

<u>No:</u>	BH2018/01336	<u>Ward:</u>	Rottingdean Coastal Ward
<u>App Type:</u>	Full Planning		
<u>Address:</u>	Land At Rear Of 1-45 Wanderdown Road Brighton		
<u>Proposal:</u>	Erection of 3no residential dwellings comprising of 2no four bedroom dwellings and 1no three bedroom dwelling incorporating parking, landscaping and associated works.		
<u>Officer:</u>	Paul Vidler, tel: 292192	<u>Valid Date:</u>	26.04.2018
<u>Con Area:</u>	N/A	<u>Expiry Date:</u>	21.06.2018
<u>Listed Building Grade:</u>	N/A	<u>EOT:</u>	20.03.2019
<u>Agent:</u>	ECE Planning Limited Worthing BN12 4AP	Brooklyn Chambers	11 Goring Road
<u>Applicant:</u>	Mr Peter McDonnell Goring Road Worthing BN12 4AP	C/O ECE Planning Brooklyn Chambers	11 Goring Road

1. PURPOSE OF REPORT

For the reasons set out in section 3. of this report, the Committee is being asked to review its decision, made at the 6 February 2019 Committee, to refuse planning application BH2018/01336: Land rear of 1 - 45 Wanderdown Road (“the application”) and to determine either that the decision of the Committee to refuse the application be upheld or that the officer “Minded to Grant” recommendation set out in the report to that Committee be agreed.

2. RECOMMENDATION

- 2.1 That the Committee reviews its decision to refuse the application;
- 2.2 That having reviewed its decision the Committee either:
- (a) Agrees to uphold its decision to refuse the application and, if so, on all or some only of the grounds; or
 - (b) Agrees the officer recommendation set out in the report to the 6 February 2019 Planning Committee, which report is attached as Appendix 1

3. BACKGROUND

1. The application was considered by Planning Committee on 6 February 2019. The officer report from that meeting, updated to include the items on the Additional Representations list, is appended as Appendix 1 to this report. Members resolved to refuse the application contrary to the recommendation on the grounds set out as headings to paragraphs 5. to 10. (inclusive) below.

The wording of the reasons for refusal has been drafted and is awaiting final agreement. A decision has not been formally issued on the application.

2. On the day following the committee meeting, 7 February, the applicant's agent wrote to the council setting out their concerns about the decision. Based on the conclusion of the Planning Inspector at the appeal for the previous scheme that 9 dwellings would not have a harmful ecological impact, the applicant considers the grounds of refusal are very weak and could not be substantiated at appeal.. The applicant has requested that the application is taken back to the next available Planning Committee for reconsideration and that if the application is refused the decision will be appealed and an award of costs against the Council sought.
3. Further correspondence was received from the agent on 12 February setting out their opinion that the committee did not pay due regard to the detailed application submissions on ecological matters, the comments of the County Ecologist or the recommendations of officers in endorsing approval of this scheme. The agent considers that undue weight was given to anecdotal information on site habitat/ecological conditions and representations made by non-statutory consultees. They consider that members were not properly informed on matters relating to ecological impact to assess whether the proposal would result in harm, which could not be mitigated for as recommended clearly by the previous Planning Inspector and subsequently the County Ecologist.
4. The agent has provided the following comments which, they submit, address the grounds for refusal agreed by Committee, with reference to the submitted Ecological Impact Assessment and findings of the County Ecologist:
5. Danger to biodiversity and ecology
 - The impact of the proposal on biodiversity and ecology is discussed at length within the applicant's ECOSA – in full Ecological Impact Assessment dated December 2018 (EclA).The report concludes positively at paragraph 6.1 that subject to mitigation (secured by condition and Natural England Licencing) the proposal would be acceptable offering many 'net gains' for biodiversity on the site.
6. Loss of site for endangered species: badgers, bats, reptiles, birds
 - The impact of the proposal on biodiversity and ecology is discussed at length within the EclA.
 - Badgers are discussed at sections 4.6,5.6 and 6.1 suggesting clearly that the potential closure and replacement of a badger sett would be acceptable. (secured under separate licence).
 - Bats are discussed at Sections 4.4, 5.5 and 6.1 suggesting clearly that the development would result in no harm, with habitat enhancements secured in the form of 10 new bat boxes on site. (to be secured by condition).

- Reptiles are discussed at Sections 3.9, 5.8 and 6.1 suggesting clearly that the development would result in limited harm, with reptile translocation proposed alongside habitat enhancements secured in the form of 10 new hibernacula on site. (to be secured by condition).
- Birds are discussed at Sections 4.9, 5.7 and 6.1 suggesting clearly that the development would result in limited harm, with habitat enhancements secured in the form of 12 new bird boxes on the new houses and within the site itself. (to be secured by condition).
- The report also refers to other identified species, which are discussed at length also in the EclA.

7. The Local Wildlife Site should be looked after

- The Local Wildlife Site (LWS) is a non-statutory designation and relates principally to the chalk grassland and scrubas set out in paragraphs 4.2.1 of the EclA. The loss of a small area of this grassland area will be compensated for through the introduction of the green chalk grass roofs which will result in a 'net gain' in calcareous grassland on site and be secured in the long term. (Para 5.3.4 EclA).
- Overall, the impact on the non-statutory designation is discussed at length through the EclA, concluding that impacts can be mitigated for positively through enhancements secured by condition, particularly in respect of the identified chalk grassland areas.

8. All comments made by the Sussex Wildlife Trust agreed

- Sussex Wildlife Trust (SWT) are a non-statutory consultee and therefore the weight attributed to such comments should be limited. The statutory response in respect of ecological matters must reasonably defer to the County Ecologist on behalf of BHCC.
- Notwithstanding the above they consider that the EclA addresses each of SWT concerns and the proposal will maintain fully green networks from the South Downs National Park to the north. The layout plan attached clearly shows how the proposals maintain such networks through the site; both east-west and north-south through retention of large areas of open grassland and woodland outside of the footprints of the proposed homes; furthermore, fences would not be solid to allow movement of mammals, reptiles and invertebrates.
- As cited previously, any ecological impacts can be positively mitigated for through habitat enhancements and reprovion. (to be secured by condition).

9. The inspector making the previous decision was not aware of the granting of the Meadow Vale planning permission which should be taken in conjunction

- The cumulative effect of this development is not considered relevant by reason of the scale of development proposed and significant distance from the application site, separated by residential properties on The

Vale itself and large swathes of unmanaged woodland. It must also be noted that the appeal decision for The Vale also considered mitigation appropriate in relation to ecological matters.

- Notwithstanding this conclusion, they would make it clear that a scheme of just 3 houses must be considered on its individual merits and as cited previously, the proposal is considered acceptable subject to mitigation.

10. The gain of 3 houses did not mitigate the loss of the site

- The gain of 3 houses is considered to mitigate fully for any habitat loss on the site for the aforementioned reasons as set out clearly in the EclA, resulting in many positive gains for biodiversity on site through future mitigation and management.
- It must also be considered fully that the previous Appeal Inspector considered the impact of 9 houses to be mitigatable in respect of ecological impact in 2017. Therefore, this is a significant and vital material consideration in the determination of this application for an appreciably smaller number of units and physical form of development.
- It is clear in their view that the previous level and form of development proposed (9 units) would have had a materially worse impact on ecology/biodiversity than the proposed 3 units and this must weigh heavily in favour of this significantly reduced scheme.

11. Officers have considered the points raised by the agent and have taken legal advice. The National Planning Policy Guidance (NPPG) (Paragraph: 049 Reference ID: 16-049-20140306) advises that unreasonable behaviour placing a local planning authority at risk of costs can include “not reviewing their case promptly following the lodging of an appeal”. As the NPPG states that its list of circumstances in which costs can be awarded is not exhaustive, it is considered the expectation of case review could also apply prior to an appeal being lodged. In the circumstances of this application, the agent promptly wrote to the council requesting a review of its decision.

12. Officers are of the view that, given the points raised above relating to the current application for 3 dwellings on the site, the information submitted with the application, the views of the County Ecologist, the ecological mitigation measures set out in the recommended conditions and the conclusions of the Planning Inspector at the previous appeal for 9 dwellings on the site, the council would not be able to adequately defend a refusal of planning permission at appeal, resulting in the risk of an award of costs against the Council.. In these circumstances, the committee is requested to review its decision to refuse the application and to determine either that its decision to refuse should be upheld or that Minded to Grant planning permission be granted in accordance with the officer recommendation on the application.