Planning Inspectorate

Appeal Decision

Hearing (Virtual) held on 11 June 2025

Site visit made on 12 June 2025

by H Miles BA (hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th of July 2025

Appeal Ref: APP/Z3825/W/25/3361285
Hilland House, New Road, Billingshurst, West Sussex RH14 9AA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
- The appeal is made by Mr G Beck of Northgate Properties Ltd against the decision of Horsham District Council.
- The application Ref is DC/24/0749.
- The development proposed is the development of up to 125 private and affordable dwellings and parking together with an access from New Road, new landscaping and open space, an ecological and woodland park together with associated works.

Decision

1. The appeal is allowed and planning permission is granted for the development of up to 125 private and affordable dwellings and parking together with an access from New Road, new landscaping and open space, an ecological and woodland park together with associated works at Hilland House, New Road, Billingshurst, West Sussex RH14 9AA in accordance with the terms of the application, Ref DC/24/0749, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Mr G Beck of Northgate Properties Ltd against Horsham District Council. This application is the subject of a separate decision.

Preliminary Matters

3. Outline planning permission is sought but with only access to be considered at this stage. Matters relating to layout, scale, appearance and landscaping are reserved for future consideration. I have determined the appeal accordingly.

4. At the hearing, the appellant made it clear that certain plans, including Drawing HTp/23163/41 Sheets 1-4, which show the New Road footway with proposed realignment at a greater scale and including cross sections, were for illustrative purposes only and I have considered the development proposed on this basis.

5. A planning obligation (S106) has been submitted which provides mechanisms which seek to secure works to highways and public rights of way (PROW), affordable housing and biodiversity net gain (BNG), amongst other things. I will return to these matters later in this decision.

6. A legal authority *British Railways Board v Secretary of State for the Environment, [1993] WL 963747* (the British Railways Board legal authority) was submitted during the appeal process. This does not change the scheme under consideration but provides information in response to the submissions. The main parties had the opportunity to consider this ahead of the hearing and the matter was discussed at the event. For the reasons above, and in the circumstances of this case, the parties would not be prejudiced if I were to consider this document, and I have taken it into account in my decision.

Main Issues

7. The main issues are;

   - Whether the site is a suitable location for the proposed development with particular regard to accessibility by sustainable transport modes.
   - The effect of the proposed development on the character and appearance of the area with particular regard to landscape.

Reasons

Accessibility by sustainable transport.

8. Policy 40 of the Horsham District Planning Framework (HDPF) seeks development to promote non-car modes of transport and sets criteria including that development should include opportunities for sustainable transport, be located in areas where there will be a choice in the modes of transport available and provide safe and suitable access for all, amongst other things. Policy BILL 12 of the Billingshurst Parish Neighbourhood Plan (2021) (NP) seeks development proposals to provide pedestrian and cycle access with routes accessible by disabled users.

9. The appeal scheme proposes alterations to three routes leading from the site; the provision of a footpath and alterations along New Road from the existing driveway of Hilland House to the roundabout at the junction with Stane Street, works including resurfacing to PROW 1942 which leads from the south western corner of the site to Hilland Road/A272, and the creation of a permissive path from the south eastern corner of the site to Wooddale Lane.

   New Road

10. The development proposes changes to New Road, including the provision of an unlit, 1.5m wide footpath on the southern side of the road. This would provide a route for future occupiers to the shops and services at Billingshurst Trade Park, the New Road bus stops and access to Billingshurst beyond. In connection, the appeal scheme would also alter New Road to a 4.8m width along this part of its length including realignment to its northern edge.

11. New Road is a rural road with a traffic count survey in April 2023 showing 139 vehicles passing during the am peak, with an additional 62 vehicle movements predicted from the proposed development. It is not dedicated as a quiet lane. The 85th percentile daily vehicle speeds are around 47mph eastbound and 42mph westbound. Around 2% of existing vehicles using the road are large heavy goods vehicles or similar and 13% are medium/large goods vehicles, although this does not account for seasonal variations. The appellant and West Sussex County

Council (WSCC) state that the existing road is between 4.8-5m wide, although this is disputed by interested parties.

12. Appendix A – HS2 Rural Road Design Criteria sets out standards for work on rural roads connected with the HS2 development. These include rural road widths of a minimum of 5.5m, and states this is the minimum for two cars to pass in safety at low speeds. Although, this document relates to works connected to the HS2 project and as such is not directly relevant to the scheme before me now. Manual for Streets demonstrates that a carriageway of 4.8m allows two cars to pass comfortably, and a car to pass a large vehicle more tightly. However, this provides standards for residential streets and is also therefore not directly applicable. I am directed to the conclusions of the Inspector in the appeal at Land to the South of Alderholt (ref APP/D1265/W/23/3336518) with regard to these documents, however that was in relation to a much larger scheme for 1700 dwellings where the highways considerations are clearly different to the proposal before me now. I also note that WSCC are satisfied with the appeal proposals and do not raise concerns with regard to highway safety.

13. Overall, there would be a low level of traffic using this road, speeds are generally below the national speed limit, and the likelihood of large vehicles passing is very small. The width proposed would allow cars to pass comfortably. Whilst larger vehicles may need to slow to pass other vehicles along this short stretch of road, given the infrequency of these events occurring with the low traffic numbers using this road, they could pass safely and this would not have a severe impact on the road network.

14. The proposed footpath would be narrower than the 2m minimum recommended under normal circumstances in the Inclusive Mobility Guide (2021), and the 1.8m which it is put to me is in the guidance on footway widths in the West Sussex Standard Construction Details. However, the proposed 1.5m width is acceptable to WSCC and would allow a pushchair or wheelchair user and a walker to pass one another. Whilst the gradient across its full length would be 1 in 24, it would be steeper than this in places. In addition, the Stage 1 Road Safety Audit recommends lighting is provided to this footpath. However, the hedge in this location provides a route for protected Barbastelle bats and therefore no lighting is proposed. I have also noted the conclusions put to me in the appeal at Land to the rear of 144 Audlem Road (Ref: APP/R0660/W/15/3139474), where the Inspector concluded in the circumstances of that case that large vehicles close to the footpath would be intimidating.

15. Consequently, there are limitations with the proposed footpath including its width, gradient and lighting. However, taking into account the separation of pedestrians on the footpath, in combination with the findings that the width of the road would be suitable, this route would not be unsafe. As such, whilst this would provide for some journeys by sustainable modes, there may be circumstances where some occupiers and at certain times of day, would not use this route.

16. Along this rural road the traffic levels are suitable that most people would be able to cycle. However, a separate cycle lane is not proposed and, given the speed of vehicles, New Road may not be suitable for all cyclists. Cyclists would then connect to the cycle infrastructure within Billingshurst Trade Park and beyond. Although these cycle paths are across private land, and therefore could be terminated, it is reasonable to assume that future occupiers would be afforded the

same rights as others to access these paths and that they would remain in the long term.

17. Concerns have also been raised as to the deliverability of the footpath and I have considered the prospect of the proposed works taking place. For the purposes of this appeal, based on the evidence submitted and considering that the footpath does not extend 1.5m back from the existing road edge, I am satisfied that there is not considerable doubt that the works proposed would be within the ownership of those who are party to the planning obligation securing the implementation of this footpath. The situation is therefore different from the conclusions of the Inspector in the appeal at Land to the South of Alderholt, due to the site specific circumstances in that case. Notwithstanding this, matters relating to land ownership would be dealt with under private legal rights.

18. The proposed footpath would be located close to the hedge which runs along the edge of New Road. The stems of this hedge are outside the site boundary and on Billingshurst Trade Park which has planning permission for works which are ongoing. The retention and enhancement of this hedgerow are conditions of this planning consent. All works to the footpath would be a minimum of 0.5m from the base of the stems, both the appellant's Arboricultural Impact Assessment and the Council's Arboricultural Officer consider that this would be a sufficient distance to retain these plants. Furthermore, a condition is proposed which includes the requirement for replanting if plants in the hedge were to fail. Whilst this relates to land outside the appellants control, given the requirements of Billingshurst Trade Park to retain this hedge there is a clear prospect that such works would occur and this condition would be reasonable. Therefore, the hedge would be retained, and this would not prevent enhancement works occurring within the Billingshurst Trade Park site nor would it be harmful to biodiversity. A condition could secure that these works would be in accordance with drawing 23163.32 Rev D which shows the footpath at 1.5m wide and a minimum of 0.5m from the stems. Taken together this therefore does not permit a wider footpath but would secure the works assessed as part of this appeal. The footpath should be in place prior to any occupiers requiring the use of this facility.

19. The realignment of the road to the north would bring it closer to existing hedgerow, trees and vegetation on the northern side of the road. Whilst particular trees are shown for retention there is limited detail as to how this would be achieved in the submitted Arboricultural Impact Assessment. At the hearing it was stated that where works occur within their root protection zones, surfaces such as a geogrid could be used to ensure these trees were protected. Detail as to the protection of the trees and groups shown to be retained on the north side of New Road could therefore be secured by condition to ensure the retention of these trees.

20. There is a ditch close to the New Road roundabout. Its sides would need to be regraded to accommodate the footway, but it would not be culverted. This would not affect its capacity and therefore would not increase flood risk. The stage 1 road safety audit identifies this as a hazard. At the hearing it was discussed that a handrail may be required to provide separation in this location, which would have a minimal effect on the width of the footway.

21. Overall, for the reasons set out above, there is a real prospect of the proposed works, subject to the required conditions set out above, occurring. The proposed route could be suitably secured as part of any grant of planning permission, and it

would not have an unacceptable impact on highway safety. However, there are some limitations as to how the footpath and cycle route along New Road would provide a suitable access to the site for all users.

PROW 1942

22. PROW 1942 leads from the south west corner of the appeal site to a road crossing at Hilland Road. It crosses a field which is grazed for cattle and sheep. Beyond this there is a network of footpaths, roads and cycle paths which connect to the centre of Billingshurst. The appeal scheme proposes the upgrading of PROW1942, seeks permissive rights for it to additionally be used as a cycle route, widening to 3m and surfacing with crushed limestone.

23. The S106 provides for the appellant to seek for this to be a permissive path with agreement from the landowner. If this is unsuccessful, the requirement passes to the Highway Authority who could use their powers to allocate this for cycle use. They also have powers to resurface and fence the route if required. As such there is reasonable likelihood that this could be a permissive cycle path and if needed the route could be fenced.

24. PROW 1942 would not provide a sealed surface and would not be lit. The crushed limestone surface would nevertheless be a compacted surface, which would be suitable for most cyclists and some wheelchairs. Similarly to New Road this route would also not be lit and therefore there may be times of the day that certain users would not use this route.

25. The route into Billingshurst leads to a road crossing with tactile paving and dropped kerbs, but it is not signalised. It is at a bend in the road, and detail has been provided to show that sufficient visibility exists in both directions so that crossing this road would be safe.

26. The upgraded PROW would provide a direct route to the centre of Billingshurst by sustainable transport modes. Albeit, similar to the above, there would be some practical restrictions on the use of the footpath, and it may not be used during hours of darkness.

South east permissive path

27. The appellant proposes a permissive path for pedestrians and cyclists which would connect to the footpath at PROW 1941 as well as routes through the Duckmoor site once constructed, via Wooddale Road. This is a less direct connection towards the centre of Billingshurst and is therefore less likely to provide a route needed for occupants' day to day needs. Nevertheless, it does provide an alternative way for those wishing to travel elsewhere or for recreational use.

Summary

28. The detailed evidence demonstrates that the proposed increase in the number of vehicles could be adequately accommodated on the surrounding road network, and that the visibility splays at the proposed entrance are suitable for the speed of the road. Decisions at Horsham Golf Park (DC/23/1178), Crouchlands Farm (22/03131/ OUTEIA) and Land at Pennpark (Ref. APP/K1128/W/24/3347514) have been referred to where it was determined that safe and suitable access could not be provided for all users. Given their distance from the appeal site there are clear differences between the site specific considerations in these cases,

Nevertheless, in common with the approach taken, I have assessed this appeal on the circumstances before me now.

29. Three routes are proposed which would connect the proposed housing to the wider area via sustainable transport modes. The proposed development would improve access by cycling and walking and would provide a choice of transport modes, and this would comply with policy BILL12 and some criteria of Policy 40. However, for the reasons set out above, there are limitations with these routes. Whilst they would be suitable for some occupiers not everyone would be likely to use these routes for all journeys at all times of day and therefore the development would not provide suitable access for all. Therefore, the development would not comply with Policy 40 of the Local Plan in this regard, which requires safe and suitable access for all. However given the circumstances described above, this conflict is limited.

30. Therefore, overall, the site is not a suitable location for the proposed development with particular regard to accessibility by sustainable transport modes. Consequently, it would be contrary to Policy 40 of the HDPF for the reasons set out above.

Landscape

31. The site is within the Low Weald National Character Area, and West Sussex County Council, 'A Strategy for the West Sussex Landscape (2005) and the Horsham District Landscape Character Assessment (October 2003) identifies it as being within the G3: Slinfold & Five Oaks Wooded Farmlands area. Together these identify the important characteristics as including its rural character, woodlands and pastures surrounded by woodlands and hedgerows.

32. The appeal site is mainly undeveloped land with open grass areas and forested parcels contained within field boundaries. These are enclosed by existing defensible boundaries of hedges, woodland and fencing. It is surrounded to the north and east by similar open land, including the land crossed by PROW 1942. The Council states that views to the South Downs National Park are possible across the site. Directly to the west of Hilland House is the land associated with Billingshurst Trade Park. This is an area of commercial premises in large buildings, surrounded with car parking and access roads, and is urban in its character and appearance. There are also large pylons and their associated cables to the south of the appeal site. The A272/Hilland Road is also to the south, with the majority of development in Billingshurst on the other side of this road. However, permission has been granted at the Duckmoor site for 83 dwellings (ref: APP/Z3825/W/21/3283823), and both Hillyfields and Dadswell Drive extend beyond the road to the east, as well as Billingshurst Trade Park. As such there are urbanising elements in the surroundings.

33. The proposed development would introduce up to 125 dwellings along with associated roads, infrastructure and residential activity. Boundary vegetation is proposed with landscape reinforced buffers around the site, a reinforced northern boundary and the retention of existing woodland and hedgerows. This would be secured at the Reserved Matters stage.

34. The proposed residential development would result in a strongly urbanising appearance to this open, rural parcel of land. However, it would be experienced in the context of the pylons, business park, and other development on this side of the

A272. Furthermore, the proposed planting would provide mitigation in some views, although the buildings would be visible particularly when trees are not in leaf.

35. The proposed development would harmfully erode the rural character of the appeal site and therefore there would be an adverse effect on the landscape character of the site. However, due to the mitigating factors above, including the proposed screening and the character of the surrounding area, this harm would be localised and modest. As such, overall, there would be modest harm to landscape character as a result of the proposed development.

36. Therefore, the proposed development would be harmful to the character and appearance of the area with particular regard to landscape. As such, it would be contrary to Policies 25, 26, 32, and 33 of the HDPF. Together these seek high quality design which complements locally distinctive character, to protect landscape character and to protect the rural character and undeveloped nature of the countryside outside of the built up area boundaries. A number of policies from the HDPF and NP are brought to my attention in this regard, some of which are strategic policies or those relating to the built up area boundary. Consequently, the policies set out above are most relevant to this main issue.

Other Matters

Water Neutrality

37. The Arun Valley Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar sites are habitats sites that have a high level of protection. They are designated because they support rare and diverse plant, invertebrate and bird assemblages.

38. The appeal site is within the Sussex north water supply zone. Natural England have advised the council that it cannot be ruled out that existing abstraction within the Sussex north water resource zone is not having an adverse effect on the integrity of the Arun Valley sites. And that developments within this area must not add to this impact.

39. The issues relating to water neutrality are a key issue for the delivery of housing in this borough. In the absence of a strategic water neutrality strategy, one way of achieving this is to demonstrate water neutrality which means that the use of water in the supply area must be equal to or less than the total water-use in the region before the new development.

40. The quantity of water needed is taken from occupancy data, is tenure blind and based on the 2011 census data, which is a precautionary approach agreed with the Environment Agency, Natural England and Horsham Council. This approach is appropriate for the purposes of this appeal. The appellant proposes efficient measures including low flush and efficient fittings as well as rainwater harvesting. The remaining water demand from the site would be from boreholes and these would generate a sufficient quantity of water without the need for a main connection. Detailed site investigation has taken place which ensures that this would be provided for the long term. Furthermore, based on the detailed evidence before me this water would be at the required potable quality, and measures to ensure this could be secured by condition. Natural England has also been consulted on this proposal and has not objected.

41. In the circumstances of this case, the measures set out above provide adequate mitigation for the effect on the Arun Valley SAC, SPA and Ramsar and accordingly I can be certain that there would be no adverse effect on the integrity of these habitats sites. Consequently, the proposed development would have an acceptable effect on the Arun Valley SAC, SPA and Ramsar sites.

Built up Area Boundary (BUAB)

42. There is no dispute that the proposed development of up to 125 homes is outside the BUAB of Billingshurst. Therefore, in this regard there is conflict with policies 2, 4, and 26 HDPF and policy BILL1 of the NP. Together these set out a spatial strategy with development focussed within the BUAB and require particular justification for development outside these boundaries which are not relevant to this site. The Council have also produced a guidance note 'Facilitating Appropriate Development' (2022). This includes five criteria which will be considered for applications outside the BUAB. In light of my conclusions above, the proposed development would not maintain and enhance the existing landscape features, although the other criteria would be satisfied. Policies 33 and 25 of the HDPF relate to development principals and the natural environment and landscape character, as such the policies set out above are more relevant to this matter.

The Mens Site of Special Scientific Interest (SSSI) and SAC and Ebernoe Common SAC.

43. The Mens SSSI and SAC and Ebernoe Common SAC are designated for reasons including their Barbastelle bat population. Due to their flightlines and foraging areas, the Council consider that applications within 12km of these SACs must be assessed. Furthermore, the appellant's Extended Phase 1 Ecological Assessment & Phase 2 Ecological Surveys (PEA) identifies records of Barbastelle bats on the site. The proposed residential development may result in impacts from lighting and loss of habitat connectivity. Therefore, when combined with other plans and projects, there would be likely to be a significant effect on the protected sites.

44. The Conservation of Habitats and Species Regulations 2017 require competent authorities before granting consent for a plan or project, to carry out an appropriate assessment (AA) in circumstances where the plan or project is likely to have a significant effect on a European site, alone or in-combination with other plans or projects. I am therefore required to undertake an AA.

45. Conditions are proposed regarding lighting, including no lighting on the footway and hedgerow to the northern boundary, and ecologically sensitive lighting to the residential part of the site. Along with conditions which would ensure the retention of the hedgerow along the northern boundary. Additional planting would be secured within the site at the reserved matters stage. Natural England has also been consulted on this specific application and raised no objection to the proposal on this basis. I have taken these comments into account.

46. In the circumstances of this case, the measures set out above provide adequate mitigation for the effect on the SACs and SSSI and accordingly I can be certain that there would be no adverse effect on the integrity of these habitats sites. Consequently, the proposed development would have an acceptable effect on the Mens SSSI and SAC and Ebernoe Common SAC.

Planning Obligation

47. Policy 16 of the HDPF requires 35% of dwellings to be affordable. The S106 would secure 43% of housing as affordable with a 70/30 split between affordable rent and shared ownership. The proposed development would exceed the affordable housing requirements of the Local Plan. The main parties agree that this holds at least, significant weight in favour of the proposed development.

48. The S106 would secure works to the highway including the works to PROW1942 and the south eastern permissive path, as outlined above. As well as a travel plan, which would further encourage the use of sustainable transport modes. These are directly relevant and proportionate to the development proposed and the S106 secures that they would be carried out when appropriate.

49. The development includes on site improvements that would lead to around a 30% BNG, clearly exceeding the statutory requirement. The S106 includes a requirement for the habitat creation and enhancement works to be secured for 30 years. It would also secure the open amenity space specification, management plan and management company. This would ensure the provision of suitable space for occupiers of the proposed development and its long term maintenance as well as use by members of the general public. Monitoring costs for highways, travel plan, open space and BNG are also included, and these fairly and reasonably relate to the scale and kind of the development.

50. Therefore, the obligation would be necessary, directly related to and fairly and reasonably related in scale and kind to the development and is necessary to make the development acceptable in planning terms. As such I have taken it into account in my decision.

Planning Balance

51. The Council and the appellant agree that, at best, the Council can show a maximum of 1.1year supply of deliverable housing land, and I am provided with detailed evidence which justifies this position. Furthermore, the regulation 19 Horsham District Local Plan 2023-2040 is paused. As such, this shortfall is likely to persist for some time. In addition, the latest housing delivery test results indicate that the delivery of housing was substantially below the housing requirement over the previous three years. Overall, this equates to a substantial shortfall.

52. The Council cannot demonstrate a 5 year supply of deliverable housing sites. Consequently, the presumption in favour of sustainable development contained within paragraph 11 d) of the National Planning Policy Framework 2024 (Framework) would be engaged. This requires that planning permission be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits of the development, when assessed against the policies within the Framework taken as a whole having particular regard to key policies.

53. The proposed development would provide up to 125 houses, 43% of which would be affordable which would provide new homes in an area where there is a substantial and ongoing shortfall in supply. The development would make a positive contribution to providing affordable homes and make an effective use of land in this regard. This provision attracts significant weight in favour of the appeal scheme.

54. The scheme would be water neutral, which does not weigh in favour of the development, but, importantly, this is not a reason for restricting planning permission in this case. The proposed development would also bring the associated economic benefits of up to 125 houses such as construction expenditure and jobs and spend in the local area from future occupants. The additional recreational routes and public access to open space and woodland would be accessible to members of the public. In addition, the scheme would deliver 30% BNG, exceeding the statutory targets. Taking all these matters together, overall, the benefits of the proposed development are significant.

55. For the reasons above, whilst the development would offer a choice of sustainable transport modes it would not provide suitable access for all. There is therefore some conflict with the Framework's aim to direct development to sustainable locations and the relevant development plan policies. However, in the circumstances of this case, the harm in this regard is limited. Furthermore, for the reasons already given, the development would have only a modest adverse impact on the landscape, but would not secure a well designed place or make effective use of land in this regard. It would also fall outside the BUAB and so would be contrary to the spatial strategy in the development plan. However, given the substantial shortfall against housing delivery I afford limited weight to the conflict with these policies. Therefore, taken together the proposed development would have no more than moderate adverse impacts.

56. Consequently, overall, the moderate adverse impacts of the development would not significantly and demonstrably outweigh its significant benefits.

57. As a result, the application of paragraph 11 d) of the Framework indicates that permission should be granted, when assessed against the policies in the Framework taken as a whole having particular regard to key policies.

Conditions

58. The suggested conditions were discussed at the event and I have considered them against the tests in the Framework and the advice in the Planning Practice Guidance. I made it clear that I would make such amendments as necessary to comply with those documents.

59. I am attaching the standard implementation condition and the requirement to submit reserved matters and in the interests of certainty a condition to define the plans with which the scheme should accord. These plans are limited to those which relate to the matters under consideration and do not include indicative plans. There is a requirement to comply with plan 23163/32 Rev D under conditions relating to footway and cycle provision, but given its fundamental importance to the matters under consideration for this appeal, it is also included in the approved list of drawings.

60. Conditions that reserved matters broadly comply with the parameter height plan and illustrative masterplan, and details of land and floor levels are required in order to protect living conditions and for character and appearance. Landscaping reserved matters must include details of the natural area of play and the provision of refuse and recycling storage are also needed in the interests of the living conditions of future occupiers. Conditions requiring tree protection are included in the interests of the character and appearance of the area.

61. The implementation of the approved access, cycle improvements, the New Road footway are required in the interests of highway safety and the operation of the road network and in the case of the latter, as set out above in detail, to provide a choice of modes of transport, and for biodiversity. The condition does not include any discretion to allow changes to the scheme considered at this appeal, to avoid any significant changes to the development without allowing interested parties the opportunity to comment. Demolition and construction details are needed in the interests of neighbouring living conditions and highway safety. This condition incorporates a requirement for construction working hours, and therefore to avoid duplication, this is not included as a separate condition.

62. Conditions relating to a private water supply management plan, evidence as to the quality of tap water and a risk assessment related to the above including any remedial actions are required for the reasons set out above, in the interests of the Arun Valley SAC, SPA and Ramsar sites and so that future occupiers have a safe, potable water supply. These include contingency measures and so the Council's suggested condition 34 is not included to avoid repetition. They follow the most up to date wording from Environmental Health and avoid duplication with the obligations pursuant to the Private Water Supplies (England) Regulations 2016 and for these reasons the Council's suggested condition 7 has not been included.

63. A site investigation, ground investigation and details of remediation as well as details of sewage pipes within the Source Protection Zone and a condition requiring detail of drainage systems which include infiltration are needed to ensure no unacceptable risk to humans, controlled water or the environment. A construction phase surface water management plan, details of a scheme for a sustainable drainage system in accordance with the submitted evidence, details of its maintenance and management and a verification report as well as a condition to secure implementation in accordance with the submitted Flood Risk Assessment are necessary in order that the site does not increase flood risk and in the case of the latter to protect water quality and habitats.

64. A biodiversity construction environmental management plan, a biodiversity enhancement layout, submissions relating to a Natural England license for Hazel Dormouse, a lighting scheme for biodiversity and the implementation of mitigation and enhancement measures in accordance with the PEA are necessary in the interests of biodiversity. In addition, a condition restricting lighting of the New Road footway is required for the same reason.

65. The site is of archaeological significance as it has a moderate potential for later prehistoric and Roman archaeology. As such, archaeological assessment reports and analysis, publication and dissemination are conditioned in order to allow appropriate conservation or recording of the archaeological interest of the site.

66. Modelling of PM10, PM2.5 and NO2 pollutant concentrations and an air quality mitigation plan, are necessary to mitigate the effect on air quality. The acoustic impact and attenuation measures for any plant are required in the interests of the living conditions of nearby occupiers. Fire hydrants are required to ensure fire safety, and the provision of high speed broadband is needed to deliver sustainable development.

Conclusion

67. I have found that the proposal conflicts with the development plan as a whole, but that in this case the provisions of the Framework indicate that planning permission should be granted otherwise than in accordance with the development plan.

68. For this reason, I conclude that the appeal should be allowed, subject to conditions.

H Miles

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Fiona Bennett

Steve Buss

John Litten KC

David O'Flaherty

Mr Godfrey

Sam Hart

Alice Howse

Oliver Shaw

James Smith

Mark Welby

FOR THE LOCAL PLANNING AUTHORITY:

Giles Holbrook

INTERESTED PARTIES:

James Bancroft

Deepak Mahal

Alex Marshall

Cllr John Trollope

DOCUMENTS

British Railways Board v Secretary of State for the Environment, [1993] WL 963747

Schedule of Conditions

1) The development hereby permitted shall be carried out in accordance with drawing nos: Location Plan 2198.DLA.DR.L.30_P01, Proposed vehicle access Sheets1 and 2 23163/01/C, Visibility Splays 23163/16, Parameter height 2198.DLA.DR.L.41_P01, Parameter land use 2198.DLA.DR.L.40_P02, NEW ROAD FOOTWAY WITH PROPOSED REALIGNMENT 23163/32 Rev D.

2) Approval of the details of the layout, the scale, the appearance, and the landscaping (hereinafter called "the reserved matters") shall be obtained from the local planning authority in writing before any development is commenced.

   Plans and particulars of the reserved matters referred to above, relating to the layout, the scale, the appearance, and the landscaping, shall be submitted in writing to the local planning authority and shall be carried out as approved.

   Application for approval of the reserved matters shall be made to the local planning authority before the expiration of 3 years from the date of this permission.

   The development hereby permitted shall be begun either before the expiration of 3 years from the date of this permission, or before the expiration of 2 years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

Commented [HM1]: Why is this shorter time period justified?

3) The Reserved Matters submissions for landscape shall include full details including, but not limited to, type of play equipment, surfacing, planting, fencing, seating and signage for the natural area of play. The details shall accord with the guidance set out in the Open Space, Sports and Recreation Review (June 2021).

4) The Reserved Matters submissions shall broadly accord with the principles set out on the submitted Parameter Height Plan (reference: 2198.DLA.DR.L.41.P01), and Illustrative Masterplan (reference: DLA.2198.L.05.P03).

5) No development (including any ground clearance or site levelling) shall commence until the demolition and construction details have been submitted to and approved in writing by the local planning authority. The details shall include the following measures:
   i) Details of site management contact details and responsibilities;
   ii) A description of the construction programme which identifies activities likely to cause high levels of noise or dust;
   iii) Details regarding dust and noise mitigation measures to be deployed including identification of sensitive receptors and ongoing monitoring;
   iv) Details of the hours of works and other measures to mitigate the impact of construction on the amenity of the area and safety of the highway network; and
   v) Details of traffic construction routing to and from the site
   vi) A plan detailing the site logistics arrangements on a phase-by-phase basis (as applicable), including:
      - location of site compound,

- location for the loading, unloading and storage of plant and materials (including any stripped topsoil),
- site offices (including location, height, size and appearance),
- location of site access points for construction vehicles,
- location of on-site parking,
- locations and details for the provision of wheel washing facilities and dust suppression facilities

vii) The arrangements for public consultation and liaison prior to and during the demolition and construction works – newsletters, fliers etc, to include site management contact details for residents;

viii) Details of any floodlighting, including location, height, type and direction of light sources, hours of operation and intensity of illumination

All demolition and construction activities shall thereafter be carried out in accordance with the details and measures approved.

6) 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 have been submitted to and approved, in writing, by the local planning authority:

i) An intrusive site investigation scheme 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.

ii) Full details of the remediation measures required and how they are to be undertaken based on the results of the intrusive site investigation (a) and a verification plan providing details of what data will be collected in order to demonstrate that the remedial works are complete.

The development shall be carried out in accordance with the approved details.

7) No development shall commence until a detailed construction phase surface water management plan for the site has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

8) No development shall commence until a ground investigation (to include chemical testing of soils) of the site has been submitted to and approved, in writing, by the local planning authority.

9) No development shall commence until a scheme to agree sewage pipe work specifications for the Source Protection Zone 1 areas has been submitted to, and approved in writing by, the local planning authority. The development shall be carried out in accordance with the approved details.

10) No drainage systems for the infiltration of surface water to the ground are permitted other than with the written consent of the local planning authority. Any proposals for such systems must be supported by an assessment of the risks to controlled waters. The development shall be carried out in accordance with the approved details.

11) No development shall commence until a construction environmental management plan (CEMP (Biodiversity) has been submitted to and approved

in writing by the local planning authority. The CEMP (Biodiversity) shall include the following.

i) Risk assessment of potentially damaging construction activities.
ii) Identification of “biodiversity protection zones”.
iii) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).
iv) The location and timing of sensitive works to avoid harm to biodiversity features.
v) The times during construction when specialist ecologists need to be present on site to oversee works.
vi) Responsible persons and lines of communication.
vii) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
viii) Use of protective fences, exclusion barriers and warning signs.

The approved CEMP (Biodiversity) shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

12) No development shall commence until a programme of archaeological work has been secured in accordance with a Written Scheme of Archaeological Investigation which has been submitted to and approved in writing by the local planning authority. And,

The archaeological site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under this condition and that provision for analysis, publication and dissemination of results and archive deposition has been secured and submitted to and approved by the local planning authority in writing.

13) No development (including demolition pursuant to the permission granted, ground clearance, or bringing equipment, machinery or materials onto the site), shall commence until the following preliminaries have been completed in the sequence set out below:

i) a scheme for the protection of the trees on the north side of New Road (tree protection plan) and the appropriate working methods (arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) has been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.
ii) All hedgerows, trees and vegetation on the site shown for retention within the Arboricultural Impact Assessment and the Tree Protection Plan [MW.2404.HHB.SK02.AIA and MW.2404.HHB.SK02.TPP] as well as those off-site whose root protection areas ingress into the site, shall be fully protected throughout all construction works by tree protective fencing affixed to the ground in full accordance with section 6 of BS 5837 'Trees in Relation to Design, Demolition and Construction -

Recommendations' (2012) and/or protection measures concordant with BS 5837 as set out within the Arboricultural Impact Assessment and Tree Protection Plan and the scheme approved under part (i).

iii) Once installed, the fencing or other protection measures shall be maintained during the course of the development works and until all machinery and surplus materials have been removed from the site, in accordance with the Arboricultural Impact Assessment and any arboricultural method statement approved pursuant to part (i) of this condition.

iv) Areas so fenced off shall be treated as zones of prohibited access, and shall not be used for the storage of materials, equipment or machinery in any circumstances. No mixing of cement, concrete, or use of other materials or substances shall take place within any tree protective zone, or close enough to such a zone that seepage or displacement of those materials and substances could cause them to enter a zone.

Any trees or hedges on the site which die or become damaged during the construction process shall be replaced with trees or hedging plants of a type, size and in positions agreed by the local planning authority.

14) Not later than the submission of the first Reserved Matters submission, a Biodiversity Enhancement Layout, providing the finalised details and locations of the enhancement measures contained within the Extended Phase 1 Ecological Assessment and Phase 2 Ecological Surveys Final Report (Philips Ecology, July 2024) shall be submitted to and approved in writing by the local planning authority. The enhancement measures shall be implemented in accordance with the approved details prior to first occupation and all features shall be retained in that manner thereafter.

15) Not later than the submission of the first Reserved Matters submission, details of a scheme for the disposing of surface water by a means of sustainable drainage system shall be submitted to and approved in writing by the local planning authority in accordance with the approved drainage strategy and discharge rates as contained within the Flood Risk Assessment and Drainage Strategy by Ridge and Partners LLP, 15/07/2024, revision P03. The scheme shall be implemented in full in accordance with the approved details prior to the first occupation of the development. The submitted details shall:

i) Provide information about the design storm period and intensity, the method employed to delay and control the surface water discharge from the site via a proposed sustainable drainage system and the measures taken to prevent pollution of the receiving surface waters.

ii) Demonstrates that the proposed surface water drainage system does not surcharge in the 1 in 1 critical storm duration, flood in the 1 in 30 plus climate change critical storm duration or the 1 in 100 critical storm duration,

iii) Demonstrates that any flooding that occurs when taking into account climate change for the 1 in 100 critical storm event in accordance with NPPF does not leave the site uncontrolled via overland flow routes

iv) Demonstrates that surface water runoff rates will be attenuated to 5.6 l/s/ha in accordance with the calculations in the FRA and Drainage Strategy.

v) Provide details of how all surface water management features to be designed in accordance with The SuDS Manual (CIRIA C753, 2015), including appropriate treatment stages for water quality prior to discharge.

16) No works which impact the breeding / resting place of Hazel Dormouse shall commence in any circumstance, unless either of the following has been submitted to and approved in writing by the local planning authority:

i) a licence issued by Natural England pursuant to Regulation 55 of The Conservation of Habitats and Species Regulations 2017 (as amended) authorizing the specified activity/development to go ahead; or

ii) a statement in writing from Natural England to the effect that it does not consider that the specified activity/development will require a licence.

17) No site levelling works shall commence until full details of the existing and final land levels and finished floor levels (in relation to nearby datum points) have been submitted to and approved in writing by the local planning authority. The details shall include the proposed grading of land areas including the levels and contours to be formed, showing the relationship of proposed land levels to existing vegetation and surrounding landform. The site levelling works shall be completed in accordance with the approved details prior to the commencement of development of any building within the site.

18) No part of the development hereby permitted shall be first occupied until a lighting design scheme for biodiversity has been submitted to and approved in writing by the local planning authority. The scheme shall identify those features on site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging; and show how and where external lighting will be installed (through the provision of appropriate lighting contour plans, Isolux drawings and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory.

All external lighting shall be installed in accordance with the specifications and locations set out in the approved scheme and retained thereafter in accordance with the scheme. Under no circumstances should any other external lighting be installed.

19) No part of the development hereby permitted shall be first occupied until details of the maintenance and management of the sustainable drainage scheme have been submitted to and approved in writing by the local planning authority. The drainage scheme shall be implemented prior to the first occupation of the development hereby approved and thereafter managed and maintained in accordance with the approved details in perpetuity. The local planning authority shall be granted access to inspect the sustainable drainage scheme for the lifetime of the development. The details of the scheme to be submitted for approval shall include:

i) a timetable for its implementation,

ii) details of SuDS features and connecting drainage structures and maintenance requirement for each aspect,

iii) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any

public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage scheme throughout its lifetime.

20) No part of the development hereby permitted shall be first occupied until a detailed surface water drainage verification report, (appended with substantiating evidence demonstrating the approved construction details and specifications have been implemented in accordance with the surface water drainage scheme), has been submitted to and approved in writing by the local planning authority. The verification report shall include photographs of excavations and soil profiles/horizons, any installation of any surface water structure and control mechanism.

21) No part of the development hereby permitted shall be first occupied until detailed modelling of PM10, PM2.5 and NO2 pollutant concentrations have been carried out and submitted to and approved in writing by the local planning authority, to verify the findings of the air quality assessment provided. The modelled results should be verified against the local authority's local air quality monitoring data to establish model performance and, where necessary, utilise a correction factor for modelled, road-based NOx in compliance with relevant statutory and non-statutory guidance.

22) No part of the development hereby permitted shall be occupied until an air quality mitigation plan has been submitted to and approved in writing by the local planning authority. The air quality mitigation plan should contain measures equal in value to the calculated environmental damage cost of £67,556, avoiding the duplication of measures that would normally be required through other regimes and include (but not be limited to) the measures detailed in Table 6.2 of the MEC Air Quality Assessment. The development shall be carried out in accordance with the approved details.

23) No part of the development hereby permitted shall be occupied until a fire hydrant(s) to BS 750 standards or stored water supply (in accordance with the West Sussex Fire and Rescue Guidance Notes) has been installed, connected to a water supply with appropriate pressure and volume for firefighting, and made ready for use in consultation with the WSCC Fire and Rescue Service. The hydrant(s) or stored water supply shall thereafter be retained as such.

24) No part of the development hereby permitted shall be first occupied until 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 has been provided to the premises.

25) No part of the development hereby permitted shall be first occupied until such time as the vehicular access serving the development has been constructed in accordance with the details shown on the drawing titled PROPOSED VEHICULAR ACCESS and numbered HTp/23163/01/C and in accordance with the lighting design scheme for biodiversity secured by condition. The access shall be thereafter retained as such.

26) No part of the development hereby permitted shall be first occupied until such time as the footway provision along New Road has been constructed in accordance with the details shown on the drawing titled NEW ROAD

FOOTWAY WITH PROPOSED REALIGNMENT and numbered 23163/32 Rev D. A distance of no less than 0.5m shall be maintained between the base of the trees that form the hedge, and the edge of the footway, including the concrete edging support throughout the development. Should any trees that form the hedge become damaged or die as a result of the construction process, they shall be replaced with trees or hedging plants of a type, size and in positions agreed by the local planning authority for a period of 5 years after completion of the development. The footway shall be thereafter retained as such.

27) No part of the development hereby permitted shall be first occupied until such time as the Cycle Improvements at A29/New Road Roundabout have been constructed in accordance with the details as shown on drawing titled NEW ROAD FOOTWAY WITH PROPOSED REALIGNMENT and numbered 23163/32 Rev D. The improvements shall be thereafter retained as such.

28) No part of the development hereby permitted shall be first occupied until there has been submitted to the local planning authority verification that the scheme to deal with the risks associated with contamination required and approved by condition has been implemented fully in accordance with the approved details. Thereafter the scheme shall be monitored and maintained in accordance with the approved scheme to deal with the risks associated with contamination.

29) No part of the development hereby permitted shall be first occupied until provision for the storage of refuse and recycling has been provided within the garage or side or rear garden for that dwelling. The facilities shall thereafter be retained for use at all times.

30) No dwelling hereby permitted shall be first occupied until, a Private Water Supply Management Plan (PWSMP) has been submitted to and approved in writing by the local planning authority. The PWSMP shall include, but not necessarily be limited to,

i) Detail on the operational sampling and testing regime, undertaken in accordance with the Private Water Supplies (England) Regulations (2016) (or any Act or Order amending, superseding and re-enacting the same);

ii) Detail on the maintenance, servicing and cleaning of the pump, pumphouse, water treatment equipment, tanks, all pipework etc for the lifetime of the development along with regularity of servicing/maintenance and clarification of what steps will be taken in the event of equipment failure. This should include sufficient detail on proposed maintenance and management measures to address the risks from fouling;

iii) Arrangements for keeping written records of all sampling, analysis, inspection, cleaning and maintenance;

iv) Contingency measures to be taken in the event of equipment failure and a named contact on a 24/7 basis in the event of a failure or issue with the private water supply;

The PWSMP shall be implemented prior to the first occupation of the proposed development and adhered to thereafter.

31) No dwelling hereby permitted shall be first occupied until evidence has been submitted to and been approved in writing by the local planning authority that water taken from a tap within the dwelling has been:-

   i) sampled by a person who has undertaken the DWI certification of persons scheme for sampling private water supplies;

   ii) has been analysed by a laboratory that is accredited to the ISO 17025 Drinking Water Testing Specification; and

   iii) meets the requirements of Schedule 1 'Prescribed concentrations or values' of the Private Water Supplies (England) Regulations 2016 (or any Act or Order amending, superseding and re-enacting the same).

32) No dwelling hereby permitted shall be first occupied unless and until a Risk Assessment has been conducted pursuant to Regulation 6 of the Private Water Supplies (England) Regulations 2016 (or any Act or Order amending, superseding and re-enacting the same) and any agreed remedial and/or corrective actions undertaken.

33) No internally and/or externally located plant, machinery equipment or building services plant shall be operated until an assessment of the acoustic impact arising from the operation of all such equipment has been undertaken and has been submitted to and approved in writing by the local planning authority. The assessment shall be undertaken in accordance with BS 4142:2014 and shall include a scheme of attenuation measures to mitigate any adverse impacts identified in the acoustic assessment and ensure the rating level of noise emitted from the proposed building services plant is no greater than background levels. The scheme as approved by the local planning authority shall be fully installed prior to first operation of the plant and shall be retained as such thereafter.

34) All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Response to Ecology Comments (Philips Ecology, September 2024), Extended Phase 1 Ecological Assessment and Phase 2 Ecological Surveys Final Report (Philips Ecology, July 2024) as submitted with the planning application and agreed in principle with the local planning authority prior to determination. This includes the Precautionary Method Statement for reptiles in Section 19.8 of the Extended Phase 1 Ecological Assessment and Phase 2 Ecological Surveys Final Report (Philips Ecology, July 2024), which avoids impacts on protected species.

   This will 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.

35) The roadside footway along New Road shall not be provided with any form of external lighting or street-lighting.

36) All development shall be constructed in accordance with the submitted and approved Flood Risk Assessment (dated 15th July 2024), this includes all new residential dwellings to have a finished floor level raised a minimum of 150 mm above the surrounding proposed ground level.