Comments on Horsham District Council's Statement of Appeal.

APP/Z3825/W/24/3345086

Town and Country Planning Act 1990
Appeal by Mr Johnny Goring
Site Address: Abbott's Shed, Hole Road, Wiston, West Lancashire, BN44 3DH,

Further to reviewing the council's statement of case we would like to make the following comments.

Firstly, the council's refusal is not for the "change of use" of the site and the Class R Prior Notification of the building therefore the council has in principle accepted the use of the site. All prior notification applications also allow for an element of curtilage which has never been confirmed or denied by the local authority.

The reasons for refusal are based on two environmental elements which have been addressed both in discussions with the council and the documents submitted to the council over the two full planning applications. The appellant has demonstrated the site is water neutral by the two water neutrality reports provided by Messrs: CGS Civils which mitigates any impact for refusing the application under reason one. This point is demonstrated in paragraph five of the council's statement of case which states "The appeal has been supported by an updated Water Neutrality Report by cgs civils. This relies upon an existing baseline from a different site, where it is stated that the operation is relocating from…"

Factually the LPA is misleading as in discussions and at an enforcement enquiry stage the council is well aware the tenant moved from about 440 metres away at Hole Street Farm, Hole Street, Wiston BN44 3DH and had been located on the farm for many years. CGS Civils were aware of this and the Planning Department knew that the Tenant had moved by a nearby location from the initial planning application (DC/23/1328).

Refusal Reason 2 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).

In the planning statement the proposal clearly states the landlord has implemented a planting scheme around the hardstanding which is highlighted on the plans submitted. The appellant has increase biodiversity by introducing a new hedgerow around the site. However, the planning department is incorrect in using this as a reason for refusal as the site is exempt for BNG for three reasons firstly the application was made prior to April 2024 and secondly it is a small site and finally de minimis applies.

The regulations state:

THE BIODIVERSITY GAIN REQUIREMENTS (EXEMPTIONS) REGULATIONS 2024 2024 No. 47
AND THE BIODIVERSITY GAIN REQUIREMENTS (IRREPLACEABLE HABITAT) REGULATIONS 2024

The Biodiversity Gain Requirement (Exemptions) Regulations 2024 ("The Exemption Regulations") prescribe categories of planning permission to which the biodiversity gain requirement that would otherwise be imposed as a general condition of planning permission do not apply.

The Exemption Regulations 7.2 Schedule 7A (as inserted by Schedule 14 to the Environment Act 2021) already makes provision for permitted development and urgent crown development to be exempt from the requirement set out in paragraph 6.2 above. These Regulations outline six additional categories of planning permission which we have agreed through consultation that the biodiversity net gain planning condition should not apply to. This narrow and focused list of exemptions has been deemed necessary to keep the policy ambitious but proportionate.

7.3 Temporary exemption for small developments: To lessen the initial burden on Local Planning Authorities' processing capacity for biodiversity gain, these Regulations will extend the transition period for small sites until April 2024 for the avoidance of doubt this application was submitted for the second time on 27 January 2024. Therefore, a development which meets the definition of a small development will be exempt from the biodiversity net gain planning condition until April 2024. For the purposes of these Regulations small developments are residential developments consisting of one to nine dwellings on a site of less than one hectare, or if the number of dwellings is not known, a site size of less than 0.5 hectares.

For other development, the exemption applies to a building or buildings where the floor space to be created by the development is less than 1,000 square metres or, to a site size of less than one hectare. The site subject to this appeal is 840 square metres below the one-hectare threshold. This exemption allows a longer period for Local Planning Authorities and developers to adapt and prepare for biodiversity net gain (BNG). Defra does not intend to extend this transition period further beyond April. These Regulations also exempt section 73 planning permissions from the biodiversity net gain planning condition where the original planning permission to which the section 73 planning permission relates was subject to the temporary small sites' exemption.

7.4 De minimis exemption: This exemption will ensure the biodiversity net gain planning condition is not applied to development of such a small scale that it would result in negligible or no loss of habitat value. The de minimis threshold applies to the area or length of habitat impacted within a development, not the total development footprint. This is for sites containing impacted habitat of an area below 25m2, and 5m for linear habitats such as hedgerows, but does not apply where priority habitat is impacted. If a development contains any priority habitat, the biodiversity net gain planning condition applies for all habitat within the development.

For avoidance of doubt the proposal states:

"Area of hardstanding for the temporary storage of Portaloo's which are emptied separately and then relocated to events and clients. In addition, the tenant has placed two six metre containers to store equipment and a caravan for welfare breaks. The existing building does not require planning permission nor the immediate curtilage of the structure. The landlord has implemented a planting scheme around the site to soften any impact from the surrounding area. Please note a sewage works is located on the same lane. "

If the Planning authority had requested any Bio Diversity Net Gain the appellant can more than provide any requirement for BNG. Attention should be drawn to the fact that the planning authority are well aware of the Appellants' commitment to the environment with the application DC/24/0521 when the LPA and Reading Agricultural Consultants met with the appellant and he provided all the information on the environmental schemes and bio diversity projects he is involved in on the holding.

The appellant is undertaking the environmental improvements;

Planting approximately 110 metres hedges in two locations.
Creation of two small ponds.
Restoration of two larger ponds.
Photos of ponds.

The appellant is also working in tandem with the following organisations to improve biodiversity and create habitat for a variety of endangered species.

1) Knepp Wildland Foundation; Black-veined White Steering Group

This is a project to investigate suitable sites for the reintroduction of The Black-veined White Butterfly. The steering group met at Fairoak Farm on 10/07/24. The steering group consisted of, among others;

Nigel Bourne, Chief Scientist, Butterfly Conservation;
Chris Thomas, Professor in the Department of Biology, University of York;
Matthew Oates, Professional Butterfly expert, advisor and writer.

Theatre carefully managed scrub on a particular field at Fairoak Farm was deemed as fantastic habitat for this reintroduction plan.

2) Knepp Wildland Foundation; Scrubland Project

The appellant has and continues working with Rachel Biker, Scrubland Project Officer for the last year. She has been surveying birds, butterflies and insects, with a view to improving habitat.

3) Waterlife Recovery Trust.

As a member of the Upper Adur Farm Cluster Group the appellant continues to work with the Waterlife Recovery Trust. The aim is for the restoration of aquatic balance on our streams and rivers through the control of Mink.

4)Newt Conservation Partnership.

Carrying out investigations into pond and scrape creation with the NCP.
The appellant has a plan in place to create several new wet areas which will have a massive benefit for newts and other aquatic dependent animals.

5)RSPB; Turtle Dove Recovery

The appellant has been working for several years with the RSPB, to aid the recovery of the Turtle Dove, through supplementary feeding and habitat creation

Please see attached plan showing the appeal site in relation to Hole Street Farm and the ponds that have been created and put into positive ecological management.

Photos of the biodiversity and habitat creation ponds developed at Fair Oak.

The following photographs show the small ponds which have been created in the last 18 months. They are already full of beetles, bugs and dragonflies.





The next photo shows a larger pond, restored from severe silting up and willow encroachment about 4 years ago. As well as beetles, bugs and dragonflies, the pond, since restoration, plays host to various species of duck, Little Grebe, Kingfishers and Moorhen which are on the Amber list for birds in serious species decline.



The fourth photo shows a pond which will receive some light restoration work this autumn; primarily to let more light into the pond by removing some willow, to encourage biodiversity.



One would have thought that the creation of the new small ponds would be enough to satisfy the planners that BNG has been created to replace any loss from the creation of a hard standing approximately 35 x 25 mts. On top of that I have planted new hedges and entered 500 acres into a Mid-tier Stewardship scheme.

Conclusion

The appellant challenges the council's decision to refuse planning permission, arguing that the council's refusal is flawed and should be overturned.

Firstly, the council failed to consider the "change of use" and the Class R Prior Notification of the building, neglecting to confirm or deny the curtilage and proposed use of the hardstanding area.

Regarding the first refusal reason, which concerns environmental impact, the appellant has addressed water neutrality through two comprehensive reports by CGS Civils. These reports, backed by data and prior discussions with the council, demonstrate that the site is water-neutral, countering the council's claim. Furthermore, the council's assertion that the tenant's relocation was unaccounted for is factually incorrect. The tenant's move from Hole Street Farm, just 440 meters away, was well-documented and known to the planning department.

For the second reason of refusal, related to biodiversity impact, the appellant argues that the council's stance is both incorrect and irrelevant. The appellant has implemented biodiversity improvements, such as planting a hedgerow around the site. Moreover, the site is exempt from the Biodiversity Net Gain (BNG) requirements due to its small size, as per the Biodiversity Gain Requirements (Exemptions) Regulations 2024. The development, falling under the specified size thresholds and being submitted before April 2024, is not subject to the BNG condition.

Additionally, if BNG were required, the appellant has demonstrated a strong commitment to environmental projects, including working with various conservation groups and improving local biodiversity.

Given these arguments, the appellant believes the council's decision was based on incorrect and incomplete information. The Planning Inspectorate should allow the appeal and overturn the council's refusal.