Horsham District Council

DELEGATED APPLICATIONS - ASSESSMENT SHEET

APPLICATION NO./ADDRESS:

DISC/24/0081

Thistleworth Farm, The Sussex Barn , Worthing Road, Dial Post, West Sussex, RH13 8NR

DESCRIPTION:

Application for Approval of Details Reserved by Condition 3, 4, 6 and 10 to approved application DC/20/0653 (Full Application)

RELEVANT PLANNING HISTORY:

DC/20/0653	Conversion of existing timber framed barn to a dwelling and retrospective application for store and stables (Full Application)	Application Permitted on 11.05.2021

PLANNING ASSESSMENT

Planning Application DC/20/0653 was granted consent on 11.05.2021.

'Conversion of existing timber framed barn to a dwelling and retrospective application for store and stables (Full Application)'.

Consent is sought to discharge the details reserved by conditions 3, 4, 6 and 10.

Condition 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) Full details of the remediation measures required and how they are to be undertaken based on the results of the intrusive site investigation (b) and an options appraisal.

(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 scheme shall be implemented as approved. 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).

Insufficient information has been provided pursuant to condition 3. The requirements of the condition have not been satisfied.

Condition 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).'

In respect of condition 4, the Planning Statement outlines that '*The surface water drainage would be via a sustainable water drainage system located a minimum of 5000mm from the dwelling'*. The Planning Statement suggests that foul water disposal would be the same as currently utilised. No specific details have been provided beyond this, and insufficient information pursuant to condition 4 has been provided. The requirements of the condition have not been satisfied.

Condition 6:

'Pre-Commencement Condition*: No development shall commence until a Preliminary Ecology Survey has been submitted to and approved in writing by the Local Planning Authority. The survey shall include details of mitigation and enhancement measures and a timetable for their implementation. These measures shall allow for the provision of a bat loft for Brown Long-eared roost and additional mitigation for Common Pipistrelle bat roost. The development shall take place in accordance with the agreed details and timetable, and shall thereafter be retained and maintained in accordance with the approved details.*

Reason: As this matter is fundamental to safeguard the ecology and biodiversity of the area in accordance with Policy 31 of the Horsham District Planning Framework (2015).'

The Ecological Impact Assessment by Darwin Ecology dated January 2022 states that there is evidence both of the presence of brown long-eared (Plecotus auritus) and common pipistrelle (Pipistrellus pipistrellus) bats, long-eared bat and daubentons bat (Myotis daubentonii) and soprano pipistrelle. The survey states that mitigation measures and a license would be required. This is recommended to be a bat loft amongst other mitigation. No specific details in respect of the timetable for their implementation is provided within the Report.

The Survey Report is dated January 2022 and is over two years old. Whilst this Report does suggest mitigation and enhancement measures, it does not provide the necessary level of detail to address the requirements of the condition. As such, the application has not been supported by details sufficient such that the details required of condition 6 can be approved.

Condition 10:

'Regulatory Condition*: The dwelling(s) hereby permitted shall meet the optional requirement of building regulation G2 to limit the water usage of each dwelling to 110 litres per person per day. The subsequently approved water limiting measures shall thereafter be retained.*

Reason: To limit water use in order to improve the sustainability of the development in accordance with Policy 37 of the Horsham District Planning Framework (2015).'

Condition 10 is a regulatory condition such that there are no details required to be submitted for approval.

It is noted that a Water Neutrality Statement has been submitted, however in this instance, water neutrality cannot be demonstrated within the scope of a regulatory condition or through the mechanism of a Discharge of condition application.

Habitat Effects and *Fry* [2023]

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 application reference DC/20/0653 pre-dates the Natural England Position Statement of September 2021. The Council did not consider the possible effects of development upon the Arun Valley sites by way of main-water resources or undertake an 'appropriate assessment' pursuant to Regulation 63 of the Protection of Habitats and Species Regulations 2017 as amended.

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.

Notwithstanding, conditions 3, 4, and 6 are Pre-Commencement conditions that prevent any development from taking place until relevant details have been submitted to the Local Planning Authority and approved in writing. The approval of details reserved by condition 3, 4, and 6 would therefore form an implementing consent and would enable development to proceed without a prior demonstration of water neutrality and the absence of possible adverse effects upon the integrity of designated Arun Valley sites. Pursuant to the judgement of the High Court in CG Fry & Son Limited v Secretary of State for Levelling Up Housing and Communities and Somerset Council [2023] EWHC 1622 (Admin) it is considered that details reserved by Condition 3 are incapable of approval in a manner concordant with the Authority's duties under the Protection of Habitats and Species Regulations (2017) (as amended) at Regulation 63.

An approval of details reserved by conditions 3,4 and 6, therefore, would enable the conversion of existing timber framed barn to a dwelling and retrospective application for store and stables. No evidence is available to the Authority to confirm that the approved development would avoid a material increase in demand for the use of mains-water resources in the absence of any mitigation measures. In any case, no mitigation measures are advanced in association with this application, nor is there any

mechanism by which relevant mitigations could be secured in conjunction with this application for an approval of details reserved by condition. The Authority, therefore, cannot 'screen out' the possibility of significant effect upon the Arun Valley sites, or otherwise conduct a favourable appropriate assessment pursuant to Regulation 63(1) and 63(5) of the Habitats Regulations (2017). Consistent with the determination of the High Court in *Fry* [2023] and the Authorities duties pursuant to the Habitat Regulations (2017) at Regulation 63, the requested approval of details reserved by condition 16 must be refused.

Recommendation: Application Refused

Reason(s) for Refusal:

1 Insufficient information to deal with the risks associated with contamination has been provided pursuant of condition 3. Furthermore, planning approval DC/20/0653 expired on 11.05.2024 and no longer remains extant. It is not possible to discharge a condition on an expired planning permission.

2 Insufficient information detailing the proposed means of foul and surface water disposal has been provided pursuant of condition 4. Furthermore, planning approval DC/20/0653 expired on 11.05.2024 and no longer remains extant. It is not possible to discharge a condition on an expired planning permission.

3 Insufficient information detailing the ecological mitigation and enhancement measures and a timeline for their implementation has been submitted. Furthermore, planning approval DC/20/0653 expired on 11.05.2024 and no longer remains extant. It is not possible to discharge a condition on an expired planning permission.

4 Conditions 3, 4 and 6 are considered to form a conditions precedent. Following the determination of the High Court in CG Fry & Son Limited v Secretary of State for Levelling Up Housing and Communities and Somerset Council [2023] EWHC 1622 (Admin), the approval of details submitted pursuant to these conditions would constitute an implementing consent that would enable development to be delivered without a prior demonstration of water-neutrality. The development would consequently 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 demand for public mains-water resources, contrary to Policy 31 of the Horsham District Planning Framework (2015) and Paragraphs 185 and 186 of the National Planning Policy Framework (2023). The Local Planning Authority, therefore, 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).

POSITIVE AND PROACTIVE STATEMENT

Statement pursuant to Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015. The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received, in order to be able to, where possible, grant permission.

Plans list for: DISC/24/0081
(The approved plans will form Condition 1 on the Decision Notice of all Permitted applications)

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

Plan Type	Description	Drawing Number	Received Date

Supporting Statement	Planning Statement		18.04.2024
Supporting Docs	Ecological Impact Assessment		18.04.2024
Supporting Docs	Ashdown Soil Report		18.04.2024
Supporting Docs	WATER NEUTRALITY STATEMENT		18.04.2024

DELEGATED

Case Officer sign/initial Hannah Darley Date: 13/06/2024

Authorising Officer sign/initial Tamara Dale Date: 13/06/2024