTATES IMPACT

12.1 n/a

13. EQUALITIES IMPACT ASSESSMENT (EIA) / SOCIAL VALUE

13.1 n/a

14. CLIMATE CHANGE & ENVIRONMENTAL IMPACT/SOCIAL VALUE

14.1 n/a

15. CRIME AND DISORDER REDUCTION IMPACT

15.1 n/a

16. HUMAN RIGHTS IMPACT

16.1 n/a

17. FREEDOM OF INFORMATION / DATA PROTECTION CONSIDERATIONS

17.1 n/a

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BACKGROUND DOCUMENTS: