Horsham District Council

Our ref: DC/24/0433
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Date: 18 September 2024

Dear Safia Kausar,

APP/Z3825/W/24/3347313 Maple Farm, Marches Road, Warnham, West Sussex, RH12 3SL

Following the submission of the appeal against the refusal of the full planning application for the Erection of a barn for light industrial and storage use on land at Maple Farm, RH12 3SL, the Local Planning Authority would refer the Inspector to the Delegated Report, and would like to reiterate the reason for refusal as follows.

Refusal Reason 1 -

"Insufficient information has been provided to demonstrate with a sufficient degree of certainty that the development would not 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 water abstraction, contrary to Policy 31 of the Horsham District Planning Framework (2015), Paragraphs 185 and 186 of the National Planning Policy Framework (2021), thus the Local Planning Authority 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)."

The application site falls within the Sussex North Water Supply Zone as defined by Natural England. New development in this zone cannot be approved by a competent authority if they would have an adverse effect on the integrity of the Arun Valley SAC, SPA and Ramsar sites.

The Local Planning Authority undertook an Appropriate Assessment which was subsequently reviewed by Natural England. It was concluded that insufficient information had been provided to demonstrate with certainty that the development would not 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 water abstraction.

Natural England advises that plans and projects affecting these sites will be required to demonstrate, with sufficient certainty, that they will not contribute further to an existing adverse effect. The received advice note advises that the matter of water neutrality should be addressed in assessments to agree and ensure that water use is offset for all new developments within the Sussex North Water Supply Zone.

It would be unreasonable for the council to condition that the application site would in perpetuity, for the lifetime of the development to not have access to water when the use permitted might reasonably require water for staff facilities and light industrial processes in the future. The Water Neutrality statement did not demonstrate the potential for water use within a light industrial and storage use. There has been no Appellant statement of case submitted to the LPA with additional information in this regard. As such, the Local Authority would not consider the reason for refusal to have been overcome. There is insufficient certainty that the proposal will not contribute further to the existing adverse effect on the integrity of the Arun Valley SAC, SPA and Ramsar sites and it would be

unreasonable for the council to condition that the application site would in perpetuity for the lifetime of the development not have access to water when the use permitted should reasonably have access to water. This would be contrary to policy 31 of the HDPF, NPPF paragraph 180 and the Council's obligations under the Conservation of Habitats and Species Regulations 2017.

Conclusion

The Council therefore remain of the view that the scheme as submitted would be contrary to the relevant policies of the Horsham District Planning Framework and NPPF as outlined within the Officer's delegated report. The Inspector is therefore respectfully requested to dismiss the appeal. However, should the Inspector be minded to approve the appeal, a List of Suggested Conditions is attached to this letter. A response to the appellants cost application is attached to this document.

Yours sincerely,

Hannah Darley
Senior Planning Officer

List of Suggested Conditions

1 Approved Plans

2 **Standard Time Condition**: The development hereby permitted shall begin before the expiration of three years from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990.

3 **Pre-Occupation Condition**: No part of the development hereby permitted shall be occupied until the parking, turning and access facilities necessary to serve the development have been implemented in accordance with the approved details and shall be thereafter retained as such.

Reason: To ensure adequate parking, turning and access facilities are available to serve the development in accordance with Policy 40 of the Horsham District Planning Framework (2015).

4 **Regulatory Condition:** No external lighting or floodlighting shall be installed without the prior written approval of the Local Planning Authority. Any that is installed with the permission of the Local Planning Authority shall be maintained in accordance with the approved details

Reason: To safeguard the amenities of adjacent occupiers in accordance with Policy 33 of the Horsham District Planning Framework (2015).

5 **Regulatory Condition**: The premises hereby permitted shall not be operated on Sundays or Public Holidays or at any time other than between 0700 to 1800 hours. Mondays to Fridays inclusive and 0700 to 1300 house on Saturdays.

Reason: In the interests of the amenities of the locality and in accordance with Policy 33 of the Horsham District Planning Framework (2015).

6 **Regulatory Condition**: No raw materials, finished or unfinished products or parts, crates, packing materials or waste shall be stacked or stored on the site at any time except within the building hereby approved by the Local Planning Authority.

Reason: In the interests of the amenities of the locality and in accordance with Policy 33 of the Horsham District Planning Framework (2015).

7 **Regulatory Condition**: The premises hereby permitted shall not be subdivided or otherwise increased in floorspace without the prior consent of the Local Planning Authority by way of a formal application.

Reason: To ensure the development is water neutral and avoid an adverse impact on the Arun Valley SAC / SPA and Ramsar sites, and in the interests of amenity, in accordance with Policies 31 and 33 of the Horsham District Planning Framework (2015).

8 **Regulatory Condition**: The premises hereby permitted shall be used solely for purposes falling within Class B8 Storage and E(giii) as defined in the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and reenacting that Order with or without modification. The premises shall not be used for any alternative use without express planning consent from the Local Planning Authority first being obtained.

Reason: Changes of use as permitted by the Town and Country Planning (General Permitted Development) Order or Use Classes Order 1987 are not considered appropriate in this case due to the proximity to neighbouring properties and the economic benefit the approved use provides under Policies 12, 13 and 33 of the Horsham District Planning Framework (2015).

Appellant's Costs application

Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

The appellant has claimed costs against the council for acting unreasonably by inconsistently applying conditions in relation to water neutrality across applications. As such they claim fees in relation to the professional fees in preparing and lodging an appeal. It is noted that no Statement of Case has been submitted by the appellant. In response to this, it was the applicant's right to appeal the decision, understanding the time, resources and effort that such entails. That they chose to do so was of their own volition, and in this case, it is advanced by the council that it is not the Council's responsibility to bear those costs as the behaviour by the council has not resulted in unnecessary or wasted expense such that an award of costs is not justified.

The appellant as part of their costs application cite the previous application DC/22/0086 on site which restricted access to mains by condition. The council would like to defend its position in this instance that it did not misapply the relevant legislation or act inappropriately in taking into account the Conservation of Habitats and Species Regulations 2017 (the Habitat Regulations) and that a condition would not have been sufficient to overcome concern that the proposal would have potential to give rise to potential water use.

As outlined within the officer's report, the specific use of the site under DC/22/0086 and the temporary nature of storage containers is such that a condition in this instance was sufficient to conclude with reasonable certainty that the use would not require mains water usage. This previous application was restricted in its use such that only a very precise use for the storage of cars and would not require water usage.

Under DC/22/0086 the storage container was used as an office very irregularly, with the specific business being almost entirely online such that it would not give rise to the potential for water usage in the future. This is distinct from the application subject to this appeal whereby businesses would be able to be at the application site over a longer time frame as it included a light industrial use and the tenants of the storage unit were unknown at the point of application. When considering this in addition to the temporary nature of storage containers, it more uncertain that the business operating from the site would change to a business requiring additional on-site presence and give rise to the potential for water usage.

Whilst it is not the intention of this costs application response to repeat the officer's report, the delegated report for the application subject to this appeal has outlined the reasoning for a condition not being acceptable and drew attention to the different uses of the sites across the different applications.

"The current application under assessment differs to these applications in that it would be for general storage and light industrial use in perpetuity, and would cater to a range of businesses. There is potential that some of the businesses for both uses would require water and it would not be reasonable for the LPA to condition that there is no mains in the future to supply them with water. Furthermore, it is considered in this instance given the need for certainty around water neutrality that whilst the current temporary storage use would not require mains, further information would be required in regards to the light industrial use, where this is likely to require additional levels of staff and dedicated facilities over a storage use."

This is a consistent approach taken on B8 storage uses across the district, where similar proposals have been required to demonstrate water neutrality including applications such as DC/23/0423 and DC/24/0180.

Given the above, the council consider that the council have considered the merits of the proposal based on the information available to them at the time of the submission and have not acted unreasonably in their approach. The application of a condition in the case of the appeal case would have not been sufficient to conclude with reasonable certainty that the proposal would have been water neutral, and furthermore would have failed to take into account the Conservation of Habitats and Species Regulations 2017 (the Habitat Regulations).

It is considered that this approach is the correct one and that the LPAs approach to the application did not amount to unreasonable behaviour, and that accordingly, the appellant has not incurred wasted expense in pursuing an appeal.

I hope this is of some assistance and please contact me if you have any queries or wish to discuss further.

Yours sincerely,

Hannah Darley
Senior Planning Officer