Horsham District Council

DELEGATED APPLICATIONS - ASSESSMENT SHEET

APPLICATION NO./ADDRESS:
DC/25/0096
Land To The West of Northlands Lane, Fryern Road, Storrington, West Sussex,

DESCRIPTION:
Provision of culvert licenced by West Sussex County Council on 05 November 2024 under LDC/HOR/2024/006 and whether such would amount to a repeat breach of enforcement notice EN/21/0037 that has already been complied with. (Lawful Development Certificate - Proposed).

RELEVANT PLANNING HISTORY:

DC/20/0907	Retrospective application for the creation of an access and track	Application Refused on 29.01.2021

DESCRIPTION OF THE SITE
Northlands Lane is a single track lane accessed from the southern side of Greenhurst Lane. Northlands Lane is 550m long with no through route and few passing places for vehicles, there is a cluster of 4 dwellings near to its southern end. The boundary between Storrington and Sullington Parish and Thakeham Parish runs down Northlands Lane, the land and the new entrance to it are on the western side within Storrington and Sullington Parish.

The highway access onto Northlands Lane, the subject of this application, is 100m south of the junction with Greenhurst Lane, and a field track has been laid that runs west to a plot of land of 0.07 Hectares consisting of meadow and an existing small pond in the north west corner, 35 metres south of Greenhurst Lane. There are no buildings on the land which is adjacent to farmland and further to the west is Hareswith Pond and sluice.

Further south along Northlands Lane, 45 metres south of the access the subject of this application, permission was given in February 2020 for the creation of an access to fields on the eastern side of Northlands Lane to 8 hectares of farmland also due to change of ownership of land following the break-up of the original farm. This access was constructed at a 45 degree angle to the highway to enable large agricultural vehicles to manoeuvre from the fields onto the highway in the direction they will be exiting (north). Vehicles would not generally be required to exit southwards down Northlands Land due to it being a no through route.

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

Representations:
20 letters of Objection have been received from 12 addresses, objecting to the application on the following grounds:

- Watercourse created for drainage has resulted in flooding issues
- Insufficient information submitted to be able to assess the flood risk

- The proposal will impact cyclists, walker and road users detrimentally
- Unsure how the current culvert would be different from the refused application

Parish Comments:
Parish Council: Neutral comment

Member Comments:
None received

PLANNING ASSESSMENT
The supporting statement sets out that: -

> *"The simple purpose of this current lawful development application is to seek formal confirmation that the construction of that culvert in accordance with the licence issued under the Land Drainage Act 1991 would not represent a repeat breach of Enforcement Notice EN/21/0037"*

The purpose of this lawful development application is not therefore to assess the suitability of the access track and culvert, but to assess the development in light of whether the development indicated on the plans accompanying the submission would constitute a breach of enforcement notice.

Article (1) of Section 192 of the Town and Country Planning Act 1990 states that:

"*If any person wishes to ascertain whether –*
Any proposed use of buildings or other land; or

Any operations proposed to be carried out in, on over or under land,

would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question."

Article (2) of Section 192 continues:

"If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect, and in any other case they shall refuse the application."

The Enforcement Notice outlined that there had been a breach of planning control within paragraph (a) of section 171A (1) of the TCPA 1990, at the Land. The Enforcement Notice set out the following requirements: -

a) Removing the track, restoring the land to former condition and re seeding it.
1. Removing the wooden access gates, removing the access and hard surfacing that forms the crossover on to the highway from the land.
2. Reinstating the ditch to its former condition by re-contouring the land on either side of the removed crossover.
3. Removing any materials that can cause an obstruction or impede the natural flow of surface water.
4. Restore the watercourse to its original condition.
5. Removing from the land all materials and debris resulting from the compliance with the above steps.
6. Following the above steps, replanting a hedge in the gap comprising a mix of field maple, hazel, beech, hawthorn and holly in two staggered rows running in a north-south direction with 300mm spacing between each plant along the row and separation distance between 300mm and 400mm between the two rows (ie planting approx. 5 plants per square metre) along the reinstated highway verge.

The Planning Statement outlines that the requirements of the enforcement were met, with the proposed works entailing the formation of a new culvert which benefits from a licence under the Land Drainage Act 1991. The submission considers that: -

> *"it cannot be the case that engineering works enshrined in a culvert licence issued under the Land Drainage Act 1991 can be taken as restoration or reinstatement of the substandard and unlicenced culvert structure removed under EN/21/0037. Notwithstanding the unauthorised culvert works are not specifically mentioned in the enforcement notice for removal in favour of requiring restoration of the banks, these are two entirely different structures.*
>
> *One is compliant with the Land Drainage Act and to a far different specification etc than the culvert that was removed, which did not comply with the associated controls including that it did not benefit from a licence under the Land Drainage Act 1991. It is a legal impossibility to claim the new culvert will reinstate or restore what was removed because to do so would require the new culvert to not accord with the controlling legislation and not be licenced to boot".*

The Enforcement Notice included requirements to reinstate the ditch to its former condition, and to restore the watercourse to its original condition. Complying with these requirements would have directly necessitated removal of the previously existing culvert.

It is acknowledged that the applicant has applied for and been granted consent for a culvert by the Lead Local Flood Authority (West Sussex County Council (WSCC)) (ref: LDC/HOR/2024/006). The details of the license outline that the works entail "Culverting section of the watercourse to facilitate access to land for maintenance purposes".

Section 181 of the Town and Country Planning Act 1990 ('The Act') (*Enforcement notice to have effect against subsequent development*) provides that "*compliance with an enforcement notice whether in respect of*

a) the completion removal or alteration of any building or works;
b) the discontinuance of any use of land; or
c) any other requirements contained in the notice,

shall not discharge the notice".

The Licence issued under the Land Drainage Act 1991 is distinct legislation separate from Section 181 of The Act, and while the details of the works may be acceptable under legislation under which the consent was granted (i.e. the Land Drainage Act 1991), it does not follow that no breach would occur under section 181 of the Act. The Notice remains effective, and it has not been established how the presence of a licence under separate non-planning legislation would overcome this. It is not therefore apparent that a lawful development certificate could be granted on the terms sought, as set out in the applicant's description.

The submitted statement also puts forward further positions, not referenced in the description, whereby the proposed culvert would either not constitute development, or if it would be classed as development that it would represent permitted development by virtue of the GPDO[1]. This element of the submission therefore seeks to establish that: -

1. The proposed operations are not development;
2. If they are considered to fall within the definition of development, they would fall within the GDPO; and
3. If they fall within the GDPO then the rights set out in Sch 2, Part 2, Class B can be relied upon to form an access.

[1] The Town & Country Planning (General Permitted Development) (England) Order 2015, as amended

The proposed operations are not development

Section 55(2) of The Act provides that: -

> *"The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—*
>
> *c) the carrying out by a local authority or statutory undertakers of any works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including the breaking open of any street or other land for that purpose"*

The local authority would not be carrying out the works and there is no evidence within the submission to suggest they would be carried out by a statutory undertaker. Further, in order to fall within the above exception, the work must be for the purpose of "*inspecting, repairing or renewing*". The works entail the formation of a new culvert within an existing watercourse, not a reparation of it. It is not therefore considered that the works would be excluded from the definition of development set out above. The operations to create a new culvert are considered to represent development for the purposes of The Act.

Would the culvert and formation of an access be permitted development

It is acknowledged that even if the operations excluded (from the definition of development (under section 55(2)(c) of The Act) are carried out by someone other than a statutory undertaker or local authority, the effect of Schedule 2, Part 10 of the GPDO is in any case to confer planning permission for: -

> *"The carrying out of any works for the purposes of inspecting, repairing or renewing any sewer, main, pipe, cable or other apparatus, including breaking open any land for that purpose."*

It must therefore be considered whether constructing a culvert falls within "*repairing or renewing any sewers, mains, pipes, cables or other apparatus…*". A culvert is defined by section 72 of the Land Drainage Act 1991 as a covered channel or pipe which prevents the obstruction of a watercourse of drainage path by an artificial construction. It is therefore considered arguable that the renewing or repairing of an existing culvert could fall within Schedule 2, Part 10 of the GPDO.

However, the operations set out within the submission indicate the construction of a new culvert. This is considered to go beyond "*repairing or renewing*", instead representing the construction of an entirely new culvert rather than the reparation of one. It is further noted that the intention of the works, according to the licence granted by WSCC, was to "*facilitate access to land*" rather than for the reparation of pipes. The submission has not therefore demonstrated that the proposal would represent permitted development elsewhere within the GPDO

The rights set out in Sch 2, Part 2, Class B of the GPDO can be relied upon to form an access.

The formation or laying out of a means of access to the highway is an engineering operation and considered to clearly represent development. Class B of Part 2 within Schedule 2 of the GPDO allows the formation laying out and construction of a means of access to a highway which is not a classified road where that access is required in connection with development permitted by any class in this schedule other than Class A (which permits the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure).

Therefore, in order to take advantage of the right conferred under Schedule 2, Part 2, Class B it must be established there is another right under the GPDO (other than Class A, as above) and that the means of access is required in connection with that permitted development.

Permitted Development Rights Concerning a Watercourse

The submission also asserts a permitted development right under Class C or Part 13 within Schedule 2, which outlines permitted development rights for "*Development by a drainage body in, on or under any watercourse or land drainage works required in connection with the improvement, maintenance or repair of that watercourse or those works."*

These rights are subject to the requirements of environmental impact assessment, and drainage bodies are forbidden from carrying out certain improvement works which are within this Part unless they have complied with the requirements of the Environmental Assessment (Land Drainage Improvement Works) Regulation 1999 (SI 1999/1783).

A ditch is a watercourse and a drainage body is defined by section 72 of the Land Drainage Act 1991 and means the Environment Agency, an internal drainage board or any other body having power to make or maintain works for the drainage of land. The applicant is not themselves a drainage body and the submission has not demonstrated that the proposal would fall within this provision of the GPDO.

The position within the submission, that if there is a right under Schedule 2, Part 13 Class C (or a Part 10, Schedule 2 right) to carry out drainage works then in connection with those works there is a permitted development right to create an access to those works is not accepted. For the reasons set out, the submission has not demonstrated that it would meet the required provisions of development permitted by any class in Schedule 2. Overall, on the basis of the available information it is considered that the proposal would not constitute permitted development.

Conclusion

The works are considered to represent development, would not benefit from the required provisions of the GPDO and includes works described within the Enforcement Notice. The presence of an Ordinary Water Course Drainage Consent does not confer planning permission either explicitly or through the operation of the GPDO, and the Drainage Consent would not negate the need to obtain planning consent. The two are separate and independent regimes.

It has not been demonstrated that the provision of culvert would not breach the Enforcement Notice served under ref: EN/21/0037.

If the developer / owner wishes to ascertain whether there is a permitted development right it is open to them to make an application for a certificate of lawful development pursuant to section 192 of the Town and Country Planning Act 1990.

Recommendation: Application Refused

Reason(s) for Refusal:

1. It has not been demonstrated that the provision of culvert would not breach the Enforcement Notice served under ref: EN/21/0037, would not represent development as defined by the Town & Country Planning Act, or would represent permitted development as set out in the Town & Country Planning (General Permitted Development) (England) Order 2015.

Plans list for: DC/25/0096
(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
Plans	Layout, Elevations, Sections and Location	100 REV C2	12.02.2025
Supporting Docs	Supporting Letter	1884.2	22.01.2025

DELEGATED

Case Officer sign/initial Hannah Darley Date: 28th July 2025

Authorising Officer sign/initial Guy Everest Date: 30.07.2025