DELEGATED APPLICATIONS - ASSESSMENT SHEET

APPLICATION NO./ADDRESS:
DISC/25/0072
Copped Hall Farm, Okehurst Lane, Billingshurst, West Sussex, RH14 9HR

DESCRIPTION:
Application for Approval of Details Reserved by Conditions 3, 4 and 7 to approved application DC/19/1257

RELEVANT PLANNING HISTORY:

DC/19/1257	Conversion of existing outbuilding to a single storey detached dwelling with the removal of existing lea-to to rear.	Application Refused on 16.08.2019. Appeal Allowed on 15.07.2020
DISC/22/0270	Approval of details reserved by conditions 3, 4, 5, 7, 10, 11 and 12 to approved application DC/19/1257.	Split Decision on 16.07.2024

PLANNING ASSESSMENT
Planning Application DC/19/1257 gained consent by way of planning appeal (APP/Z3825/W/20/3246693) on 15.07.2020. This permission was for the following:

Conversion of existing outbuilding to a single storey detached dwelling with the removal of existing lea-to to rear.

An approval of details reserved by conditions 3, 4 and 7, as numbered on the Inspector's decision notice, is sought.

Condition 3:
"*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."*

The applicant provided a drainage plan detailing the proposed means of surface water disposal to 4x newly created soakaways within the garden spaces of the approved dwelling. Foul water would be disposed by a klargester positioned at the northern extent of the site disposing to an existing drainage ditch adjacent to Okehurst Lane.

It is noted that the Drainage response requested more information. However, the Council's drainage engineer reviewed the plan with the previous discharge of conditions application (ref: DISC/22/0270) and raised no objection to the submitted details, subject to the usual Building Regulations approval. There are no changes to the scheme since the previous consultation response with the submitted details considered acceptable.

Condition 4:
"No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the Local Planning Authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the Local Planning Authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the Local Planning Authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the Local Planning Authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the Local Planning Authority within 15 days of the report being completed and approved in writing by the Local Planning Authority".

The applicant has provided a remediation verification sampling report, following an earlier refusal of the condition under application ref: DISC/22/0270. The report states that remediation works have been undertaken with the identified source areas being excavated and material disposed of off-site. No evidence of any wood or metal fragments, or other foreign material remaining were noted. The report concludes that no further action is required. The Council's Environmental Health team were consulted and considered the verification report to be satisfactory. The submitted details are considered acceptable.

Habitat Effects and *Fry* [2023]
It is noted that a preceding approval of details application, ref: DISC/22/0270, for Conditions 3 and 4 due to the implications of CG Fry. There have been no changes to this case or the relationship of the scheme to water neutrality since this preceding decision.

The application site falls within the Sussex North Water Supply Zone (Supply Zone) where public-mains water is, in-part, supplied by way of groundwater abstractions underlying the Arun Valley Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar sites. Natural England issued a 'Position Statement' in respect of the Supply Zone on September 2021, addressing the effects of public groundwater abstraction upon the Arun Valley SAC, SPA and Ramsar.

The advice issued by Natural England, within the 2021 Position Statement, is that Planning Authorities within the Supply Zone pause decisions until a strategy is devised, in partnership with Natural England, to offset increased water-use associated with new development within the Supply Zone. Where it is critical that individual applications proceed, Natural England advise that any application needs to demonstrate 'water-neutrality', such to provide certainty that new development will not further contribute to the existing adverse effect upon the integrity of Arun Valley sites associated with public groundwater abstraction.

Any development falling within the Supply Zone which would materially increase demand for the use of mains-water resources is considered to result in a potential significant effect upon the Arun Valley sites and contribute to the possible adverse effect upon integrity associated with public groundwater abstraction.

The decision of the High Court pursuant to *CG Fry & Son Limited v Secretary of State for Levelling Up Housing and Communities and Somerset Council* [2023] EWHC 1622 (Admin), confirms that the provisions of the provisions of the Habitat Regulations (2017) apply in respect of all consents and/or authorisations, in requiring that an appropriate assessment be completed pursuant to Regulation 63 of the Habitat Regulations in advance of any determination to grant consent/authorisation which would prove tantamount to taking an implementing decision. As considered by the High Court this would include an approval of details reserved by condition where no appropriate assessment had been undertaken in advance of an initial determination to grant planning permission, deemed consistent with circumstances before the LPA in this instance.

The Inspectors initial determination (July 2020), pre-dates the Natural England Position Statement of September 2021 and, therefore, does not consider the likely effects of development upon the integrity of the Arun Valley SAC, SPA and Ramsar designations, neither was any appropriate assessment undertaken by the Authority or Inspector in advance of their respective determinations.

The approved development enables the creation of a single dwelling by way of the conversion of an existing storage building. No evidence of mains water consumption associated with the current and/or historic use of the building is available. In accordance with the precautionary principle, in the absence of any evidence, it is considered appropriate to assume that the mains-water demand associated with the use of the existing building is nil.

The occupancy of a single dwelling resulted from the conversion of the existing building would inevitably result in a demand for mains-water resources. In the absence of any mitigation measures it cannot be demonstrated that the approved development would not result in a material increase in demand for the use of mains-water resources within the Sussex North Water Supply Zone. It is, therefore, considered that the approved development has the potential to contribute to the existing adverse effect upon the Arun Valley SAC, SPA and Ramsar designations.

Consistent with the determination of the High Court in *CG Fry* [2023] it is considered that the Council is unable to approve details reserved by condition pursuant to ref: APP/Z3825/W/20/3246693 where the approval of those details would prove tantamount to taking an 'implementing decision'.

Both Conditions 3 and 4 attached to ref: APP/Z3825/W/20/3246693 prohibit the commencement of development until the approval of relevant details. Both conditions, further, relate to matters which are not capable of latter correction if development were to commence in breach of the requirements of those conditions, and relate to matters (drainage and contamination) which are fundamental to the safe occupation of a residential development. Both conditions, therefore, are regarded as a 'conditions precedent', where the approval of relevant details would prove tantamount to taking an 'implement decision' as characterised by the High Court within *Fry* [2023]. Notwithstanding the details submitted pursuant to Conditions 3 and 4, it is not considered that those details are capable of approval in a manner consistent with the Authority's duties under the Habitat Regulations without a positive appropriate assessment first being conducted. The details submitted pursuant to Condition 4, therefore, must be refused accordingly.

Condition 7:
"The dwelling hereby permitted shall not be occupied until full details of all hard and soft landscaping works shall have been submitted to and approved, in writing, by the Local Planning Authority. The details shall include plans and measures addressing the following:

- *details of all existing trees and planting to be retained;*
- *details of all proposed trees and planting, including schedules specifying*
- *species, planting size, densities and plant numbers and tree pit details;*
- *details of all hard surfacing materials and finishes;*
- *details of all boundary/residential curtilage treatments; and*
- *details of any external lighting.*

The approved landscaping scheme shall be fully implemented in accordance with the approved details within the first planting season following the first occupation of any part of the development. Unless otherwise agreed as part of the approved landscaping, no trees or hedges on the site shall be wilfully damaged or uprooted, felled/removed, topped or lopped without the previous written consent of the Local Planning Authority until 5 years after completion of the development. Any proposed planting, which within a period of 5 years, dies, is removed, or becomes seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the Local Planning Authority gives written consent to any variation."

A landscape plan has been submitted as part of the application. The drawings indicate provisions for hard and soft landscaping, parking, and turning facilities, cycle parking facilities and provisions for the refuse and recycling bins. The submitted plan denotes the formation of lawn spaces to the front, side and rear of the approved dwelling in addition to a grey composite deck to sections of the dwellings southern and eastern elevation. 2m closeboard fencing would be introduced to the southern and western site boundaries with 1m post-rail fencing introduced to the eastern site boundary. The combined plan, further, notes that no external lighting is to be introduced in association with the proposals. Landscape were invited to comment but have not provided any response. The requirements of the condition have been satisfied.

Condition 7 operates to prevent the occupation of development prior to the approval of relevant details, as such, pose no restriction to the lawful implementation of the approved development through the undertaking of material operations. It is not considered, therefore, that an approval of details reserved by Condition 7 would prove tantamount to taking an implementing decision, the approval of which would prove contrary to the Authority's duties pursuant to Regulation 63 of the Habitat Regulations.

Recommendation: Split Decision

The details submitted pursuant to Condition 7 are considered acceptable such that the requirements of these conditions are discharged accordingly.

In respect of the details submitted pursuant to Conditions 3 and 4, the submitted details are refused for the following reason:

1. Following the determination of the High Court within CG Fry & Son Limited v Secretary of State for Levelling Up Housing and Communities and Somerset Council [2023] EWHC 1622 (Admin), consenting details reserved by Conditions 3 and 4 would enable the implementation of a consented scheme which has not previously demonstrated water neutrality. The implementation of the approved development would, therefore, 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 increased demand for mains-water resources. The Local Planning Authority is unable to approve details submitted pursuant to Conditions 3 and 4 in manner consistent with its duties under the Conservation of Habitats and Species Regulations 2017 (as amended) and s.40 of the NERC Act 2007 (Priority Habitats and Species).

Plans list for: DISC/25/0072
(The approved plans will form Condition 1 on the Decision Notice of all Permitted applications)

Schedule of plans/documents **approved**:

Plan Type	Description	Drawing Number	Received Date
Plans	Landscaping Plan	573/03 F	03.03.2025

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

Plan Type	Description	Drawing Number	Received Date
Supporting Statement	Planning Statement		03.03.2025
Plans	Drainage Plan	575/02	03.03.2025
Supporting Docs	REMEDIATION VERIFICATION SAMPLING REPORT	A220403-R03	03.03.2025

DELEGATED

Authorising Officer sign/initial Guy Everest Date: 09.07.2025