



**Horsham
District
Council**

Statement of the Local Planning Authority

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PLANNING INSPECTORATE REFERENCE

APP/Z3825/W/25/3365004

LOCAL PLANNING AUTHORITY REFERENCE

DC/25/0005

Town and Country Planning Act 1990

Planning appeal by Mr & Mrs Christian John

Lower Batchelors, Emms Lane, Barns Green, Horsham, West Sussex, RH13 0QH

Appeal to be determined by an Inspector appointed by the Secretary of State by way of

Written Representation

The appeal proposal

The application sought permission for the “*Permission in Principle for demolition of an existing structure and erection of a single dwelling*”

An assessment was made during the 8 weeks and put forward for recommendation for refusal, however there was delay during the internal review process at the determination such that the determination exceeded the statutory determination time. Subsequently, the applicant had a right to appeal for non-determination. Had the LPA continued to its determination of the application it would have refused the application for the following reasons.

Had the application been determined, the reasons for refusal would have been as follows:

Reason 1:

“The development would enable a residential use within a countryside location outside of the built-up area boundary of any settlement, on a site which has not been allocated for development within the Horsham District Planning Framework or an adopted Neighbourhood Plan. The development would be contrary to the overarching strategy and hierarchical approach of concentrating development within the main settlements and is not essential to its countryside location. There are no material considerations which outweigh this harm, and the proposal represents unsustainable development, contrary to Policies 1, 2, 4, and 26 of the Horsham District Planning Framework (2015).”

Reason 2:

“Insufficient information has been provided to demonstrate with a sufficient degree of certainty that the proposed development would not contribute to an existing adverse effect upon the integrity of the internationally designated Arun Valley Special Area of Conservation, Special Protection Area and Ramsar sites by way of increased water abstraction, contrary to Policy 31 of the Horsham District Planning Framework (2015), Paragraphs 193 and 194 of the National Planning Policy Framework (2024), thus the Local Planning Authority is unable to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), and s40 of the NERC Act 2006 (Priority Habitats & Species).”

The case for the local planning authority

This statement forms the Local Planning Authority’s statement of case. Given that the appeal is on the basis of non-determination, the written representation will include in full the relevant local plan policies.

The crux of the appeal relates to:

1. Whether the proposed development would be acceptable within its countryside location
2. Whether the development would be water neutral

Reason for refusal 1:

The statement of case outlined within the appeal submission mirrors the Planning Statement within the application stage and does not raise new or compelling evidence in support of their case. The appellant does not contest that the application site is within the countryside, they

instead appear their opinion that the site would be suitable for '*up to 5 dwellings*' and would not give rise to amenity concerns. It is noted that the description of the application would be limited to one dwelling such that it is not certain if the Statement of case is advancing that the appeal site is suitable for one dwelling or for five.

Policies 3 and 4 of the HDPF direct growth within the District and define the settlement hierarchy. Policy 3 outlines that development will be permitted within towns and villages which have defined built-up areas. Policy 4 directs the growth of settlements outside of the built-up areas, and states that the expansion of settlements will be supported where: the site is allocated in the Local Plan or in a Neighbourhood Plan and adjoins an existing settlement edge; the level of expansion is appropriate to the scale and function of the settlement type; the development is demonstrated to meet the identified local housing need; the impact of the development individually or cumulatively does not prejudice comprehensive long term development in order not to conflict with the development strategy; and the development is contained within an existing defensible boundary and the landscape and townscape character features are maintained and enhanced.

Policy 26 of the HDPF states that outside built-up area boundaries, the rural character and undeveloped nature of the countryside will be protected against inappropriate development. Any proposal must be essential to its countryside location, and in addition meet one of the following criteria: support the needs of agriculture or forestry; enable the extraction of minerals or the disposal of waste; provide for quiet informal recreational use; or enable the sustainable development of rural areas. In addition, proposals must be of a scale appropriate to its countryside character and location. Development will be considered acceptable where it does not lead, either individually or cumulatively, to a significant increase in the overall level of activity in the countryside, and protects and/or conserves, and/or enhances, the key features and characteristics of the landscape character area in which it is located.

Policy 11 of the Regulation 16 Barns Green and Itchingfield Neighbourhood Plan (BGINP) (2020), provides that development comprising of the delivery of windfall housing will be supported within defined built-up areas where proportionate in scale, appropriate in design and character and where the effects of development on the amenities of neighbouring occupiers would prove appropriate.

As the Council has been unable to meet its housing land supply targets within the parameters of the existing development plan policies, it has produced a Facilitating Appropriate Development Document 2022 (FAD) which sets out an approach to boosting the supply of housing, pending adoption of the emerging Local Plan. Although only guidance, it offers a more positive stance on applications for housing outside settlement boundaries. In particular, unallocated sites outside but adjoining built up area boundaries can be supported, subject to meeting certain other criteria.

The other criteria includes:

- The site adjoins the existing settlement edge as defined by the BUAB;
- The level of expansion is appropriate to the scale and function of the settlement the proposal relates to;
- The proposal demonstrates that it meets local housing needs or will assist the retention and enhancement of community facilities and services;
- The impact of the development individually or cumulatively does not prejudice comprehensive long-term development; and
- The development is contained within an existing defensible boundary and the landscape

character features are maintained and enhanced.

The appeal site would not meet all of the above criteria as it would not adjoin an existing settlement edge (defined by a BUAB) and has not demonstrated that it would accord by being within an existing defensible boundary and maintaining and enhancing the landscape features.

As the site does not adjoin a settlement edge, the development would not benefit from the provisions of the FAD, thus failing on the first criteria as above. Whether or not the proposal meets the remaining criteria is extraneous, as *all* of the criteria must be met- the FAD is clearly worded and presented as above, which sets out a sequential series of criteria with the use of semi-colons (;) and the presence of 'and' between criteria 4 and 5.

The proposal is not in accordance to the above policies, or the objectives of the development plan and would overall be considered inappropriate development in the countryside location.

It is noted that the application site is located immediately to the south of Emms Lane, where road traffic noise is audible from the application site. Where this is the case, and residential development is proposed in close proximity to a predominant source of noise, it would be reasonably expected that the application be supported by a Noise Impact Assessment which quantifies and assesses the impact of noise on residential amenity and, crucially, provides the LPA with confidence that noise levels, both internally and in proposed amenity spaces, are capable of being mitigated through conditions. A report of this nature has not been submitted with the appeal.

Having regard to the principle of development in the countryside location, the provisions of the FAD, the neighbourhood plan and the potential for the land use not being essential to its countryside location, the proposed development is considered contrary to the policy 3, 4 and 26 of the HDPF.

Amount of Development:

Policies 25, 32, and 33 of the HDPF promote development that protects, conserves and enhances the landscape character from inappropriate development. Proposal should take into account landscape characteristics, with development seeking to provide an attractive, functional and accessible environment that complements the locally distinctive character of the district. Buildings should contribute to a sense of place, and should be of a scale, massing, and appearance that is of a high standard or design and layout which relates sympathetically to the landscape and built surroundings.

Notwithstanding the Appellant's Statement of case outlines that includes inconsistencies relating to the number of dwellings within the site, the assessment is made on the basis of the proposed development introducing 1 no. dwelling to the site. Two indicative housing types that have not been scaled have been submitted to illustrate the design, and form of the proposed dwellings, however the Block Plan is a reflection of the location plan and does not illustrate the extent of built form across the site. Nevertheless from the elevations submitted for both the housing types the scale would appear excessive for the amount of land within the plot and would spread across the breadth of each site, likely extending beyond the parameters of the red line boundary. The proposed dwellings would likely be comparable in size to the nearest neighbouring dwelling house within the immediate vicinity, however the size of the curtilage of the proposed would be noticeably smaller than the adjacent property. The perception and visual massing of both of the dwellings when considered within this context, particularly when considering the limited spacing would therefore contrast and

juxtapose the build pattern of the wider surroundings. While recognised that the proposal would replace existing built form, these buildings are considered to reflect the rural character of the countryside location. The development would appear as an ad hoc suburban interruption to the rural character and would not therefore protect, conserve or enhance the landscape character of the area, and would not reflect or maintain the settlement characteristics or build pattern of the surroundings.

For the reasons above, the development would formalise and urbanise the rural setting of the countryside location. The proposal would therefore detract from the informal character and sporadic build pattern of the rural locality.

Reason for refusal 2:

The application site falls within the Sussex North Water Supply Zone as defined by Natural England. New development in this zone cannot be approved by a competent authority if it would have an adverse effect on the integrity of the Arun Valley SAC, SPA and Ramsar sites.

Natural England advises that plans and projects affecting these sites will be required to demonstrate, with sufficient certainty, that they will not contribute further to an existing adverse effect. The received advice note advises that the matter of water neutrality should be addressed in assessments to agree and ensure that water use is offset for all new developments within the Sussex North Water Supply Zone.

Paragraph 005 of the Permission in Principle Planning Practice Guidance states that “*permission in principle must not be granted for development which is habitats development...habitats development means development which is likely to have a significant effect on a qualifying European site or a European offshore marine site, referred to as habitats sites in the National Planning Policy Framework (either alone or in combination with other plans or projects); is not directly connected with or necessary to the management of the site, and; the competent authority has not given consent, permission, or other authorisation in accordance with regulation 63 of the Conservation of Habitats and Species Regulations 2017. This means for sites where development is likely to have a significant effect on a qualifying European site or a European offshore marine site without any mitigating measures in place, the local planning authority should ensure an appropriate assessment has been undertaken before consideration of the grant of permission in principle. If the local planning authority is satisfied, after taking account of mitigation measures in the appropriate assessment and concluding that the development will not adversely affect the integrity of the protected site, then, subject to compliance with other statutory requirements regarding the permission in principle process, it can grant permission in principle.*”

No information has been provided in respect of Water Neutrality. During the application process the LPA was the ‘competent authority’ and a consultation was received from Natural England. It was concluded that insufficient information had been provided to demonstrate with certainty that the development would not contribute to an existing adverse effect upon the integrity of the internationally designated Arun Valley Special Area of Conservation, Special Protection Area and Ramsar sites by way of increased water abstraction.

In the absence of a strategy to demonstrate water neutrality through the incorporation of on-site measures and/or appropriate offsetting actions capable of achieving water neutrality, there is no certainty that the proposal will not contribute further to the existing adverse effect on the integrity of the Arun Valley SAC, SPA and Ramsar sites. In such circumstances the grant of permission would be contrary to Policy 31 of the HDPF, NPPF paragraph 193 and

194 and the Council's obligations under the Conservation of Habitats and Species Regulations 2017.

The council are positive and proactive where there is a presumption in favour of sustainable development, however in this instance, the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects) unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site. As such the presumption in favour of sustainable development did not in this instance apply. Where Water neutrality is not demonstrated, proposals would amount to adverse harm to the designated sites identified (as detailed in the above paragraphs) and thus provide a clear reason in refusing the application.

As the development is considered as part of an appeal, the LPA is now not the 'competent authority' as this has gone to the Planning Inspectorate, and as such we respectfully request the Inspector to review if the development has demonstrated water neutrality.

As such, the Inspector will reach their own conclusions with regards to Water Neutrality. The Local Planning Authority would not want to prejudice the due process of the competent authority however for the avoidance of doubt, the competent authority must consider the likely effectiveness of any mitigation measures proposed, including (amongst other things) the baseline water use of the site, the proposed water use and the appellant's submission or lack of in regards to water neutrality statement in addition to whether any mitigation measures outlined are capable of meeting the conditions tests.

Other matters

The appellant in their statement of case advances that the development should be considered in light of green belt policy and proceeds to outline greenbelt policy and recent appeal information where the inspector decided to allow an appeal on balance as the development would not harm the green belt land.

Appeal history is a useful material consideration where it represents a relevant application site, and has sufficient similarities in design, scale, form, location, siting and site context, however in this instance the appellant has included green belt assessment and appeal information where the application site is not in a "green belt" designation nor allocated "grey belt". Furthermore, no part of the district falls within allocated green belt land. As such, the policy considerations within this section of their statement of case is not considered useful or relevant in the determination of the application.

If the appellant feel that they were not aware of the LPA's policies then, given that they have the right of final comment in the appeal process, they have an opportunity to respond to the council's assessment advanced within this written representation.

Conclusion

It is considered that if the application were determined by the local authority within the statutory 8 week period, the application would have been determined as a balancing exercise, where it would have been considered by the Council that the harm arising from granting consent would not have been outweighed by the benefits of the scheme. The balancing exercise itself is academic, as it is a matter of opinion for an involved party to attribute weight to any determining factor.

As the site is not allocated for development within the HDPF or a made neighbourhood plan, owing to the site's location outside of the built-up area boundary, the principle of the development is contrary to Policies 1, 2, 4 and 26 of the Horsham District Planning Framework. This is granted moderate weight in the planning balance.

There is a housing shortage within the district, with the council being able to demonstrate a deliverable supply of housing sites for 1 year. As the Council cannot currently demonstrate a supply of deliverable housing sites, it is considered that the relevant policies would be considered 'out of date' as per Footnote 8 (FN8) associated with this paragraph of the NPPF. However, footnote 7 of paragraph 11 confirms that the policies referred to in the Framework are those relating to, among others, habitat sites.

Insufficient information has been provided to demonstrate that the development would not contribute to an existing adverse effect upon the integrity of the internationally designated Arun Valley Special Area of Conservation, Special Protection Area and Ramsar sites. Paragraph 11(d) is not therefore engaged in this instance. As the proposal would result in adverse harm to the Arun Valley protected sites, Footnote 7 would be triggered. Accordingly, whilst the tilted balance in favour of sustainable development as per Paragraph 11(d) is engaged, this is reset to the neutral position and not in favour of granting the permission.

The cumulative benefits (the provision of one market dwelling (moderate weight) and the socio-economic benefits (limited weight) would be outweighed from the identified adverse impacts of the development. Namely the conflict with the development plan (moderate weight) and the site's unsustainable location (significant weight). On balance, this would demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. This is in part considered given that the contribution of one dwelling to the district's housing shortage would in itself be a limited contribution.

Should the Inspector be minded to allow the appeal, then the following conditions are suggested on a without prejudice basis:

1 A List of the Approved Plans

- 2 Regulatory (Time) Condition:** The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990.

- 3 Pre-Commencement Condition:** No development shall commence until a drainage strategy detailing the proposed means of foul and surface water disposal has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved scheme.

Reason: As this matter is fundamental to ensure that the development is properly drained and to comply with Policy 38 of the Horsham District Planning Framework (2015).

- 4 Pre-Commencement Condition** No development shall commence until a Water Neutrality statement has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved scheme. The installed mitigation measures would be retained as such thereafter.

Reason: To ensure the development is water neutral to avoid an adverse impact on the Arun Valley SACSPA and Ramsar sites in accordance with Policy 31 of the Horsham District Planning Framework (2015), Paragraphs 193 and 194 of the National Planning Policy Framework (2024), and to enable the Local Planning Authority to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), and s40 of the NERC Act 2006 (Priority habitats & species).

- 5 Pre-Commencement Condition:** No development shall commence until a Preliminary Ecological Appraisal has been submitted to and the mitigation measures approved by local planning authority.

This may include the appointment of an appropriately competent person e.g. an ecological clerk of works (ECoW) to provide on-site ecological expertise during construction. The appointed person shall undertake all activities, and works shall be carried out, in accordance with the approved details.

Reason: To conserve and enhance protected and Priority species and allow the Local Planning Authority to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (Priority habitats & species) and Policy 31 of the Horsham Development Framework.

- 6 Pre-occupation Condition:** Prior to the first occupation of the dwelling, the necessary in-building physical infrastructure and external site-wide infrastructure to enable

superfast broadband speeds of 30 megabits per second through full fibre broadband connection shall be provided to the premises.

Reason: To ensure a sustainable development that meets the needs of future occupiers in accordance with Policy 37 of the Horsham District Planning Framework (2015).

- 7 **Pre-Occupation Condition:** No part of the development hereby permitted shall be occupied until a plan showing the layout of the proposed development and the provision of car parking spaces for vehicles has been submitted to and approved in writing by the Local Planning Authority. The dwelling hereby permitted shall be occupied or use hereby permitted commenced until the parking spaces associated with it have been provided in accordance with the approved details. The areas of land so provided shall thereafter be retained for the parking of vehicles.

Reason: To ensure that adequate and satisfactory provision is made for the parking of vehicles clear of all highways in accordance with Policy 40 of the Horsham District Planning Framework (2015)

- 8 **Pre-Occupation Condition:** No part of the development shall be first occupied until covered and secure cycle parking spaces have been submitted to and approved in writing by the Local Planning Authority.

Reason: To provide alternative travel options to the use of the car in accordance with current sustainable transport policies and Policy 40 of the Horsham District Planning Framework (2015).

- 9 **Regulatory Condition:** Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (and/or any Order revoking and/or re-enacting that Order, no development falling within Classes A, AA, B, C, E, or F of Part 1, Class A of Part 2, or Class AD of Part 20 of Schedule 2 of the order shall be erected, constructed or placed within the curtilage of the development hereby permitted without express planning consent from the Local Planning Authority first being obtained.

Reason: In the interest of visual amenity and due to control the development in accordance with Policy 33 of the Horsham District Planning Framework (2015).