

REPORT UPDATE

Application No: **WA/63/21/PL**

Reason for the Update / Changes

FURTHER LETTER OF OBJECTION FROM WALBERTON PARISH COUNCIL

The Parish Council has provided an update on new legal advice regarding WA/63/21/PL. The advice is concerned that Arun's officers are, at present, misleading members which, if uncorrected, would also form the basis of another ground for judicial review as the analysis is inadequate and fundamentally legally flawed. Arun's approach as set out in the officer's report is clearly contrary to case law and does not address the issue of harm correctly. A finding that a development would cause harm to the conservation area creates a strong presumption against granting planning permission. In conclusion, they consider that it is beyond doubt that the alternative access is unnecessary. There are no new public benefits that flow from the proposal; the benefits of the residential development were already taken into account when Arun granted outline planning permission (WA/44/17/OUT). Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 mean that this harm is a matter of considerable importance and creates a strong presumption against granting planning permission. In circumstances where there are no countervailing public benefits, let alone benefits sufficient to outweigh the identified harm, the only option to refuse WA/63/21/PL.

The Parish Council has also submitted a paper raising concerns about the proposed pavement on Tye Lane. The proposed pavement on Tye Lane is below 1500mm for approximately 50m, with approximately 25m being 1.2m. A clear width of 2000mm allows two wheelchairs to pass one another comfortably. The absolute minimum, where there is an obstacle, should be 1000mm clear space; the maximum length of restricted width should be 6m. They consider that the proposed pavement is non-compliant with Department for Transport guidance on Inclusive Mobility.

Officers Comment:

The Council is required to determine the application by reference to the Local Plan. Not only must the Council have regard to the Local Plan, but the Council also has to make a decision in accordance with the plan unless material considerations apply. No material considerations have been brought to the committee's attention. In this

case, therefore, the correct focus must be on the terms of the Local Plan. The Local Plan contains no requirement to demonstrate need.

The Council is required to pay special attention to the desirability of enhancing or preserving the character of the Conservation Area. It is accepted that section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990:¹ is a statutory consideration and not just another material consideration. The character appraisal for the Conservation Area identifies managing traffic movements in the Conservation Area as a means of preserving the “village” character of the area. The proposal is assessed as causing “less than substantial harm” in accordance with paragraph 202 of the NPPF (2021). This harm is assessed to be on low end of the scale. As such, the public benefits that the development may achieve need to be considered as part of the assessment of the application. These include: Benefitting the local economy by bringing in additional customers to the village centre shops and services. There is no legal authority for the proposition that public benefits already taken into account cannot be taken into account again especially as the proposal is intended to be an alternative access for the same development.

A new 1.5 metre pavement is proposed along the eastern side of Tye Lane connecting to The Street. The proposed pavement reduces to 1.2 metres for approximately 25 metres but given the anticipated vehicle flows, alternative pedestrian accesses to the site and land constraints, the width proposed is acceptable. In order to accommodate the pavement, the carriageway width of the road would be narrowed to between 5.6 metres and 5.0 metres (i.e. a 5.0 metre wide road would allow an HGV and car to pass). The proposed improvements to the pedestrian links along Tye Lane to High Street should be provided in advance of the opening of the Tye Lane access to all vehicles. The proposed pavement along part of Tye Lane would ensure that the site links up with the village centre, and it complies with Policy T SP1 and Policy T DM1 of the Local Plan, in terms of connectivity.

LETTER OF OBJECTION

Refuse this application as it fails to provide a safe, convenient or adequate access for the development approved and started under WA/44/17/OUT. The development undertaken on the site to date is not only unauthorised by the only planning permission for the site that exists (WA/44/17/OUT) but also cannot be lawfully completed in accordance with the planning permission and its conditions and because the wording used in the S106 Agreement, the planning obligations it contains may not be enforced.

¹ “In the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character and appearance of that area”.

Officers Comment:

The principle of residential development at Avisford Grange was established in 2018 when WA/44/17/OUT was granted for 175 dwellings on the Land East of Tye Lane, with the access to the site directly off Yapton Road. The reserved matters (WA/95/18/RES) were approved in April 2019. The outline permission included the construction of the main vehicular access into the site from Yapton Lane, which has already been constructed, together with the provision of a new vehicular access point onto Tye Lane for use by emergency services vehicles. The residential development undertaken on the site to date is authorised and can be lawfully completed in accordance with the planning permission and its conditions, many of which have been discharged under their respective discharge of condition applications.

Committee is asked to note that in law a site can have multiple planning permissions and that there is a difference between granting planning permission and the implementation of the permissions. It is for the applicants to determine how they can lawfully implement the multiple applications they have made. Applying that principle to this application, if this application is successful it is for the Developer to decide how they can or whether they will implement both permissions, i.e. the outline / reserved matters scheme for 175 dwellings and the proposed alternative vehicular accesses. The role of the LPA at the time of implementation will be to decide whether it is expedient to carry out any enforcement action should the development depart from what is permitted.

FURTHER LETTER OF OBJECTION FROM A LOCAL RESIDENT

There are errors in the Technical Note (November 2021). The Technical Note refers to the High Street, and it should refer to The Street. The reference to the junction of Yapton Lane and The Street is irrelevant. The traffic survey was carried out during Covid; it is expected that car movements will increase in the future after Covid.

Officers Comment:

Noted.