Horsham District Council

DELEGATED APPLICATIONS - ASSESSMENT SHEET

APPLICATION NO./ADDRESS:

DC/24/1701
Hyders Farmhouse, Bonnetts Lane, Ifield, West Sussex, RH11 0NY

DESCRIPTION:

Lawful development certificate to vary condition 8 of DC/24/0392 to confirm that other sustainable development of rural areas uses referred to in Policy 26 of the Horsham District Planning Framework (2015) would not constitute a material change of use of the building to cover existing sand school. The proposed uses in the alternative in this instance are:

1. Parking of horse boxes
2. Waste Transfer
3. Courier Depot

RELEVANT PLANNING HISTORY:

DC/16/2133	Proposed stables and sand school	Application Permitted on 31.01.2017
DISC/17/0147	Approval of details reserved by condition 3 and 5 to approved application DC/16/2133	Application Permitted on 27.06.2017
DC/24/0392	Erection of a building to cover existing sand school.	Application Permitted on 16.09.2024

PLANNING ASSESSMENT

The application seeks a Certificate of Lawful Development Existing to confirm whether use of the development approved under DC/24/0392 for the parking of horse boxes; waste transfer; and courier depot would not constitute a material change of use.

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

"If any person wishes to ascertain whether –

(a) *Any proposed use of buildings or other land; or*

(b) *Any operations proposed to be carried out in, on over or under land,*

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

Article (2) of Section 192 continues:

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

Applicant's Submission

- *Location Plan*
- *Planning Statement*

- *Decision Notice for planning reference DC/24/0392*

Council's Evidence

- *Planning reference DC/16/2133*
- *Planning reference DC/24/0392*
- *Consultation Response from Rusper Parish Council*

  Objection on the grounds that the proposal would constitute a significant change of use to commercial, with resultant increase in road traffic access. No indication of the type of waste transfer proposed and no way to judge environmental risks.

Discussion

The application seeks a Certificate of Lawful Development Existing to confirm whether use of the development approved under DC/24/0392 for the parking of horse boxes; waste transfer; and courier depot would not constitute a material change of use.

Planning reference DC/24/0392 permitted the erection of a building to cover existing sand school. This is subject to the approved plans condition, along with a number of Pre-Commencement and Pre-Commencement (Slab Level) conditions. Condition 8 of the planning permission is a regulatory condition which states:

> *"**Regulatory Condition**: The development hereby permitted shall be used for private equestrian purposes only, and shall not be used for any commercial riding, livery or riding establishment or for any other business use.*
>
> *Reason: The establishment of an additional independent operation would give rise to an overintensive use of the site contrary to Policies 26 and 33 of the Horsham District Planning Framework (2015)."*

The purpose of this condition is to restrict the use of the development, in this case the building, for private equestrian purposes only. The condition states explicitly that the development shall not be used for any commercial riding, livery or riding establishment, or for any other business use.

Dunnett Investments Ltd v SSCLG & East Dorset DC 2016 considered a condition which included the words that the building in question should be used for a specific purpose and *"for no other purpose whatsoever, without express planning consent from the Local Planning Authority first being obtained"*. It was held that when read as a whole, alongside the reason for its imposition, the condition prevented the operation of the General Permitted Development Order.

In Royal London Mutual Insurance Society v SoS & Lewisham LBC 2013, the court held that it is not necessary for a condition to refer to the Use Classes Order if it is clear and unequivocal from its wording that changes within a particular use class are not to be permitted. Each condition should be interpreted according to its specific wording.

Condition 8 states that the development permitted shall be used for private equestrian purposes only, and shall not be used for any commercial riding, livery or riding establishment or for any other business use. The condition explicitly states what activities are permitted within the development and explicitly excludes what would not be permitted. The reason for the condition is outlined to be that the establishment of an additional independent operation would give rise to an overintensive use of the site.

The relevant condition has the effect of restricting the use of the building to private equestrian purposes only, excluding commercial riding, livery or riding establishment or for any other business use. Therefore, the use of the building for any purpose other than private equestrian purposes would be in breach of the condition. No evidence has been provided to demonstrate that the proposed activities would be linked to a private equestrian use, and it is not therefore possible to determine whether the proposed activities would fall within the defined "private equestrian purposes". Furthermore, the information available would suggest that the proposed activities would represent a commercial activity, where this would be in breach of condition 8 of planning permission reference DC/24/0392.

Notwithstanding the above, it is recognised that the Certificate seeks confirmation of whether the proposed uses would represent a material change of use. Planning permission reference DC/24/0392 permitted the erection of a building to cover the existing sand school, with condition 8 of this permission restricting the use of the development for private equestrian purposes. The use of the building is therefore considered sui generis.

Paragraph 011 of the "When is Permission Required" PPG states that *"a change of use of land or building requires planning permission if it constitutes a material change of use. There is no statutory definition of 'material change of use'; however, it is linked to the significance of a change and the resulting impact on the use of land and buildings. Whether a material change of use has taken place is a matter of fact and degree and this will be determined on the individual merits of the case."*

The Applicant's Planning Statement considers that no material change of use would take place should the development be used for the described purposes on the basis that there are no conditions on the planning permission that limit vehicle movements, size of horsebox movements, or hours of use. On this basis, the Applicant considers that the proposed activities would not be materially different to the planning permission and that no material change of use would take place.

In Cotswold Grange Country Park v SSCLG 2014, it was outlined that *"…the grant [of planning permission] identifies what can be done – what is permitted – so far as use of land is concerned, whereas conditions identify what cannot be done – what is forbidden."* To this effect, in order to understand the parametres of the planning permission, it must be read as a whole with reference to both the description of development and the conditions attached to the permission.

When read as a whole, planning permission reference DC/24/0392 permitted the use of the development for the purposes of private equestrian use, with condition 8 explicitly stating that any other business use was not permitted. The specific circumstances of the development approved, when considering the permission granted and the conditions imposed, therefore limit the use of the development to private, non-commercial equestrian purposes only. While acknowledged that there are no conditions restricting vehicle movements and hours of operation, condition 8 outlines that the development shall be used for private equestrian purposes. As a matter of fact and degree, it would be considered that such activities would be modest and low-key in nature.

No information has been submitted in regard to anticipated vehicle movements and activity levels, and it is not therefore possible to ascertain the intensity and nature of the proposed uses. Insufficient information has therefore been submitted to determine whether the proposed activities would amount to a material change of use.

Conclusion

It has not been demonstrated to the satisfaction of the Local Planning Authority that the proposed uses as detailed within the Application Form would comply with condition 8 of planning permission reference DC/24/0392. Furthermore, insufficient information has been provided to determine whether the proposed uses would amount to a material change of use.

Recommendation: Application Refused

Reason for refusal:

1 It has not been demonstrated to the satisfaction of the Local Planning Authority that the proposed uses as detailed within the Application Form would comply with condition 8 of planning permission reference DC/24/0392. Furthermore, insufficient information has been provided to determine whether the proposed uses would amount to a material change of use.

DELEGATED

Case Officer sign/initial	Tamara Dale	Date:	19.12.2024
Authorising Officer sign/initial	RHERMITAGE	Date:	20.12.2024