

PLANNING APPEAL STATEMENT

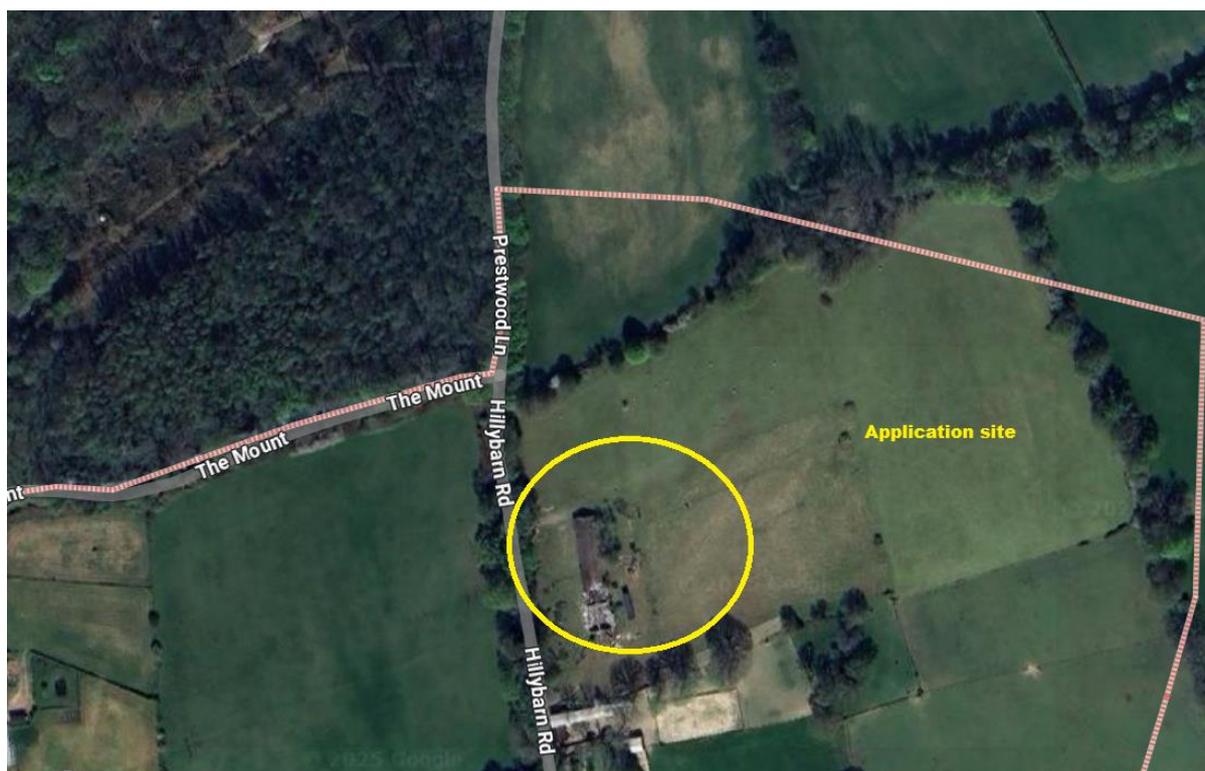
DC/25/0447 Land at Hillybarn Farm, Hillybarn Road, Ifield, West Sussex, RH11 0LF

Erection of 4no. new build dwellings and amended access details. (Alternative to permission granted under DC/22/1918 Prior Approval of Proposed Change of Use of Agricultural Building to form 5 dwellinghouses).

Introduction, the site and context:

This appeal statement sets out the general grounds in favour of the proposed development. The application documents made **reference to the extant permission for substantially similar residential development engaging the fallback position** along with the submitted plans setting out the proposal and context are included with the appeal and it is not necessary to excessively repeat the points made within the appeal statement.

The appeal is advanced on grounds that planning permission should be granted.



Above-aerial photo of the site

Any **Traffic light underlining** and bold type face throughout the Appeal statement emphasises the suitability of the proposal against the material planning

considerations as part of the planning balance exercise. The proposed development would represent a planning betterment / planning gain **(to which it seems no weight has been given)** in several respects as outlined within the main body of the statement.

The reasons for refusal are reproduced below with **comments added**.

Reason for Refusal (RFR)

1 The proposed development would be sited within an **unsustainable location in the countryside, outside of a defined built-up area boundary, and on a site not allocated for housing development within the Horsham District Planning Framework**, or a made Neighbourhood Plan. Furthermore, the proposed development is not essential to its countryside location. Notwithstanding the absence of a five-year land housing supply, and the provisions of the National Planning Policy Framework (2024) at paragraph 11(d), it is not considered that there are any material considerations in this instance which would outweigh harm arising from conflict with Policies 1, 2, 3, 4 and 26 of the Horsham District Planning Framework (2015).

Comment – The italicised extracts from the officer report below have now been addressed. The prior to commencement condition regarding contamination has now been discharged under application DISC/25/0201; copy included as background document. **As such the Council would now agree that there is a legitimate fallback such that the proposed development in the alternative would be considered to be in a sustainable location.**

The submitted Design and Access Statement advises that the current proposal is submitted as an alternative to an extant prior approval consent for the conversion of the barn to five dwellings (DC/22/1918). This prior approval consent had attached to it a pre-commencement condition outlining the need for a preliminary contamination report. This condition is considered to represent a condition precedent, which goes to the heart of the planning permission. In order to represent a reasonable fallback, this condition would need to have been discharged. This is no record of this matter having been dealt with, where the Prior Approval scheme could not be commenced without this condition being addressed. It is not therefore possible at this stage to commence development of the Prior Approval scheme, where the condition of the permitted development right is that the development should be completed within 3 years of Prior Approval being granted. Whilst there is an approved Regulation 77 application (HRA/24/0010) application relating to water neutrality, there is no viable fallback as the Pre-Commencement condition has not been discharged.

Without the presence of a viable fallback permission for the conversion of the barn to five dwellings as a significant material consideration the proposed development would be in conflict with the spatial strategy for housing within the development plan as set out in Policies, 2, 3, and 4 of the HDPF. In addition, the proposal would not meet any of the exceptions as identified within Policy 26 of the HDPF.

3 Insufficient information has been provided to demonstrate that the proposed development would have **no adverse impact on protected species and its habitat**,

and to establish how the development will contribute to measurable Biodiversity Net Gain, contrary to Policy 31 of the Horsham District Planning Framework (2015) and Paragraphs 193 and 194 of the NPPF.

Comment – Subsequent to the refusal the italicised extracts from the officer report below have now been addressed.

The Council's Ecologist has been consulted during the course of the application and has objected to the proposal given that the Bat Roost Potential Report (Sylvatica, July 2023) is out of date. The information submitted was more than 18 months old when it was submitted to support the application. Further information would be required including an up to date report, or an addendum to the initial report to show the validity of the initial report, further surveys and appropriate scope, timing and methods for the update surveys for bat roosts.

Comment – An updated Bat roost potential report has been prepared and is included with the appeal. The report confirms:

1.5 No evidence of bats was observed within the building. The building was considered to have negligible potential to support roosting bats. It was a long, single-storey structure in poor condition, with extensive fire damage, collapsed sections, and an exposed interior. Construction materials included corrugated metal and asbestos cement sheeting, blockwork, and timber cladding, all of which lacked suitable roosting features such as enclosed voids or crevices. Internally, the roof was tightly boarded, and no signs of bat use were recorded. The combination of structural degradation, poor thermal conditions, and absence of roosting features meant the building was highly unlikely to support bats.

1.6 Recommendation has been incorporated into this report regarding adhering to a sensitive lighting scheme to preserve foraging habitat of bats, locally. Recommendation has also been made regarding the avoidance of impact on any nesting bird and for the installation of ecological enhancement features in the form of bat boxes and swift nest boxes.

Biodiversity Net Gain (BNG):

Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021) mandates that every development must achieve at least a 10% Biodiversity Net Gain (BNG (unless the development qualifies as exempt under the Biodiversity Gain Requirements (Exemptions) Regulations 2024). A metric has been submitted however there are inconsistencies with the metric where the percentage of units reduced on site would be high, yet the on site change is reported to be in excess of 10%. Had the development been considered acceptable, the Local Planning Authority would have sought clarification on these matters.

Comment – An updated *Biodiversity Net Gain statement and matrix* has been prepared and is included with the appeal. The report confirms that the necessary BNG offset planting will be provided on site.

Rebuttal

COMMENT – It would be a nonsense to implement what is an extant Class Q conversion permission to then immediately apply to knock it down and replace it, just so that it strictly accorded with the ‘being in the same use’.

This is precisely the *mutually irreconcilable* and **exercise of judgment** points below from the ‘Braintree Judgement’ Case No: CO/1207/2017:

15. In *Tesco Stores Limited v Dundee City Council* [2012] UKSC 13, Lord Reed (with whose judgment Lord Brown, Lord Hope, Lord Kerr and Lord Dyson agreed), **rejected the proposition that each planning authority was entitled to determine the meaning of development plans from time to time as it pleased, within the limits of rationality.** He said:

*"18. ... The development plan is a carefully drafted and considered statement of policy, published in order to inform the public of the approach which will be followed by planning authorities in decision-making **unless there is good reason to depart from it. It is intended to guide the behaviour of developers and planning authorities.** As in other areas of administrative law, the policies which it sets out are designed to secure consistency and direction in the exercise of discretionary powers, while allowing a measure of flexibility to be retained. Those considerations point away from the view that the meaning of the plan is in principle a matter which each planning authority is entitled to determine from time to time as it pleases, within the limits of rationality. On the contrary, these considerations suggest that, in principle, in this area of public administration as in others (as discussed, for example, in *R (Raissi) v Secretary of State for the Home Department* [2008] QB 836), policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context. They are intended to guide the decisions of planning authorities, who should only depart from them for good reason.*

19. *That is not to say that such statements should be construed as if they were statutory or contractual provisions. Although a development plan has a legal status and legal effects, it is not analogous in its nature or purpose to a statute or a contract. As has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. **In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment. Such matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse (Tesco Stores Ltd v. Secretary of State for the Environment [1995] 1 WLR 659, 780 per Lord***

Hoffmann). Nevertheless, planning authorities do not live in the world of Humpty Dumpty: they cannot make the development plan mean whatever they would like it to mean."

Based on this starting point, it cannot be said that any adverse impacts permitting the proposal would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

The appeal site visit will enable a subjective judgement. Additional points are amply covered in the detailed Planning statement we only add the following summary points:

Planning history and case law on fallback position:

Based on the extant permission referred to above a **fallback position** is engaged.

The Development Control Practice Manual emphasises the fallback position point by confirming that, "**Previous planning permissions are important material considerations to be applied in any decision making process. There is, of course, an important distinction to be made between those permissions that are still capable of implementation, and those that have expired. In South Oxfordshire v SOS & Flaherty Bros 1981 an expired permission was referred to as a "relevant consideration", but not a "vitaly material consideration" as the SOS had concluded. The term "vitaly material consideration" had been used in Spackman v SOS 1977 with regard to an extant permission**".

Comment - The recent conversion permission **would** be implemented in the alternative; as such the conversion permission represents an extant permission and for the purposes of this application, '**a vitaly material consideration**'.

Further extracts from the The Development Control Practice Manual state:

"6.351 Extant permissions

The existence of an extant planning permission relating to the site of a proposed development is a particularly important material consideration for two reasons. These are: a) natural justice – It is not fair administration to allow one thing and then to turn round and deny something similar, b) that the development for which permission has been given could be implemented should any later proposal be refused".

Comment - There is a need to look at the proposal realistically and proportionately in respect of the context of the site. **As such there are material planning benefits arising from the proposal in contrast to the extant permission.**

Central to the proposal is that in comparison with the extant permission for one dwelling, the proposed new build dwelling in the alternative would maintain the openness of countryside. Whilst the circumstances are peculiar they are considered to represent the very special circumstances, in this instance, such that the proposal can be supported.

It is clear from planning case law that the weight that can be given to fallback position arguments **as significant material considerations** has notably increased in planning appeal reporting in the last couple of years, particularly where as in this scenario the proposed alternative development shares a common footprint with an extant permission.

Additional general appeal points

The proposed development suitably considers Local and National planning policies and guidance.

It is forcefully advanced and readily acknowledged that the application sufficiently complies with the effect and spirit of the Council's own policies. Given the subordinate in-keeping design of the proposal, and the nature of development in the surrounding area, the proposed development will not have a materially adverse impact on the character of the area.

Notwithstanding, even if marginal harm is created there is no significant impact. It is further advanced in this instance *that any marginal impacts of permitting the development would not significantly and demonstrably outweigh the benefits.* The appellant's primary case is that by the imposition of suitable conditions, the proposal can be made acceptable.

The proposed development has been given consideration to be sympathetic to and harmonious with local characteristics and to demonstrate that it contributes to and does not materially harm the character of such areas.

Given the above points, acknowledging the variety of housing styles which forms the context, it is advanced that the proposed development is an acceptable design feature which would fit in seamlessly **with the existing, varied surroundings.**

The analysis of the local context confirms that the design of the proposed development has considered and responded positively to the prevailing characteristics.

The proposed development is designed to simple and sound architectural principles - this can be further controlled by conditions including materials etc.

The relationship of the proposed development to its neighbours and to the character and appearance of its setting will not be materially different to the current established character.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]