# Statement of the Local Planning Authority

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PLANNING INSPECTORATE REFERENCE APP/Z3825/W/25/3361339

LOCAL PLANNING AUTHORITY REFERENCE DC/24/1486

*Town and Country Planning Act 1990*

Planning appeal by Mr v Sawyer
Appeal to be determined by an Inspector appointed by the Secretary of State by way of **Written Representation**

The appeal proposal

The application sought permission for the "*Construction of a two storey four bedroom barn style dwelling."*

The application was refused by the Council on 21/11/2024 under delegated powers for the following reasons:

Reason 1:

*"The proposed development would be sited within an unsustainable location in the country-side, outside of a defined built-up area boundary, and on a site not allocated for housing de-velopment within the Horsham District Planning Framework, or a made Neighbourhood Plan. Furthermore, the proposed development is not essential to its countryside location. Notwith-standing the absence of a five-year land housing supply, and the provisions of the National Planning Policy Framework (2023) 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) and Policy Ship HD1 of the Shipley Parish Neighbourhood Plan."*

Reason 2:

*"Insufficient information has been provided to demonstrate with a sufficient degree of certainty that the proposed development would not contribute to an existing adverse effect upon the integrity of the internationally designated Arun Valley Special Area of Conservation, Special Protection Area and Ramsar sites by way of increased water abstraction, contrary to Policy 31 of the Horsham District Planning Framework (2015), Paragraphs 185 and 186 of the National Planning Policy Framework (2023), thus the Local Planning Authority is unable to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), and s40 of the NERC Act 2006 (Priority Habitats & Species)."*

The case for the local planning authority

This statement, together with the previously submitted questionnaire and Officer's delegated report, forms the Local Planning Authority's statement of case. The Officer's delegated report outlines the relevant local plan policies in full. The purpose of this Statement is not to reiterate the plan policies considered within the assessment but to respond to the appellant's appeal submission.

The Council has determined the application against the relevant policies of the Horsham District Planning Framework (HDPF) (2015), in addition to the relevant requirements within the Conservation of Species and Habitats Regulations 2017. The crux of the appeal relates to:

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

Reason for refusal 1:

The appellant makes reference to the Council's Facilitating Appropriate Development (FAD) document which was published in October of 2022, and that the Officers report. The FAD was published in response to the age of the HDPF and the Council's current five-year housing supply shortfall which effectively revises the wording of the Policy 4 to remove the restriction relating to allocation, to:

*The growth of settlements across the District will continue to be supported in order to meet identified local housing, employment and community needs. Outside built-up area boundaries, the expansion of settlements will be supported where;*

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

Similarly to Policy 4, in order for development to benefit from the provisions of the FAD, each criteria detailed above must be met. As the site does not adjoin a settlement edge, the development would not benefit from the provisions of the FAD, thus failing on the first criteria as above. All of the criteria must be met- the FAD is clearly worded and presented as above, which sets out a sequential series of criteria with the use of semi-colons (;) and the presence of '*and'* between criteria 4 and 5. Essentially, the development would not in this case meet the requirements of the FAD.

The appellant's Statement of Case does not build on the arguments raised in their original submission considered by the Council, other than a general disagreement about the council's decision and the objection raised by the Parish council. The statement mostly comprises reused information from the submitted application statement, in addition to duplicated text from the Officer's report. No additional or supporting evidence has been included to support their case other than general disagreement, advancing that the development would not be in the countryside, that there are dwellings nearby, and that they were in receipt of pre-application advice in regards to a commercial use.

The appellant has included two examples of appeals as part of their submission. Whilst appeals are material in decision making, they do not always offer useful comparison, being different in circumstances given different site context, circumstances of the applicant, application site history, design and scale of the proposed and nature of development. As such, whilst a development may be acceptable in one instance, it could be unacceptable in another, with each application being decided on its own merits.

The Officer would like to bring to the attention of the Inspector the differences between the current appeal under consideration and that of the appeal considered most relevant to the application site. The closest comparison mentioned would be with APP/Z3825/W/24/3341171 Wappingthorn Lodge, Horsham Road, Steyning, West Sussex BN44 3AA. This appeal is advanced by the applicant as a way of outlining that the council

made an error in their decision making process as Wappingthorn Lodge was allowed at appeal despite being in a countryside location. The site circumstances were different to the current application site however, with the direct neighbour in the Wappingthorn Lodge appeal being residential. Although it is not made clear within the appellant submission how precisely this appeal would be useful, they indicate that the current appeal should be approved as the application site "certainly does not qualify as countryside". Contrary to this, the land within the red line boundary submitted under DC/24/1486 is however outside the Built up area boundary within a countryside location, outside of a settlement. The Wappingthorn Lodge application is materially different to the current application, with the Wappingthorn Lodge application being a change of use of the site, where it had existing built form within the application site, including a stables, garage and machinery store. The merits of the Wappingthorn Lodge appeal therefore were greater than that of the current application, with no existing built form within the red line boundary submitted. The subsequent level of intensification of activity arising from the current proposal would therefore be greater than within the Wappingthorn Lodge site. During the Wappingthorn Lodge appeal, the Inspector was able to attribute weight, even if limited to the use of rural buildings. In the case of this appeal however, whilst it is noted that the appellant details that "decades" ago the land within the application site may have been used for equestrian uses, there is no submitted evidence of this use nor equestrian stables. As such, it would not be concluded that the development would represent reuse of existing rural buildings or brownfield land, with the application site consisting of open agricultural land.

In the case of the Cowfold Lodge Cottage appeal, the site was located some 0.2km from the built-up area. The Inspector resolved (at paragraph 8) that the proposal was not a suitable location for a new dwelling, and that there was therefore conflict with core policies. However, it was concluded that in the overall planning balance, the benefits of the proposal would outweigh the conflict with these policies. The closer location to the built-up area boundary would have been afforded increased weight in favour of the appeal in the overall planning balance by comparison. In the case of the present appeal, the unsustainable location of the development was afforded significant weight, and in the overall planning balance this weight 'tipped the scales' in favour of refusing the consent. The difference in distance between 0.2km, 0.6km/0.68km is academic in determining whether or not the location of a development is considered sustainable, as ultimately, this is all relative, dependent on the user / occupant, and the conditions of the link between the site and the settlement. In each case, the sites were located outside of the built-up area and, as set out above, the present case and appeal case present individual circumstances that can amount to the resultant outcome. The Council thus contests that in the case of this appeal, none of the cases are relevant for consideration.

The appellant outlines paragraph 84 of the NPPF in the case of their statement. Whilst this policy is stated within the Officer's report, it is not directly relevant in the overall balance and assessment of the appeal case as the site is not isolated, owing to the site's location in relation to existing nearby residential development. However, the site is some distance away from nearby services, with limited sustainable transport routes and thus the occupants would rely on the use of a car. As such, the Council does not consider that the site is located within a sustainable location. The proposal would not therefore benefit from the provisions of paragraph 84. The proposal therefore represents a conflict with Policy 26 of the HDPF.

Reason for refusal 2:

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

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

The appellant had during the application process submitted a dedicated Water Neutrality statement. The Local Planning Authority undertook an Appropriate Assessment and communicated their assessment of the WNS which was subsequently reviewed by Natural England. It was concluded that insufficient information had been provided to demonstrate with certainty that the development would not contribute to an existing adverse effect upon the integrity of the internationally designated Arun Valley Special Area of Conservation, Special Protection Area and Ramsar sites by way of increased water abstraction.

The guidance is unambiguous on the council's website that water neutrality would need to be demonstrated and how to achieve this for various types of development. The council are positive and proactive where there is a presumption in favour of sustainable development, however in this instance, the LPA had made an assessment as the competent authority that the development had not demonstrated Water Neutrality for the reasons outlined within the delegated report. The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects) unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site. As such the presumption in favour of sustainable development did not in this instance apply. Where Water neutrality is not demonstrated, proposals *would* amount to adverse harm to the designated sites identified (as detailed in the above paragraphs) and thus provide a clear reason in refusing the application.

It is not the intention of this Statement of case to reiterate the delegated report in entirety and whilst this report outlines the rationale of the LPA in response to the appeal information submitted, the LPA is now not the 'competent authority' as this has reverted post-determination to the Planning Inspectorate, we respectfully request the Inspector to consider the reasoning outlined within the officer's delegated report, review if the WNS provides the required certainty, and consult with Natural England. As such, the Inspector will reach their own conclusions with regards to Water Neutrality. The Local Planning Authority would not want to prejudice the due process of the competent authority however for the avoidance of doubt, the competent authority must consider the likely effectiveness of any mitigation measures, including (amongst other things) the contents of the appellant's water neutrality statement in addition, and whether the mitigation measures outlined are capable of meeting the conditions tests and whether a legal agreement would be required to secure mitigation. For the competent authority to conclude that the development is water neutral, they must have reasonable certainty that they have sufficient evidence so as to conclude that the development is water neutral.

Other matters raised:

Within the appellant statement, the appellant appears to advance that weight in support of the development should be assigned given that the dwelling would be a self-build development. The Council recognises that there is a need to facilitate self-build projects within the District. However, the appellant appears to have fallen within the common pitfall in not differentiating between 'self-build' housing in terms of CIL and BNG exemption, and 'Self-build and Custom Housebuilding' as defined within the Self-build and Custom Housebuilding Act 2015 and the subsequent Housing and Planning Act 2016.There is no evidence submitted as part of the appeal or the application to outline a commitment to self-build housing. The Inspector should note that the site is does not appear to be on the Council's self-build register, and the appellant has not detailed how the proposal would meet an unmet need of self-building within the local area or indeed the District. As such, whilst this would be viewed positively during an assessment limited weight can be attributed to the development as a self-build.

The Pre-application advice referenced within the appellant statement was for a commercial building, which is a different type of application to the one being proposed with the principle of development assessed under different policy considerations. Furthermore, pre-application advice is informal advice subject to change when a full application is submitted with full details of the proposal as the assessment is made clearly stating that the advice given is informal and subject to the assessment of all material planning matters.

Other matters including accepting further amendments

The local authority have a procedure and guidance surrounding making changes to the contents of an application during the application process which is published on the council website. It is understood from the appellant's submission that they sent in unsolicited further amendments with regards to two new Water Neutrality statements and some further plans. In response to this, I outline the council's guidance here:

*"It is not possible to evolve and amend development proposals as part of the formal planning application process, and any such discussions should instead take place at a pre-application stage. Is it at the discretion of the Local Planning Authority whether to accept amended plans or additional application as part of an application, or whether the proposed changes are so significant as to materially alter the proposal such that a new application would instead be required.*

*To prevent unnecessary delays and to reduce uncertainty for all interested parties, amendments which significantly alter the character or description of the proposal will not be accepted. In these circumstances applications will be determined as submitted. In addition, unsolicited amendments (i.e., in response to representations or consultation responses) will not be accepted unless there have been previous discussions between the agent / applicant and case officer."*

In summary of this point above, the council are not always able to accept amendments during the course of the application. There may be a number of reasons that further amendments will not be accepted or more than one round of further amendments are not accepted, and whilst this decision is at the officer's discretion, not accepting multiple amendments usually involves a combination of the following reasons;
Accepting amendments would lead to unreasonable delays, where accepting further amendments would take capacity that prevents other statutory requirements from being delivered,

where the amendments altered a fundamental part of the assessment of the application which necessitates a new application and crucially in this instance, a combination of the above and that the amendments submitted do not alter the outcome of the application. In the instance of the appeal, the proposed changes would have been so significant that they would have materially altered the proposal such that a new application would instead be required, in addition to the principle of the proposal being unacceptable in this location such that accepting the amendments could have led to uncertainty for interested parties and not have altered to outcome of the application. The council maintain that it has not been unreasonable in this regard, with amendment guidance available to the public via the council website.

Conclusion

The Planning Assessment considers all planning policies and material considerations, and comes to a conclusion by balancing all matters. The Council considers all applications in a professional and impartial manner, and while not all will agree with the decision, it does not follow that as an application has been refused that the supporting information was not reviewed, understood and assessed. The Council are therefore of the view that the planning application was appropriately considered and determined.

The Council is firmly of the view that it has not behaved unreasonably nor put the Appellant to additional or wasted expense in the appeal process. Furthermore, the Council considers it to have been correct in refusing planning permission for the proposed development. The Council remain of the view that approving the scheme would conflict with core local and national planning policy and should be dismissed.

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

1 **A List of the Approved Plans**

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

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

3 **Pre-Commencement Condition**: No development shall commence until the following components of a scheme to deal with the risks associated with contamination, (including asbestos contamination), of the site be submitted to and approved, in writing, by the local planning authority:

(a) A preliminary risk assessment which has identified:
- all previous uses
- potential contaminants associated with those uses
- a conceptual model of the site indicating sources, pathways and receptors
- Potentially unacceptable risks arising from contamination at the site.

The following aspects (b) - (d) shall be dependent on the outcome of the above preliminary risk assessment (a) and may not necessarily be required.

(b) An intrusive site investigation scheme, based on (a) to provide information for a detailed risk assessment to the degree and nature of the risk posed by any contamination to all receptors that may be affected, including those off site.

(c) The intrusive site investigation results following (b) and, based on these, a detailed method statement, giving full details of the remediation measures required and how they are to be undertaken.

(d) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (c) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action where required.

The development shall thereafter be carried out in accordance with the approved details. Any changes to these components require the consent of the local planning authority.

Reason: As this matter is fundamental to ensure that no unacceptable risks are caused to humans, controlled waters or the wider environment during and following the development works and to ensure that any pollution is dealt with in accordance with Policies 24 and 33 of the Horsham District Planning Framework (2015).

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

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

5 **Pre-Occupation Condition**: The dwelling hereby permitted shall not be first occupied until evidence has been submitted to and been approved in writing by the Local Planning Authority that the approved water neutrality strategy for proposal has been implemented in full. The evidence shall include the specification of fittings and appliances used, evidence of their installation, completion of the as built Part G water calculator or equivalent and water harvesting system installation. The installed measures shall be retained as such thereafter.

Reason: To ensure the development is water neutral to avoid an adverse impact on the Arun Valley SACSPA and Ramsar sites in accordance with Policy 31 of the Horsham District Planning Framework (2015), Paragraphs 185 and 186 of the National Planning Policy Framework (2023), and to enable the Local Planning Authority to discharge its duties its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), and s40 of the NERC Act 2006 (Priority habitats & species).

6 **Pre-occupation Condition**: Prior to the first occupation of each dwelling, the necessary in-building physical infrastructure and external site-wide infrastructure to enable superfast broadband speeds of 30 megabits per second through full fibre broadband connection shall be provided to the premises.

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

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

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

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

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

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

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

10 **Regulatory Condition**: All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Preliminary Ecological Appraisal as already submitted with the planning application and agreed in principle with the local planning authority prior to determination.

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

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