Horsham District Council

DELEGATED APPLICATIONS - ASSESSMENT SHEET

APPLICATION NO./ADDRESS:
DC/23/1524
Southlands, Kent Street, Cowfold, Horsham, West Sussex, RH13 8BA

DESCRIPTION:
Restoration upon previously deposited wastes to create a wildflower meadow/garden

RELEVANT PLANNING HISTORY:

No relevant previous planning history.

SITE AND SURROUNDS

This application concerns land to the south and east of Southlands, comprising agricultural land extending to an approximate extent of 1.96ha. The site occupies a gradient, with land falling away from the built facilities of Southlands to the north of the site to the south.

The site has been subject to previous importation of waste containing soils resulting in a regrading of the site relative to its original condition. Evidence of this importation remains in the form of a temporary access track, waste building materials at surface level and through the presence of large mounds of imported soils adjacent to the eastern and western site perimeters in addition to a single mound within the central part of the site.

The site does not appear to be actively farmed in its current condition. A good number of semi-mature saplings have established in the south-eastern section of the site, with shrub grassland prevalent to the majority of the current site extent.

The site is found in a rural context characterised by large irregularly shaped fields interspaced by treed-hedgerows, small parcels of woodland and sporadic farmyard development. The site, overall, contributes to the prevailing character of its surroundings and benefits from verdant boundaries featuring several large individual trees.

The site is not subject of any heritage or ecological designation, however, is designated as at low-high risk of surface water flooding. Publicly available Environment Agency mapping models that the greatest extent/risk of surface water flooding within the site is at the south-eastern extent of the site, though, that the entirety of the southernmost extent of the site is at 'high' risk of surface water flooding. Environment agency modelling represents the expected depth of surface water flooding within the site to range between 30-90cm.

The site is not designated as at risk of flooding from any other source of flood-risk. The site, additionally, is not subject of any heritage or ecological designation.

DETAILED DESCRIPTION:

Planning permission is sought for engineering operations comprising the importation of 12,200m^3 of soil form local construction projects and the reprofiling of land. As shown on plans titled 'proposed improvement works – sections', the proposed importation/reprofiling would provide for a substantially even gradient at a datum of 20m to the vast majority of the site other than to the eastern, southern and western perimeters of the side, where land would be profiled to fall away steeply to the existing land level.

The submitted Planning Statement advances that the proposed operations are intended to regularise the previous depositing of soils to the land and to return the land to agricultural use (paragraph 2.11). The previous depositing of soils referenced within the planning statement are explained to comprise the importation of approximately 7,800m^3 of soil, with the incomplete nature of operations advanced to render the site incapable of being put to use for productive purposes (paragraphs 2.13 and 2.14). Current importation and engineering operations were undertaken without the benefit of planning permission.

It is understood that the proposed reprofiling of land would involve the redistribution of previously imported soils in addition to newly imported soils. It should, therefore, be noted that while the proposed development would remedy a breach of planning control arising from the previous importation, if approved, the scope of the Authority's consideration is not limited to the merits of works previously undertaken. The Authority must, instead, consider the merits of existing operations and proposed operations in combination.

The submitted planning statement references the creation of a small-shallow pond at the south-eastern corner of the site, though, the position, extent, design and depth of this feature is not detailed within any of the plans submitted in support of the proposals, or mentioned within the submitted application form. It is considered unclear whether this feature forms part of the proposals.

RELEVANT PLANNING POLICIES

The National Planning Policy Framework (NPPF) (2023):

Horsham District Planning Framework (HDPF) (2015):
Policy 1 - Strategic Policy: Sustainable Development
Policy 2 - Strategic Policy: Strategic Development
Policy 3 - Strategic Policy: Development Hierarchy
Policy 7 - Strategic Policy: Economic Growth
Policy 10 - Rural Economic Development
Policy 24 - Strategic Policy: Environmental Protection
Policy 25 - Strategic Policy: The Natural Environment and Landscape Character
Policy 26 - Strategic Policy: Countryside Protection
Policy 31 - Green Infrastructure and Biodiversity
Policy 32 - Strategic Policy: The Quality of New Development
Policy 33 - Development Principles
Policy 35 - Strategic Policy: Climate Change
Policy 36 - Strategic Policy: Appropriate Energy Use
Policy 37 - Sustainable Construction
Policy 38 - Strategic Policy: Flooding
Policy 40 - Sustainable Transport

West Sussex Waste Local Plan (WLP) (2018)
Policy W8 – Recovery Operations involving the Depositing of Inert Waste to Land
Policy W9 – Disposal of Waste to Land
Policy W14 – Biodiversity and Geodiversity
Policy W16 – Air, Soil and Water
Policy W17 – Flooding
Policy W18 – Transport
Policy W19 – Public Health and Amenity
Policy W20 – Restoration and Aftercare

Cowfold Neighbourhood Plan (Referendum Version) (CNP) (2021):

Cowfold Neighbourhood Plan (2019-2031) was subject to independent examination in September 2021, with a subsequent recommendation to proceed to public referendum. The Neighbourhood Plan examination pre-dates receipt of the Natural England Position Statement of September 2021, while the Neighbourhood Plan, in addition, does not consider the likely implication of policies contained within upon the integrity of the Arun Valley SAC, SPA and Ramsar designations by way of mains-water consumption as addressed within the Natural England Position Statement.

No referendum can be conducted in respect of the emerging Neighbourhood Plan unless and until strategic mitigation for development plan allocations/policies has become operation, which is not yet the case. The Council has prepared a 'Planning Advice Note' (June 2023) in respect of the Cowfold Neighbourhood Plan, which advances that the policies of the emerging plan remain consistent with the provisions of the Framework and can be afforded significant weight, subject to a demonstration of water-neutrality. This is considered to remain the case, notwithstanding amendments to the Framework effected in December 2023. Full weight would be attributed to local plan policies upon adoption of the Neighbourhood Plan following successful referendum.

The relevant policies of the Referendum Neighbourhood Plan are:-
Policy 1 – Groundwater and Surface-Water Flood Risk;
Policy 2 – Green Infrastructure;

Planning Advice Notes:
Facilitating Appropriate Development
Biodiversity and Green Infrastructure

REPRESENTATIONS AND CONSULTATIONS RESPONSES
Where consultation responses have been summarised, it should be noted that Officers have had consideration of the full comments received, which are available to view on the public file at www.horsham.gov.uk

Consultations:

WSCC – Minerals and Waste: Further information required:-

[Summary] The Minerals and Waste Authority responded to request additional information in advance of determination in respect of the depositing of waste materials to land. No objection, however, was raised in respect of the potential sterilisation of mineral resources.

The Minerals and Waste Authority Officer identified that the proposal seeks permission for the depositing of inert material (topsoil) to balance lend levels and enable continued agricultural use. The relevant policies of the Waste Local Plan considered by the Waste Authority Officer were Policies W8, W13 and W16, W17, W18, W19 and W20.

The Waste Authority Officer highlighted Policy W8 as an important policy, as the proposals involve an element of waste recovery involving the depositing of inert waste to land. The Officer considered the policy supportive of genuine recovery operations, subject to the criteria contained within the policy.

The Officer noted that the depositing of inert waste to land would qualify for use via the Cl;AIRE Protocol, though, could still be considered waste for planning purposes.

The Officer recognises that the submitted Planning Statement identifies policies contained within the Waste Local Plan, but does not demonstrate that the proposal would meet policy tests except with regard to points addressed within the 'Enhancements' and 'Conclusions' sections, which advance that the proposal could be delivered without any significant impacts upon the landscape or local receptors.

The Officer recommended that the applicant provide an assessment of the proposal against the criteria of Policy W8 of the Waste Local Plan for further consideration, including by the Minerals and Waste Authority, in advance of a determination.

WSCC – Highways: No objection:-

[Summary] The Local Highways Authority (LHA) responded to raise no objection to the proposal.

The LHA Officer noted that existing parking and access arrangements would be unaffected by the proposals, and, though, the proposals could result in significant vehicular activity to and from the site,

the implementation of a Construction Management Plan would mitigate impacts upon the local highways network. Subject to a condition requiring a Construction Management Plan be agreed with the Council in advance of commencement, the LHA Officer considered that the proposal would not unacceptably impact upon highway safety or severely impact upon highway operation with no transport grounds to resist the proposal.

WSCC – Lead Local Flood Authority: Objection:-

[Summary] The Lead Local Flood Authority (LLFA), responded to object to the proposals.

The LLFA Officer noted the proposal concerns the raising of land levels utilising imported soil. Although the site is located within Flood Zone 1, the LLFA Officer highlighted the existence of several surface water flow paths through the site and raised concern that development may increase the risk of flooding elsewhere as surface water flows may be impacted.

The LLFA Officer requested that a Flood Risk Assessment be conducted to demonstrate that development would not result in increased flood-risk elsewhere, and in order to evidence the satisfactory management of surface water flow paths, including through means for the storage and disposal of surface water in a range of rainfall events.

HDC – Arboriculture: Amendments requested:-

[Summary} The Council's Arborist noted that the works undertaken to date have involved an increase in land levels within the minimum recommended root protection areas of larger hedgerow trees located at the perimeter of the site and considered to form an intrinsic part of the landscape character of the countryside.

The Council's arborist recommended that all current and proposed contouring (of deposited material) is designed to avoid the depositing of material within 12m of relevant trees to leave relevant root-protection areas at the original field level.

The Council's arborist noted, as trees have not been plotted and/or measured, that it is unclear whether this is achieved by the proposed development.

HDC – Environmental Health: Objection:-

[Summary] The Council's Environmental Health team responded to object to the proposal on the basis that this is insufficiently detailed to be determined.

The Environmental Health Officer (EHO) noted, and reviewed, the Soil Analysis Results report provided in accompaniment to the proposals, providing an indication of the quality of a, currently unknown, quantity of material imported on to the site.

Several concerns were raised by the EHO, first in relation to the quality and testing of imported materials, with the EHO noting the presence of elevated levels of heavy metals and asbestos within testing, and that trial-pit logs, resultant findings and material transfer notes have not been provided in support of the proposals.

The EHO, in addition, noted that aerial photography appears to show that the lateral extent of imported material on to the site has not been established.

Overall, it was considered that insufficient information was available for the EHO to form a view as to the appropriateness of soil testing and the overall quality of imported materials.

Place Services – Ecology: No objection:-

[Summary] the Council's consultant ecologists considered that the proposed development could be made acceptable, subject to the incorporation of a condition requiring details of Biodiversity Enhancement Measures be agreed with the Authority within three months of the grant of consent.

The consultant ecologist noted the absence of ecological information in support of the proposals and to establish the potential presence of protected/priority species and habitats (including bats). The ecologist noted that the site underwent land improvement without the benefit of planning permission in 2021, and that publicly available aerial imagery suggests the site was cleared of all vegetation.

The ecologist noted that several mitigation licences for bats (of various species) have been granted in the vicinity of the site since 2012 and that at least 20 records of bats to the south, east and north of the site are contained within the Sussex Biodiversity Record Centre.

The ecologist noted that the potential presence of protected species/and effects of development. Had not been assessed before works commenced, but considered that sufficient ecological information was ,nonetheless, available for determination subject to relevant biodiversity enhancement measures.

NatureSpace: No objection:-

[Summary] NatureSpace, operators of the District-wide mitigation strategy for Great Crested Newt, responded to raise no objection to the proposals.

The proposed development was considered to pose a low risk to Great Crested Newt and/or their habitat. As the proposed development is within the 'red' impact Risk Zone, as represented within relevant mapping, an informative advising the developer of their statutory obligations to protected Great Crested Newt throughout operations was recommended.

Parish Comments:
None received

Representations:
None received

Member Comments:
None received

HUMAN RIGHTS AND EQUALITY:
The application has been considered having regard to Article 1 of the First Protocol of the Human Rights Act 1998, which sets out a person's rights to the peaceful enjoyment of property and Article 8 of the same Act, which sets out their rights in respect to private and family life and for the home. Officers consider that the proposal would not be contrary to the provisions of the above Articles.

The application has also been considered in accordance with Horsham District Council's public sector equality duty, which seeks to prevent unlawful discrimination, to promote equality of opportunity and to foster good relations between people in a diverse community, in accordance with Section 149 of the Equality Act 2010. In this case, the proposal is not anticipated to have any potential impact from an equality perspective.

PLANNING ASSESSMENT

Principle of Development:

The application site is located beyond a defined built-up area boundary, constituting a countryside location where development is to be more strictly controlled for the purposes of local plan policy as confirmed at paragraph. 4.7 to the Horsham District Planning Framework (HDPF) (2015).

Policy 26 of the HDPF defines the approach of the local plan to countryside protection, and seeks to ensure that, beyond defined built-up area boundaries, the rural character and undeveloped nature of the countryside is protected against inappropriate development. Policy 26 provides that any proposal must be essential to its countryside location, and in addition, 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, development within

the countryside must avoid a significant increase in the overall level of activity on an individual and/or cumulative basis and be of a scale and design which respects the key features and characteristics of the receiving landscape character area, ecological features, landscape pattern and landform.

HDPF Policy 26, therefore, establishes an in-principle basis upon which essential minerals and waste related development can be supported in the countryside, subject to consideration of the scale of activity on an individual and cumulative basis in addition to the resultant landscape/character effects of such development.

Within the planning statement submitted in support of this proposal the applicant explains that the proposed engineering operations comprise the importation of 12,200m^3 of soil (approximately 1,220 HGV loads) from local construction projects and the reprofiling of land to enable the site to be returned to active agricultural use.

The submitted planning statement discusses multiple 'options' available to the landowner in seeking to redress a breach of planning control arising from the previous importation of waste materials to the site, and, in addition, addresses the disbenefits associated with a prospective removal of previously imported material at paragraphs 2.16-2.23 and 4.18. It should, though, be noted that the current proposal reflects the nature/scale of works characterised as 'option 2' by the applicant, and that alternative proposals/options are not currently before the Authority for consideration.

In respect of the proposed depositing of inert waste it is considered that Policy W8 to the adopted West Sussex Waste Local Plan (WLP) (2014) represents the most important policy to the principle of development, as identified within the response of the Minerals and Waste Authority Officer.

Policy W8 to the adopted West Sussex Waste Local Plan (WLP) (2014), provides that recovery operations involving the depositing of inert waste to land will be permitted provided that:-

(a) The proposal results in clear benefits for the site and, where possible, the wider area;
(b) The material to be used is only residual waste following recycling and/or recovery, or it is a waste that cannot be recycled or treated;
(c) There is a genuine need to use the waste material as a substitute for a non-waste material that would otherwise have to be used;
(d) The material to be reused is suitable for its intended use;
(e) The amount of waste material to be used is no more than is necessary to deliver the benefits identified under (a);
(f) There would be no unacceptable impact on natural resources and other environmental constraints;
(g) The proposal accords with Policy W13 (Protected Landscapes);
(h) Any important mineral reserves would not be sterilised, and;
(i) Restoration of the site to a high quality standard would take place in accordance with Policy W20.

<u>Benefits and Proportionality:-</u>

Criterion (a) to Policy W8 requires that development derives clear benefits to the site, and wider area (where possible) while criterion (e) requires that the amount of waste material to be used is no more than is necessary to derive those benefits.

The submitted planning statement does identify WLP Policy W8 as a relevant policy, though, is not formatted in a way which directly addresses the individual components of this policy. Section 4 'enhancements' of the planning statement, however, does set out a number of benefits upon which the applicant seeks to rely.

The applicant advances that it has been difficult to achieve a good quality hay-crop from the site by reason of its historically waterlogged nature, with the primary intention of waste importation being to improve the landform of the site and provide a wildflower hay meadow enabling an annual cut for hay for commercial sale.

The applicant details the intended composition and management of the wildflower hay meadow at paragraphs 4.4-4.7, which would comprise mainly of grass species cut on a rotational basis.

In principle, measures to enhance the productivity of agricultural land are a material benefit which can be relied upon in support of development. The Authority, in addition, can rely on improvements to biodiversity made possible/achieved by development, including the creation of wildflower meadows suitable for wildlife.

The extent to which 'clear' benefits would derive from the proposals, however, has not been established in this instance. No detail as to historic crop-yields and/or expected crop-yields derived from the site have been provided, nor is any assessment/detail of the benefit of improved yields to the operation of the agricultural holding available. In the absence of this detail, it is not possible to establish the scale of economic benefits derived from the proposals, and as to whether these provide genuine support to the long-term viability of agricultural enterprise.

The principal justification put-forward for the proposed development relates to the historic condition of the site, though, no evidence of this historic condition is available. Aerial imagery (dating to 2001) shows that the site was successfully maintained as paddock prior to the importation of waste materials circa 2021, consistent with adjacent fields to the respective west and east of the site suggested to historically be of a similar topography on the basis of 2014 'lidar' data provided with the proposal. Land to the south of the site, at a lesser elevation to the majority of the application site, similarly, appears to have been successfully maintained as paddock on the basis of available aerial imagery.

The site is designated as at risk of surface-water flooding, however, the extent of this risk largely corresponds to the lowest lying section of the site along its southern boundary as detailed on the available 2014 'lidar' data. The applicant has not provided any flood-risk assessment and/or drainage assessment establishing the extent to which existing and proposed importation, undertaken across the entirety of the site, would provide a genuine improvement to soil/drainage conditions across the site. It is considered possible that the proposed reprofiling of land to a substantially even gradient, as detailed on the proposed plans, may worsen drainage conditions if the consequence of that reprofiling were to reduce surface-water run-off rates.

Reference to the formation of a field-pond/water-feature is made a paragraphs 4.9 and 4.13 of the submitted planning statement, however, this is not mentioned within the application description and/or proposed plans, which do not detail and/or account for the presence of such a feature. It is considered ambiguous as to whether this pond forms part of the development proposals, with no detail available to the Authority to reasonably assess the effects, benefits and disbenefits of such a prospective feature.

It is acknowledged that the proposed works are represented as necessary to 'return' the field to agricultural use, with paragraph 2.28 of the submitted planning statement advancing that stored topsoil on the site is insufficient to provide sufficient coverage or a useable, level field. The usability of the field in this regard, however, is directly influenced by the importation of waste materials and current site profile as a consequence of works undertaken without planning permission. While further importation may provide a benefit in returning the site to more productive agricultural use, the weight which can be assigned to that benefit is minimal where the productivity of the field has been negatively impacted by previous unlawful operations.

It is, in addition, noted that the scale of proposed waste importation is substantial, in excess of 12,200m^3. As represented by the applicant this is anticipated to necessitate approximately 1,200 HGV deliveries and importation activities over a period of approximately 122 days (weather accounting) to complete. The available information provides no clear justification for this scale of importation, with no consideration given to the proportionality of this importation relative to the biodiversity and economic benefits relied upon by the applicant.

Overall, while it is considered that benefits could be derived from the proposed operations, these benefits, their extent, and the degree to which the proposed development is necessary to give effect to those benefits, is not clearly and/or convincingly detailed. The proposal, therefore fails to establish accordance with criterion (a) and (e) of Policy W8.

Type and Origin of Imported Material:-

Criteria (b) and (c) to WLP Policy W8 require that material to be used is only residual waste following recycling and/or recovery, or that can otherwise not be recycled or treated and that there is a genuine need to use the waste material as a substitute for a non-waste material which would otherwise have to be used.

The submitted planning statement indicates that waste materials are to be imported from local construction projects, and that such material will comprise of inert waste. No further detail is available as to the origin or nature of imported waste, or as to whether a genuine need to utilise waste-materials as a substitute for non-waste materials exist. In the absence of such information the proposal does not accord with criterions (b) and (c) to WLP Policy W8.

Suitability for Use:

Criteria (d) to WLP Policy W8 requires that material to be reused is suitable for its intended use. In the event that the remaining requirements of Policy W8 were deemed satisfied, it is considered that the inclusion of an appropriately worded condition requiring the use of inert materials and prior testing to confirm the absence of contamination in advance of first importation could establish the suitability of any imported soils in this instance.

Impacts Upon Natural Resources, Environmental Constraints and Protected Landscapes:

The proposed development would not involve land falling within or in the setting of a protected landscape as defined at Annex 2 to the NPPF, such as to engage consideration against the provisions of criteria (f) of Policy W8.

With regard to other environmental constraints and natural resources as subject of criteria (e) the site is not subject of any specific ecological and/or environmental designation, however, is found in proximity of designated ancient woodland, woodland present to the perimeter of the site and a number of habitats of potential suitability to protected and priority species. The effects of development upon trees, habitats and species will be assessed within a separate section of this report.

Sterilisation of Mineral Resource/Reserves:

The application site lies within a designated area of potential extraction for brick clay. No important mineral reserves would be sterilised by the works, however, and if the minerals are required the imported material could be removed. No conflict with the requirements of criteria (h) to Policy W8 is therefore considered in this instance.

Restoration and Aftercare:

Criterion (i) to Policy W8 refers to the need for high quality restoration in accordance with Policy W20 to the WLP. Policy W20 to the WLP addresses temporary waste development, and therefore, is not deemed applicable to the proposed development as seemingly sought on a permanent basis.

In-Principle Conclusion:

Overall, it is not considered that the proposed development satisfactorily demonstrates compliance with the requirements of Policy W8 of the WSWLP, inclusive of the key of criteria (a) and (e) through a robust justification of clear material benefits which would justify the depositing of waste to the scale and amount proposed. The proposed development, therefore, is contrary to the requirements of Policy W8 of the WLP and cannot be considered an essential form of development to a countryside location in conflict with HDPF Policy 26.

Landscape Character and Visual Appearance:

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. Development 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. Chapter 15 of the NPPF (2023) recognises the importance of the intrinsic landscape character, but also the wider benefits that natural capital and ecosystems play within the natural environment, along with trees and woodland.

The site is found within a highly rural landscape context, with opportunities for public views of the site restricted to views on Kent Street to the adjacent west of the site. From this perspective, at the time of the officers site-visit (March 2024), mounds at the western extent of the site are clearly visible through boundary vegetation, though, do not appear overly prominent within the context of their immediate surroundings, largely by reason of vegetation which now established itself upon existing mounds. The degree of screening afforded by boundary vegetation would inevitably increase during summer months and when vegetation is in-leaf.

The proposed works would result in significant additional reprofiling further to that already undertaken on the site, with the site largely graded to an even level at a datum of 20m except where land would fall away to the eastern, southern and western site boundaries. The proposed topographical/section plans show that slopes at the perimeter of the site would see a fall of 3m within a slope approximately 20m in length. Though it is considered that such a slope would be appreciable as an unnatural gradient relative to existing levels to the west of Kent Street, this is a noticeably less extreme gradient to the earthen bund/mound currently retained against the western site boundary. Once vegetation has established on the site following the proposed operations, it is not considered that the reprofiling of land as a physical operation would prove obvious and/or harmful within public views from Kent Street.

The proposed operations, however, may have secondary effects, including potential impacts upon trees and/or vegetation. HDPF Policy 33 expressly presumes in favour of the retention of landscape and natural features, including trees and hedgerows. NPPF paragraphs 180(b), recognise the contribution which trees make to the character and beauty to the countryside, in addition to the intrinsic value which trees and woodland hold for the provision of ecosystem services.

Several large trees are present within the site boundaries, with the locations of those trees represented on the ‘existing’ levels plan. Those trees, and associated hedgerows, positively contribute to the rural character of the site, and the wider landscape character of its surroundings.

The proposed development has not attempted to assess the likely effects of proposed development upon the integrity of existing boundary trees, neither has excluded proposed depositing of waste within the root-protection areas of individual trees. It is evident that existing material has been deposited within the root-protection-areas of individual trees, particularly where mounds have been formed immediately adjacent to the eastern and western site boundaries. The proposed development sill involves the introduction/retention of materials against the site-perimeter such that some adverse impact upon root structures would likely remain.

On the proposal before the Authority, and on the evidence available, it cannot be concluded that the proposed development would allow for the successful retention of mature trees. The proposal, therefore, is considered contrary to the requirements of HDPF Policy 33 and NPPF paragraph 180(b).

Ecology:

Policy 25 of the HDPF *inter alia*, requires that development safeguards protected species, ensuring no net loss of biodiversity. Policy 31 of the HDPF provides that development which makes a positive contribution to existing biodiversity, including the creation and management of new habitats where appropriate, will be supported. Policy 31 of the HDPF, in addition, requires that development respects the hierarchy of ecological sites by way of direct and/or indirect effect, including in respect of potential impacts upon the Arun Valley Special Protection Area (SPA).

Policy W14 to the WLP provides that proposals for waste development will be permitted provided that international and international sites are safeguarded, that there are no adverse impacts on areas, sites

or features of regional and/or local biodiversity or geological conservation importance, unless the benefits of development clearly outweigh the impact on the objectives of relevant designations. Where development results in an adverse effect upon an important area, site or feature, Policy W14 provides that the harm should be minimised or compensated for including, where practicable, the provision of a new resource which of at least of equivalent value. Policy W14, in addition, supports, where appropriate, the creation, enhancement and management of habitats, ecological networks and ecosystem services where consistent with wider environmental objectives.

Policy 2 to the referendum CNP provides that proposals which preserve or enhance the existing green infrastructure network and deliver a net-gain in green-infrastructure will be supported. Policy 2 to the referendum CNP, further, provides that proposals resulting in the loss of existing Green Infrastructure will not be supported unless it can be demonstrated that an overall net-gain in green infrastructure, biodiversity and/or deliver an equivalent carbon-sink capability in the short term.

Integrity of Habitats Sites:

The application site is not subject of any pre-existing ecological designation, neither are any ecological designations located within the near vicinity of the site.

The application site, does, however, fall within the Sussex North Water Supply Zone, as subject of the Natural England Position Statement of September 2021, and where public mains-water is supplied from sources including groundwater abstraction at Hardham. Within their Position Statement, Natural England advise that it cannot be concluded with the required degree of certainty that new development in the supply zone avoid adverse effect on the integrity of the Arun Valley SAC, SPA and Ramsar sites, unless, it can be demonstrated that development would achieve 'water neutrality'.

It is considered that there is no evidence to suggest that the importation of soils and reprofiling operations would result in an increased demand for the use of mains-water which could result in a significant effect upon the Arun Valley SAC, SPA and Ramsar sites alone or in combination with other plans and projects. It is considered, therefore, that the proposed development does not engage the necessity to undertake an 'appropriate assessment' pursuant to Regulation 63 of the Conservation of Species and Habitats Regulations (2017) were the Authority minded to grant consent.

Site Specific Habitats and Species:

The application is not supported by an ecological assessment, as such, no assessment of existing habitats, the potential presence of protected/priority species present within the site and/or the resultant effects of development.

The Council's consultant ecologists note that the site was cleared of vegetation circa 2021, and consider that sufficient information is available for determination, notwithstanding the absence of site-specific surveys. The Council's consultant ecologists consider that an overall biodiversity net-gain can be achieved through a range of biodiversity enhancement measures, including the creation of a wildflower meadow, full details of which are to be secured by appropriately worded condition.

While the comments of the Council's consultant ecologists are noted, it is not agreed that sufficient information is available to determine either the absence of potential adverse effect upon protected and priority species and the extent to which the proposed development could deliver a biodiversity net-gain where existing habitats have not been surveyed.

Vegetation has re-established within the site subsequent to initial clearance and importation operations undertaken circa 2021. Much of this vegetation consist of scrub grasses which broadly reduce in height towards the northern part of the site. By reason of the current condition of the site, its situation on a south-facing slope and its proximity to watercourses it is considered that the site could provide suitable habitat for a range of amphibians and/or reptiles, acknowledged, in part, by its designation as a 'red' impact risk zone for Great Crested Newt (constituting the highest risk designation).

In addition, vegetation and trees present to the site perimeter are well-established, as noted earlier within the report, and could provide suitable habitat for birds, bats and/or badgers with the grant of a

number of protected species licences for bats noted in the vicinity of the site within the response of the Council's consultant ecologists. The potential loss of roosts resulting from harm to or the loss of perimeter trees or works within proximity of potential setts cannot be discounted with any confidence.

Reasonable avoidance measures to be undertaken during operations, as referenced within the NatureSpace response, could represent appropriate mitigation for amphibians and/or reptiles, however, these measures are typically relied upon where reptiles/amphibians are not expected to be present, as established through the prior conduct of relevant species surveys. It is not considered appropriate to employ a condition requiring the implementation of reasonable avoidance measures where the potential for impact, and likely scale of any impact, have not been first determined. Plainly the Authority cannot assume that there is no need for relevant species licences to be obtained for reptiles and/or amphibians, or that more intensive forms of mitigation, including collection and relocation of species, would prove unnecessary.

It is plausible that proposed wildflower planting could deliver an overall biodiversity net-gain, though, no assessment of the value and condition of existing habitat (including perimeter habitat potentially effected by the proposals) has been undertaken. The extent to which a net-gain would be delivered through such planting is, therefore, unclear, in addition to whether those prospective gains are truly dependent on the substantial scale of further importation proposed. In any case, even were an overall biodiversity gain delivered by the proposals, this general benefit to the provision of ecosystem services would not establish the acceptability of the proposals in relation to possible harm to protected and priority species.

Overall, it is considered that the Authority does not benefit from sufficient information to establish that the proposed operations would avoid adverse effect upon protected and priority species and would deliver an overall biodiversity net-gain in the absence of surveys establishing the ecological condition of the site and affected habitats. The proposal, therefore, is contrary to the requirements of HDPF Policies 25 and 33 in addition to referendum policy CNP 2.

Water Neutrality:

The application site falls within the Sussex North Water Supply Zone, as subject of the Natural England Position Statement of September 2021, and where public mains-water is supplied from sources including groundwater abstraction at Hardham. Within their Position Statement, Natural England advise that it cannot be concluded with the required degree of certainty that new development in the supply zone avoid adverse effect on the integrity of the Arun Valley SAC, SPA and Ramsar sites, unless, it can be demonstrated that development would achieve 'water neutrality'.

It is considered that there is no evidence to suggest that the importation of soils and reprofiling operations would result in an increased demand for the use of mains-water which could result in a significant effect upon the Arun Valley SAC, SPA and Ramsar sites alone or in combination with other plans and projects. It is considered, therefore, that the proposed development does not engage the necessity to undertake an 'appropriate assessment' pursuant to Regulation 63 of the Conservation of Species and Habitats Regulations (2017) were the Authority minded to grant consent.

Impacts Upon Neighbouring Occupiers/Users:

Policy 33 to the HDPF, *inter alia*, requires that development is designed to avoid unacceptable harm to the amenities of neighbouring occupiers/users of land, including by way of disturbance, loss of light and/or privacy. Policy 24 to the HDPF, similarly, requires that development minimises the emission and exposure to noise and light pollution.

WLP Policy W19 provides that waste development will be permitted provided that lighting, noise, dust, odours and other emissions, including those from traffic, are controlled to avoid unacceptable impact upon public health and amenity.

The site is remote from nearby residences, with the exception of 3x dwellings contained within Southlands Farm to the immediate north indicated to be within the applicants ownership. Occupiers of

those dwellings could reasonably be subject to noise, dust and light pollution arising from the uncontrolled importation of waste and subsequent reprofiling of land as proposed.

It is, however, considered that appropriately worded conditions could be employed to avoid unacceptable effects upon the living conditions of nearby occupiers, in restricting operations during night-time hours, and requiring that a construction, environment management plan (CEMP) be agreed with the Authority in advance of the commencement of further operations. Such measures would enable the Authority to control daily vehicle movements to the site to a reasonable level, and require that measures to lessen any potential dust and/or light disturbance (if operations are undertaken during night-time hours) are put in place. Subject to relevant conditions, therefore, it is not considered that the proposed development would conflict with the requirements of HDPF Policies 24 and 33 in this regard, or the requirements of WLP Policy W19.

Highways Impacts:

HDPF Policy 40, *inter alia*, provides that development will be permitted provided that it is appropriate in scale to existing transport infrastructure and provides safe and suitable access for all highways users.

Policy W18 to the WLP provides that proposals for waste development will be supported where the proposal makes use of rail and/or water transportation of materials to the site, if practicable and viable, and where transport links are adequate to the serve the development or can be improved to an appropriate standard without unacceptable effects upon amenity, character or the environment.

Where a need for road transport can be demonstrated, Policy W18 to the WLP requires that development demonstrates that materials are capable of being transported using the Lorry Route Network with minimal use of local roads, that vehicle movements will not have an unacceptable effect upon highway safety and/or capacity, that there is a safe and adequate means of access to the highway network and that vehicle movements are minimised by the optimal use of the vehicle fleet.

The submitted planning statement outlines that the proposed development would likely give rise to 10x HGV movements a day over a period of approximately 122 days (paragraph 4.17). The applicant has not attempted to demonstrate a need for road-transport, though, no water or rail borne delivery to the site would prove feasible in this instance given the site context. Daily vehicle movements and arrangements for managing vehicle movement could be secured within an appropriately worded condition requiring a CEMP to be approved prior to the commencement of importation.

The site is well-related to the strategic road network, being found to the adjacent south of the A272 which affords easy connection to the A23 and A24. It is not considered that the scale of anticipated vehicle movements would unacceptably influence highway operation/capacity, individually or cumulatively, or would give rise to over-reliance on the 'local roads' network given the convenience of access via the A272.

The site access would be onto Kent Street, via the pre-existing access to Southlands Farm. It is not considered that this arrangement would unacceptably influence highway safety, with good visibility in either direction observed during the officers site visit and with Kent Street being a lightly trafficked lane.

Overall, it is not considered that the proposal would conflict with the provisions of HDPF Policy 40, WLP Policy W18 or NPPF Paragraph 115. The proposal, therefore, is deemed acceptable in respect of its highway effects.

Drainage and Flood Risk:

Policy 38 to the HDPF provides that development should follow a sequential approach to flood-risk, giving priority to sites and layouts which minimise vulnerability to flood risk and the risk of increasing flooding elsewhere. All proposals at risk of other sources of flooding (including surface water flooding) or in excess of 1ha in area within Flood Zone 1, should be informed by a site-specific Flood Risk Assessment. Policy 38 further provides that, where there is potential for development to increase in flood-risk elsewhere, that sustainable urban drainage systems, or alternative water management

measures, be incorporated such as to eliminate that risk with a preference for drainage systems which mimic natural features wherever possible.

NPPF paragraph 173, similarly, requires site-specific flood-risk assessment in the same instances as HDPF Policy 38. NPPF paragraph 173 provides that development should only be allowed in areas at risk of flooding (in light of the sequential and exception tests) where it can be demonstrated that development is located in the areas of lowest flood-risk, that development is appropriately flood-resistant and resilient, that sustainable urban drainage systems are incorporated and any residual risk can be safely managed.

Policy W17 to the WLP, *inter alia*, provides that proposals for waste development within areas at risk of flooding will not permitted unless they pass the sequential test and, where applicable, the exception test. In addition, proposals for waste development must incorporate mitigation measures to avoid an increased risk of flooding elsewhere and measures to manage surface water run-off, including the use of SUDS where appropriate.

The applicant has not conducted a flood-risk assessment in support of the proposals, notwithstanding that paragraph 173 footnote 59 to the NPPF sets an expectation that a site-specific flood-risk assessment is conducted for a development site at risk of surface water flooding and in excess of 1ha in area. No sequential and/or exception test has been performed by the applicant to establish the need for operations within land at risk of surface water flooding, contrary to the provisions of the NPPG in this regard, with no assessment of the effects of proposed operations on surface water flows, drainage conditions and impacts on land beyond the extent of the application site.

In the absence of the information it cannot be established that the proposal is in compliance with the requirements of the Framework at paragraph 173, Policy 38 of the HDPF and Policy W17 to the WLP, and would not result in increased risk of flooding elsewhere – particularly by way of impacts upon surface water flow pathways in the vicinity of the site as identified by the Lead Local Flood Authority.

Land Contamination:

Policy 24 to the HDPF requires, *inter alia*, that development is appropriate to its location, minimises the emission of pollutants, addresses land contamination, incorporates appropriate remediation and maintains the environmental quality of watercourses, groundwater and drinking water supplies.

The information before the Authority is that existing importation to the site has comprised of inert waste (soils and building materials), consistent with the categorisation of additional waste importation sought within this proposal.

Some testing of imported materials has been undertaken by the applicant, with a soil samples analysis and interpretation report provided in support of the proposal. It is understood that a total of 8 soil-samples were taken from the site, with the analysed samples returning no levels of contamination, except for negligible levels of heavy metals and asbestos contamination below relevant threshold levels.

The Council's Environmental Health team have raised concern as to the assessed presence of contaminants, notwithstanding the low level of heavy metal and asbestos contamination. In addition, Environmental Health have questioned the methodology of soils assessment, noting that the 8x trial-pits do not correspond to the full extent of deposited materials on the site (particularly within the eastern parts of the site), and that no trial-pit logs and resultant photography have been provided as is typical for ground investigation.

The data available to the Authority does not suggest that existing importation has resulted in the introduction of contaminated materials at an unacceptable level, however, as noted by Environmental Health, available data cannot be considered representative of the site as a whole with large areas of the site not subject to any form of soils analysis. In the absence of any other information as to the nature of imported material (including importation/transport notes or records under to the CI:AIRE Protocol) the Authority cannot have confidence that material imported to the site, and which is proposed to be retained on the site, has not introduced contaminants harmful to the quality of the

surrounding environment and nearby watercourses. The proposal, therefore, is contrary to the requirements of HDPF Policy 24 in this regard.

In respect of additional importation, it is considered that appropriately worded conditions requiring the prior testing and provision of results to the Authority in advance of importation would avoid the introduction of contaminated materials.

Conclusions and Planning Balance:

Planning permission is sought for engineering operations comprising the importation of inert waste and reprofiling of land in order to return the site to agricultural use, to improve its overall suitability for agricultural production, create a wildflower meadow and address existing drainage problems.

The Council, however, considers that no convincing and clear justification has been provided for the proposed use of waste materials, and the significant scale of importation, to generate the benefits advanced by the applicant. While some benefit to agricultural production, the economic viability of agricultural enterprise and biodiversity could be derived from the proposals, these benefits, and the extent of those benefits are not clearly established and, therefore, attract limited weight.

On the basis of information available to the Authority it is considered that the applicant has failed to establish compliance with the requirements of Policy W8 to the WLP, and, therefore, that development represents as form of 'essential' development to this countryside location as required by Policy 34 to the HDPF.

It is, in addition, considered that the Council does not possess sufficient information to establish the likely effects of proposed development upon protected and priority species, flood-risk, the effects of exiting importation on ground and water quality in addition to boundary trees, which are of significance to local character and appearance. The absence of sufficient information to establish the acceptability of the proposed development in these regards is considered to attract significant weight in this determination.

It is not considered that the proposed development would adversely influence the integrity of the Arun Valley SAC, SPA and Ramsar sites, or unacceptably impact upon the living conditions of nearby occupiers, and highway safety. The absence of harm in these regards, though, attracts neutral weight in the planning balance.

It is acknowledged that the applicant has sought to draw attention to disbenefits arising from the removal of imported material, described as 'option 1' in the submitted planning statement. That is not the form of development currently before the Authority for consideration, however, and the harms advanced by the applicant are not an inevitable consequence of a refusal of planning permission. The environmental and economic harm, advanced by the applicant, arising from a prospective removal of material from the site, therefore, attract limited weight in this determination.

Overall, it is considered that the proposed development fails to establish compliance with the requirements of the development plan and that there are no material considerations which would justify a grant of planning permission as a departure from the provisions of the development plan. It is, therefore, recommended that planning permission be refused, for the reasons set out below.

Recommendation: Application Refused

Reasons for Refusal:

1. It has not been demonstrated to the satisfaction of the Local Planning Authority that the proposed development would result in clear benefits to the site and its wider surroundings and that the scale of waste importation is proportionate to the scale of expected benefits. The proposed development, therefore, is not considered to represent an acceptable form of waste-related development nor an essential form of development to this countryside location in conflict

with the requirements of Policy 26 of the Horsham District Planning Framework (2015) and Policy W8 of the West Sussex Waste Local Plan (2014).

2. It has not been demonstrated to the satisfaction of the Local Planning Authority that the proposed development necessitates the use of land at risk of flooding, and that the proposed operations would not result in a material increase in surface water flood-risk elsewhere. The proposed development, therefore, is contrary to the requirements of Policy 38 of the Horsham District Planning Framework (2015), Policy W17 of the West Sussex Waste Local Plan (2014) and Paragraph 173 of the National Planning Policy Framework (2023).

3. It has not been demonstrated to the satisfaction of the Local Planning Authority that the proposed development would prevent harm to and/or the loss of trees present to the boundaries of the application site, and which are expected to be negatively impacted by operations within the respective root-protection areas of individual trees. Trees possess intrinsic value for the ecosystem services they provide and, in this instance, are considered to positively contribute to the rural landscape character of the site and its surroundings. Prospective harm or loss of trees as a consequence of proposed operations, therefore, is considered contrary to the requirements of Policy 33 of the Horsham District Planning Framework (2015) and Paragraph 180(c) of the National Planning Policy Framework (2023).

4. It has not been demonstrated to the satisfaction of the Local Planning Authority that the proposed development would avoid adverse harm to protected and priority species and their habitats. The proposed development, therefore, is contrary to the requirements Policies 25 and 33 of the Horsham District Planning Framework (2015) and Policy CNP2 of the Referendum Cowfold Neighbourhood Plan (2021).

5. It has not been demonstrated to the satisfaction of the Local Planning Authority that waste materials previously imported to the site, and which would be retained on the site as part of the development proposals, has not resulted in the introduction of contaminated materials harmful to the environmental quality of local ground conditions and watercourses. The proposed development, therefore, is contrary to the requirements of Policy 24 of the Horsham District Planning Framework (2015).

POSITIVE AND PROACTIVE STATEMENT

Statement pursuant to Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015. The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received, in order to be able to, where possible, grant permission.

Plans list for: DC/23/1524

(The approved plans will form Condition 1 on the Decision Notice of all Permitted applications)

Schedule of plans/documents **not approved**:

Plan Type	Description	Drawing Number	Received Date
Location plan		20-02-01	31.07.2023
Supporting Statement	Planning		31.07.2023
Location plan	WSCC highway		31.07.2023
Site plan	Land Survey		31.07.2023
Section plan			31.07.2023
Supporting Statement	Analytical Report		31.07.2023

Supporting Statement	Soil Analysis		31.07.2023
Site plan	Original Ground Levels		31.07.2023
Site plan	Proposed Improvement Works		31.07.2023
Section plan	Proposed Improvement works sections		31.07.2023
Site plan	Flood Map		31.07.2023

DELEGATED

Case Officer sign/initial Giles Holbrook Date: 22.03.2024

Authorising Officer sign/initial Adrian Smith Date: 09/04/2024