Statement of the Local Planning Authority

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PLANNING INSPECTORATE REFERENCE	APP/Z3825/W/24/3351359
LOCAL PLANNING AUTHORITY REFERENCE	DC/24/0093

Town and Country Planning Act 1990

Planning appeal by Mr Dean Weston
Application address Capons Hill Farm Unit 3, Station Road, Cowfold, Horsham, West Sussex RH13 8DE

Appeal to be determined by an Inspector appointed by the Secretary of State by way of **Written Representations**

The appeal proposal

The application sought permission for the "*Variation of condition 6 of previously approved application reference DC/19/1283 (Retrospective application for the change of use of existing vacant building to a club for teaching of various martial arts) from 10 participants to 24 plus 2 Instructors."*

The application was refused by the Council on 04/06/2024 under delegated powers for the following reasons:

"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 179 and 180 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 case for the local planning authority

This statement, together with the previously submitted questionnaire and Officer's delegated report, forms the Local Planning Authority's statement of case. The purpose of this Statement is to respond to the appellant's appeal submission.

The Council has determined the application against the relevant policies of the Horsham District Planning Framework (HDPF) (2015), in addition to the relevant requirements within the Conservation of Species and Habitats Regulations 2017. The crux of the appeal relates to:

1. Whether the development would be water neutral.

The appellant's statement of case raises no new or compelling evidence in support of their case or in rebuttal to the Council's reasons to refuse the application. The Council does, however, have the following points to make in response to what has been raised in the appellant's statement.

The Local Planning Authority undertook an Appropriate Assessment and communicated their assessment of the WNS 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.

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 it would have an adverse effect on the integrity of the Arun Valley SAC, SPA and Ramsar sites.

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.

The appellant's statement of case advances that the local authority wrongfully concluded that the development would result in additional water abstraction and that the LPA in submitting their Appropriate assessment, the appellants WNS and the conclusions reached by the LPA were purposefully misleading Natural England. The appellant as part of this made a comment relating to the Council's conduct during the application on the site noting 'LPA lied and manipulated figures with impunity'.

The Inspector will be aware that whilst Natural England consider the LPA's assessment, they will make their independent evaluation of Water Neutrality Statements. Natural England will object to the LPA's reasoning if they do not concur and in such circumstances, the LPA will review their assessment made. Furthermore, the Inspector will be aware of the Natural England consultation response which outlines their rationale for concluding with the LPA. Separate formal complaint had been raised by the appellant in regards to the above and has been responded to by the Council. As such, this is not material planning matter that the Inspector needs to address as part of this appeal.

The guidance is unambiguous on the council's website that water neutrality would need to be demonstrated and how to achieve this for various types of development. The council are positive and proactive where there is a presumption in favour of sustainable development, however in this instance, the LPA had made an assessment as the competent authority that the development had not demonstrated Water Neutrality for the reasons outlined within the delegated report. The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects) unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site. As such the presumption in favour of sustainable development did not in this instance apply. Where Water neutrality is not demonstrated, proposals *would* amount to adverse harm to the designated sites identified (as detailed in the above paragraphs) and thus provide a clear reason in refusing the application.

It is not the intention of this Statement of case to reiterate the delegated report in entirety and as the LPA is now not the 'competent authority' as this has reverted post-determination to the Planning Inspectorate, we respectfully request the Inspector to consider the reasoning outlined within the officer's delegated report, review if the WNS provides the required certainty, and consult with Natural England. As such, the Inspector will reach their own conclusions with regards to Water Neutrality. The Local Planning Authority would not want to prejudice the due process of the competent authority however for the avoidance of doubt, the competent authority must consider the likely effectiveness of any mitigation measures, including (amongst other things) the contents of the appellant's water neutrality statement in addition, and whether the mitigation measures outlined are capable of meeting the conditions tests.

Other matters

Under the provisions of the Planning Practice Guidance (PPG) the respective parties in planning appeals are expected to meet their own expenses unless a party has acted unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process. "Unreasonable" is used in its ordinary meaning, and

unreasonable behaviour in the context of an application for an award of costs may be either procedural (relating to the process) or substantive (relating to the issues arising from the merits of the appeal).

Case of the Appellant

Appears to outline that the LPA have acted unreasonably in several ways, including:

1. The manner in which Planning enforcement have investigated compliance complaints
2. The appellant considers the complaints procedure failed to demonstrate that the WNS had been understood

Response

Planning enforcement are able to investigate potential planning compliance concerns at any time if required. For the avoidance of doubt, there is a case for EN/24/0283 pending investigation and some recent relevant enforcement investigations that have been closed notably EN/23/0004, EN/22/0308, EN/22/0170, EN/20/0383, EN/20/0048. Whilst the case officer was aware that there was relevant enforcement history, it did not form part of the reason for refusal and would fall outside of the parameters of this appeal for consideration.

The Planning Assessment considers all planning policies and material considerations, and comes to a conclusion by balancing all matters. The Council considers all applications in a professional and impartial manner, and while not all will agree with the decision, it does not follow that as an application has been refused that the supporting information was not reviewed or understood. The Council are therefore of the view that the planning application was appropriately considered and determined.

Conclusion

The Council is firmly of the view that it has not behaved unreasonably nor put the Appellant to additional or wasted expense in the appeal process. Furthermore, the Council considers it to have been correct in refusing planning permission for the proposed development. The Council remain of the view that approving the scheme would conflict with core local and national planning policy.

Suggested conditions for consideration:

1. **Regulatory Condition**: The use hereby approved shall be for a Mixed Martial Arts Studio and for no other purpose.

   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 countryside location and the proximity to the neighbouring properties under Policies 26 and 33 of the Horsham District Planning Framework (2015).

2. **Regulatory Condition**: The visibility splays currently on site will be kept clear of all obstructions to visibility above a height of one metre above the adjoining road level.

   Reason: In the interests of road safety, and in accordance with Policy 41 of the Horsham District Planning Framework (2015).

3. **Regulatory Condition**: The premises shall not be open for trade or business except between the hours of 09:00 and 21:00 Monday to Friday and 09:30 and 14:00 on Saturdays and Sundays.

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

4. **Regulatory Condition**: At no time shall the number of participants exceed more than 24 individuals and 2 instructors.

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

5. **Regulatory Condition**: No amplified music or public address system shall be played within the building except between the hours of 09:00 and 21:00, and shall at no times be played outside of the building.

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

6. **Regulatory Condition**: No external lighting or floodlighting shall be installed other than with the permission of the Local Planning Authority by way of formal application.

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

7. **Pre-occupation condition**: The development hereby permitted shall be undertaken in full accordance with the water neutrality strategy. The development will not 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 and the water efficiency measures set out within the water neutrality strategy have been implemented in full. The evidence shall include photographic evidence of the appliances installed and the removal of the relevant fixtures and fittings. 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), Paragraph 193 of the National Planning Policy Framework (2024), its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), and s40 of the NERC Act 2006 (Priority habitats & species).