Horsham District Council

The Planning Inspectorate
Temple Quay House
2 The Square
Bristol
BS1 6PN

Our ref: DC/24/1022
Your ref: APP/Z3825/W/25/3363210
Contact: 01403 215 429
Email: Bethan.Tinning@horsham.gov.uk
Date: 12.05.2025

Dear Sir/Madam,

APP/Z3825/W/25/3363210 – Mount View, Stane Street, North Heath, West Sussex, RH20 1DN

Following the submission of the appeal against the refusal of a variation of conditions application to vary the design and scale of the building, please accept this letter as the Council's statement of case on the matter. The Local Planning Authority would refer the Inspector to the Delegated Report, and would like to reiterate the reasons for refusal as follows:

Refusal Reason 1: -

It has not been demonstrated that the original 2003 permission was implemented lawfully and is therefore extant. The pre-commencement conditions were not discharged and therefore due to the length of time that has passed since the granting of permission, the site does not benefit from an extant permission that can be built out.

The Appellants appeal statement states that the pre-commencement conditions attached to the 2003 permission did not need to be worded as pre-commencement. However, the conditions required more details relating to the built form and drainage for example, where it is the Council's view that these would go to heart of the permission, where the details as required by the condition would require formal discharge prior to the commencement of development. While it is acknowledged that the Appellant was not the owner of the site at the grant of the 2003 permission, the Appellant nor the Council hold evidence of any details being submitted and approved in writing to discharge these conditions.

Among the conditions listed in the permission (ref: PL/107/03), the following are considered to be condition precedent that go to the heart of the permission:

7. Before development commences precise details of the finished floor levels of the development in relation to a nearby datum point shall be submitted to and approved by the Local Planning Authority. The development shall be completed in accordance with the approved details.

Reason: To control the development in detail in the interests of amenity.

8. The development hereby permitted shall not proceed until details of the proposed surface water and foul drainage and means of disposal have been submitted to and approved by the Local Planning Authority.

Reason: To ensure that the proposed development is satisfactorily drained.

11. No development shall take place unless and until details of the layout and specification of and construction programme for the roads, footpaths and casual parking areas and the foul and surface water drainage and means of disposal have been submitted to and approved by the Local Planning Authority. No dwelling shall be occupied until it is provided with an access constructed in accordance with such approved details to the established highway network.

Reason: To secure satisfactory standards of access and drainage for the proposed development.

FG Whitley & Sons v SoS for Wales and Clwyd CC 24/3/92 established the general principle on development in breach of planning conditions and planning control. The Court held that the development permitted had to be read with the conditions imposed on it, and if the material operations concerned contravened the conditions, they would be unlawful. Thus, they could not be relied upon as commencement of the development for the purposes of preventing the permission from lapsing.

The judgment in R (Hart Aggregates Ltd) v Hartlepool BC [2005] also determined that it is necessary to establish two things. Firstly, whether the breached condition is truly a condition precedent, and secondly, whether it goes to the heart of the permission, and if so, would it be reasonable to take enforcement action against the entire development because of non-compliance. The Court held that it is necessary to distinguish between a condition that explicitly prevents development from being started before specified actions are taken and which are subject to the test of reasonableness (the Whitley principle), and those that require that something be done before development commences. The principles established in Whitley should not be applied over-rigidly if that would be irrational and serve no useful planning purpose. So, if the breach is considered to be insignificant and relates to a matter of detail rather than a fundamental issue, it need not be fatal.

Condition 7 requires the submission of precise details of the finished floor levels of the development in relation to a nearby datum point. It is stated within the reason that this matter is fundamental to control the development in detail in the interests of amenity. The condition specifies that these details are required before development commences and should be submitted to and approved by the Local Planning Authority. The development should then be completed in accordance with these details.

The condition explicitly prevents development from being started before the specified action of submitting the finished floor levels is undertaken. The reason outlines that this is fundamental to control the development in the interests of amenity. This condition is considered to be fundamental to the permission approved and therefore goes to the heart of the permission. To this effect, condition 7 is considered to be a condition precedent, where the carrying out of development before the details were submitted and approved represents a breach of the condition and unlawful development.

Condition 8 of the relevant planning approval requires that a drainage strategy detailing the proposed means of foul and surface water drainage be submitted to and approved by the Local Planning Authority before development shall commence. It is stated that the reasoning is to ensure that the proposed development is satisfactorily drained.

The condition specifies that the development should not proceed before a drainage strategy is submitted and approved, where the development should be carried out in accordance with the approved details. This condition prevents development from being started before the specified action of submitting a strategy is undertaken, outlining this is fundamental to ensure that the development is properly drained. This condition is considered to be fundamental to the permission approved and therefore goes to the heart of the permission. To this effect condition 8 is considered to be a condition precedent, where the carrying out of development

before the details were submitted and approved represent a breach of the condition that is unlawful.

Condition 11 requires the submission of details relating to the layout and specification of a construction programme for the roads, footpaths and casual parking areas and the foul and surface water drainage and means of disposal. It is stated within the reason that this matter is to secure satisfactory standards of access and drainage for the proposed development.

The condition specifies that no development shall take place until these details have been submitted and approved by the Local Planning Authority. This condition explicitly prevents development from being started before the specified action of submitting details of the development is undertaken. The reason outlines that this is fundamental to securing satisfactory standards of access and drainage. This condition is therefore considered to be fundamental to the permission approved and therefore goes to the heart of the permission. To this effect, condition 11 is considered to be a condition precedent, where the carrying out of development before the details were submitted and approved represents a breach of the condition and unlawful development.

Conditions 7, 8 and 11 of planning approval reference PL/107/03 are considered to go to the heart of the permission and represent a condition precedent. It is acknowledged that Building Control were satisfied with the installation of piling for the foundations. However, while the foundations have been in situ for over 4 years, and therefore may be lawful by the virtue of time, for the reasons outlined above, it is not considered that this would amount to the lawful implementation of planning permission ref: PL/107/03. Therefore, the 2003 permission was not lawfully implemented and there is no extant permission still in place on the site to continue with the development.

Refusal Reason 2: -

Notwithstanding information submitted, insufficient information has been provided to demonstrate with a sufficient degree of certainty that the proposed 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 193 and 194 of the National Planning Policy Framework (2024), 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 and Species).

The Appellant's appeal statement states that planning permission PL/107/03 for a 2-bedroom dwelling is extant. Due to the site benefitting from this fallback, the provided water neutrality statement and the mitigation measures proposed would demonstrate that the development is water neutral.

However, as stated within the delegated report, the strategy is reliant on the fallback of the 2003 permission (PL/107/03) for a 2-bedroom dwelling for the existing baseline water consumption. As outlined above, it is the Council's view that this permission was not lawfully implemented and is therefore no longer extant. As the site does not benefit from the fallback planning permission, the existing baseline is 0 litres/day. The proposed mitigation measures are acknowledged, and if there were an extant permission on site to provide an existing baseline, this would likely demonstrate water neutrality. This is not however the case, as outlined above. Further offsite offsetting would be required to make the site water neutral, which has not been demonstrated. Therefore, the site does not demonstrate water neutrality and there is no 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.

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. 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.

Yours sincerely,

Bethan Tinning
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-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).

4. **Pre-Commencement Condition:** No development shall commence until precise details (to include details shown on a plan) of the existing and proposed finished floor levels and external ground levels of the development in relation to nearby datum points adjoining the application site have been submitted to and approved by the Local Planning Authority in writing. The development shall be completed in accordance with the approved details.

   Reason: As this matter is fundamental to control the development in detail in the interests of amenity and visual impact and in accordance with Policy 33 of the Horsham District Planning Framework (2015).

5. **Pre-Commencement (Slab Level) Condition:** No development above ground floor slab level of any part of the development hereby permitted shall take place until a schedule of materials and finishes and colours to be used for external walls, windows and roofs of the approved building(s) has been submitted to and approved by the Local Planning Authority in writing and all materials used in the construction of the development hereby permitted shall conform to those approved.

   Reason: As this matter is fundamental to enable the Local Planning Authority to control the development in detail in the interests of amenity by endeavouring to achieve a building of visual quality in accordance with Policy 33 of the Horsham District Planning Framework (2015).

6. **Pre-commencement (slab level) Condition**: No development above ground floor slab level shall commence until full details of the water efficiency measures and rainwater/greywater harvesting system required by the approved water neutrality strategy (Water Neutrality Report received 05.07.2024) have been submitted to and approved in writing by the Local Planning Authority.

   Reason: To ensure the development is water neutral to avoid an adverse impact on the Arun Valley SACSPA and Ramsar sites in accordance with Policy 31 of the Horsham District Planning Framework (2015), Paragraphs 179 and 180 of the National Planning Policy Framework (2021), its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), and s40 of the NERC Act 2006 (Priority habitats & species).

7. **Pre-Occupation Condition**: No dwelling hereby permitted shall be first occupied until evidence has been submitted to and been approved in writing by the Local Planning Authority that the approved water neutrality strategy for that dwelling has been implemented in full. The evidence shall include the specification of fittings and appliances used, evidence of their installation, and completion of the as built Part G water calculator or equivalent. The installed measures shall be retained as such thereafter.

   Reason: To ensure the development is water neutral to avoid an adverse impact on the Arun Valley SACSPA and Ramsar sites in accordance with Policy 31 of the Horsham District Planning Framework (2015), Paragraphs 179 and 180 of the National Planning Policy Framework (2021), its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), and s40 of the NERC Act 2006 (Priority habitats & species).

8. **Pre-Occupation Condition:** No part of the development hereby permitted shall be occupied until details for the provision for the storage of refuse and recycling facilities have been submitted to and approved in writing by the Local Planning Authority. These facilities shall be provided prior to occupation (or use) of the development hereby permitted and thereafter be retained for use at all times.

   Reason: To ensure the adequate provision of recycling facilities in accordance with Policy 33 of the Horsham District Planning Framework (2015).

9. **Pre-Occupation Condition:** No part of the development hereby permitted shall be first 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:

   a) Details of all existing trees and planting to be removed and retained
   b) Details of all proposed trees and planting, including schedules specifying species, planting size, densities and plant numbers and tree pit details
   c) Details of all hard surfacing materials and finishes
   d) Details of all boundary treatments

   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 or retained 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.

   Reason: To ensure a satisfactory development that is sympathetic to the landscape and townscape character and built form of the surroundings, and in the interests of visual amenity in accordance with Policy 33 of the Horsham District Planning Framework (2015).

10. **Regulatory Condition:** No works for the implementation of the development hereby approved shall take place outside of 08:00 hours to 18:00 hours Mondays to Fridays and 08:00 hours to 13:00 hours on Saturdays nor at any time on Sundays, Bank, or public Holidays.

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