Horsham District Council

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Dear Inspector,

APP/Z3825/X/25/3376135 - Firwood House, Bashurst Hill, Itchingfield, West Sussex, RH13 0NY

Following the submission of the appeal against the refusal of a Lawful Development Certificate for the Erection of a detached garage with associated access (Proposed), the Local Planning Authority would like to further substantiate the reasons for refusal as follows.

Refusal Reasons:

1. *The development, namely the proposed formation of a new access, proposed installation of hard surfacing and the proposed erection of new gates, as a single building operation, would not be permitted by Class B of Part 2 within Schedule 2 of the Town and Country (General Permitted Development) (England) Order 2015, as amended, Class F of Part 1 within Schedule 2 of the Town and Country (General Permitted Development) (England) Order 2015, as amended and Class A of Part 2 within Schedule 2 of the Town and Country (General Permitted Development) (England) Order 2015, as amended respectively.*

2. *The development, namely the proposed erection of a garage, would not be permitted by Class E of Part 1 within Schedule 2 of the Town and Country (General Permitted Development) (England) Order 2015, as amended.*

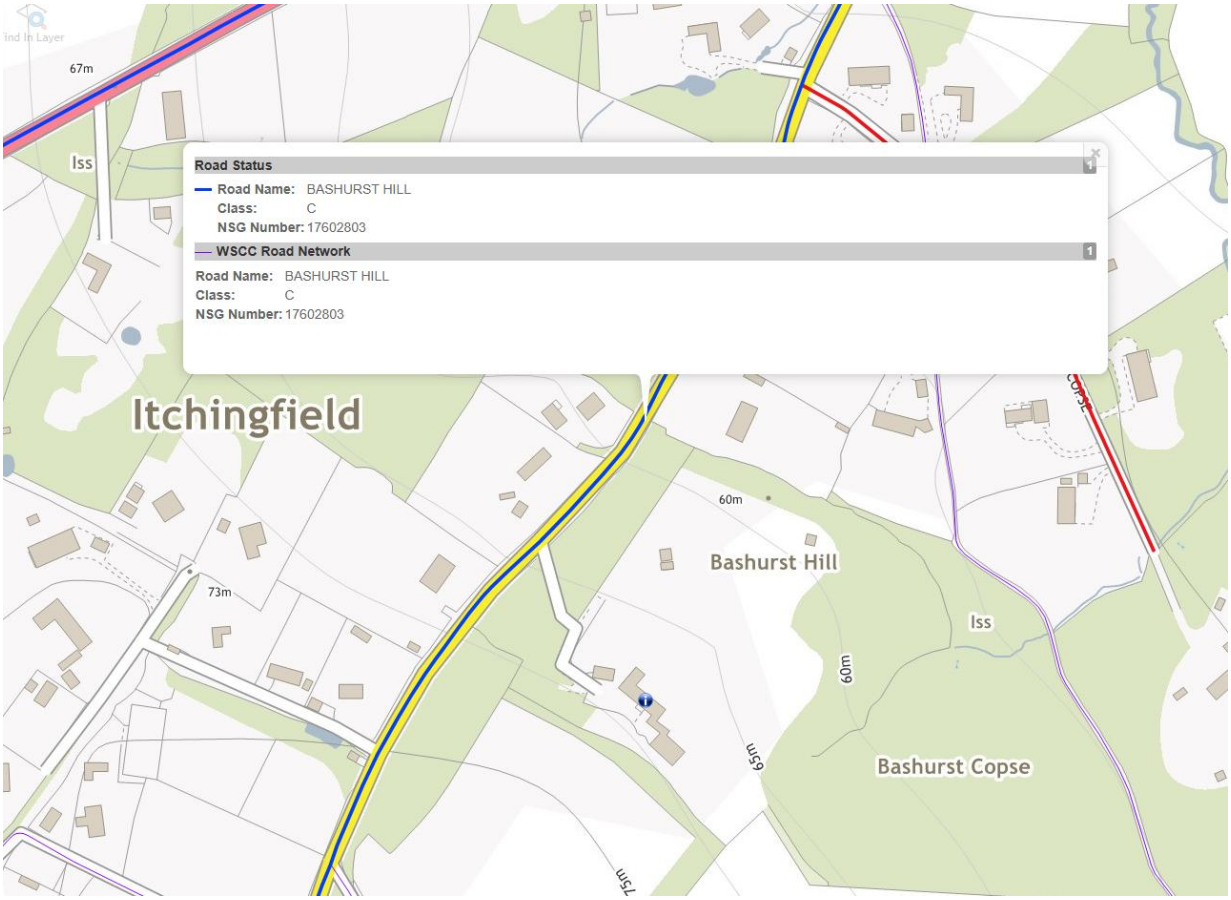
The development proposed is the formation, laying out and construction of a means of access to Bashurst Hill, with the Appellant's Statement of Case detailing that Bashurst Hill is an unnumbered road.

Class B, Part 2, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015, details that the formation of an access is expressly excluded from Class B if the new access is formed onto a trunk road or a classified road.

Article 2, 'Interpretation', of this same Act, details that a *"classified road means a highway or proposed highway which,*

(a) *is a classified road or a principal road by virtue of section 12(1) of the Highways Act 1980 (general provision as to principal and classified roads)".*

Section 12(1) of the Highways Act 1980 details that classified roads are A to C classifications. West Sussex County Council's Local Land Charges Map confirms that Bashurst Hill is a C classified Road (shown within the screenshot below) and as such, the formation of an access is expressly excluded from Class B. Therefore, this aspect of the proposal would not constitute permitted development.



Source: West Sussex County Council – Local Land Charges Map.
Available at: https://www.westsussex.gov.uk/planning/local-land-charges/local-land-charges-map/

Notwithstanding the above, the Appellant's Statement of Case details that the premise of the appeal is that the individual elements of the proposal, would be situated within the residential curtilage of Firwood and therefore could be constructed under permitted development rights. The statement details that the characteristics of the site have changed little over the last 14 years and that the tennis court and open grass areas are ideal for family recreational use. It continues that groups or individual TPO trees are commonly retained within residential curtilages.

It is acknowledged that a dwelling the size of Firwood House would have a large curtilage, however, curtilage is determined by physical layout, past and present use and functional relationships. It is the Council's view that the established curtilage at Firwood House includes the maintained garden land immediately surrounding the dwelling, domestic structures, and the tennis court. The woodland to the north, including this small area where there are no trees currently present, has:

- Not been enclosed, maintained or used as domestic garden, with no evidence submitted by the Appellant to confirm otherwise.
- Always formed part of the continuous wooded belt protected by TPO/1213.

- There is a clear physical and visual separation between the woodlands and the maintained garden land.
- There is no planning history that indicates the incorporation of this section into domestic use.

The Appellant's own plans show a clear line of separation between the woodland and the grassed area and whilst the Appellant details that groups or individual TPO trees are commonly retained within residential curtilages, the proposals in this case go beyond this, being sited within an established woodland, protected by means of TPOs.

A small clearing within a protected woodland does not constitute residential curtilage, nor does the absence of trees change the land's function or the planning unit. Furthermore, Google Earth aerial images, provided within Appendix A, confirm that whilst the trees were removed within this section of land before 2001, subsequent dated images appear to show the regrowth of this woodland. This new growth appears to then be removed by the April 2020 images. There is no evidence before the Council that substantiate the claim that this woodland is located within the residential curtilage of Firwood, nor do these aerial images confirm as such. Therefore, it has not been demonstrated on the balance of probability, that this section of woodland has been used as residential garden land for a period in excess of 10 years and its use as such, is not lawful by virtue of time. As such, the Council remains of the view that the proposals would be sited outside the residential curtilage.

Excluding the points above, it is acknowledged that part of the proposals would comply with the physical limitations set out under their relevant part of the GDPO, for example the access gates. As detailed within the Officer's Delegated Report, it is the Council's view that it is necessary to determine whether the proposals constitute separate building or engineering operations, or whether they form a single operation. In this case, the formation of the new access, the construction of the track and hardstanding, the erection of the garage and the installation of the gates are functionally interdependent and would be undertaken together as one overall operation. The gates cannot reasonably be erected or used without the access and track being formed, and all elements rely upon the same groundworks within the woodland.

Permitted development rights cannot apply selectively to individual components of a single operation. As such, where any element falls outside the GPDO, the development as a whole cannot proceed under permitted development rights. As the access, track, hardstanding and garage fall outside the scope of the GPDO, the development as a whole cannot be carried out under permitted development rights.

Conclusion

The Council remain of the view that the development subject of the appeal would represent development requiring the benefit of planning permission.

Yours sincerely,

Applications Team
Horsham District Council

APPENDIX 1


December 2001


September 2012


June 2013


September 2018


April 2020


May 2025