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Ms Shazia Penne
Planning Officer
Horsham District Council

Our ref: 4388

Sent by email:
[redacted]
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11 November 2024

Dear Shazia,
DC/24/1499 Removal of Condition 4 of previously approved application CG/33/94 (Erection of stables and haybarn) relating to the tie to the existing dwelling at Tanglewood.

We are writing on behalf of **Forest Grange Private Road Limited** (FGPRL) and **Forest Grange (Horsham) Management Company Ltd** (FGHMCL) and their 23 shareholders who are the owners of the private road leading from the junction with Forest Road to the dwellings and associated fields situated on the south side of the private road within the Forest Grange community.

This letter is submitted in objection to the Application made by Ms Andrea Starns ('the Applicant') the owner of Tanglewood Equestrian, Forest Grange, and submitted to Horsham District Council, the relevant Local Planning Authority ('the LPA') seeking the '*removal of condition 4 of previously approved application CG/33/94 (Erection of stables and haybarn) relating to the tie to the existing dwelling at Tanglewood*'.

For the avoidance of doubt, the dwelling now known as Tanglewood was previously known as 1 Garage Cottages; whilst the Applicant's equestrian land is known as Tanglewood Equestrian. The application address entered into the Council's planning register is 'Tanglewood' whilst the associated geospatial polygons locate the site at Tanglewood Equestrian. These two parcels of land are not only tied by planning condition but also, until very recently, also tied by Land Registry Title (ref: WSX188935).

Further, the red line indicated by the Applicant as showing the extent of the application site on the submitted drawing entitled *"Existing location plan"* and dated September 2024 does not reflect the extent of the application site indicated on the Location Plan approved by CG/33/94. The submitted red line boundary erroneously incorporates the Priority Habitat which runs to the north of the private lane, and which does not fall within the ownership of the Applicant, rather it falls within the ownership of our client. The green box in Figure 1 below illustrates the error.

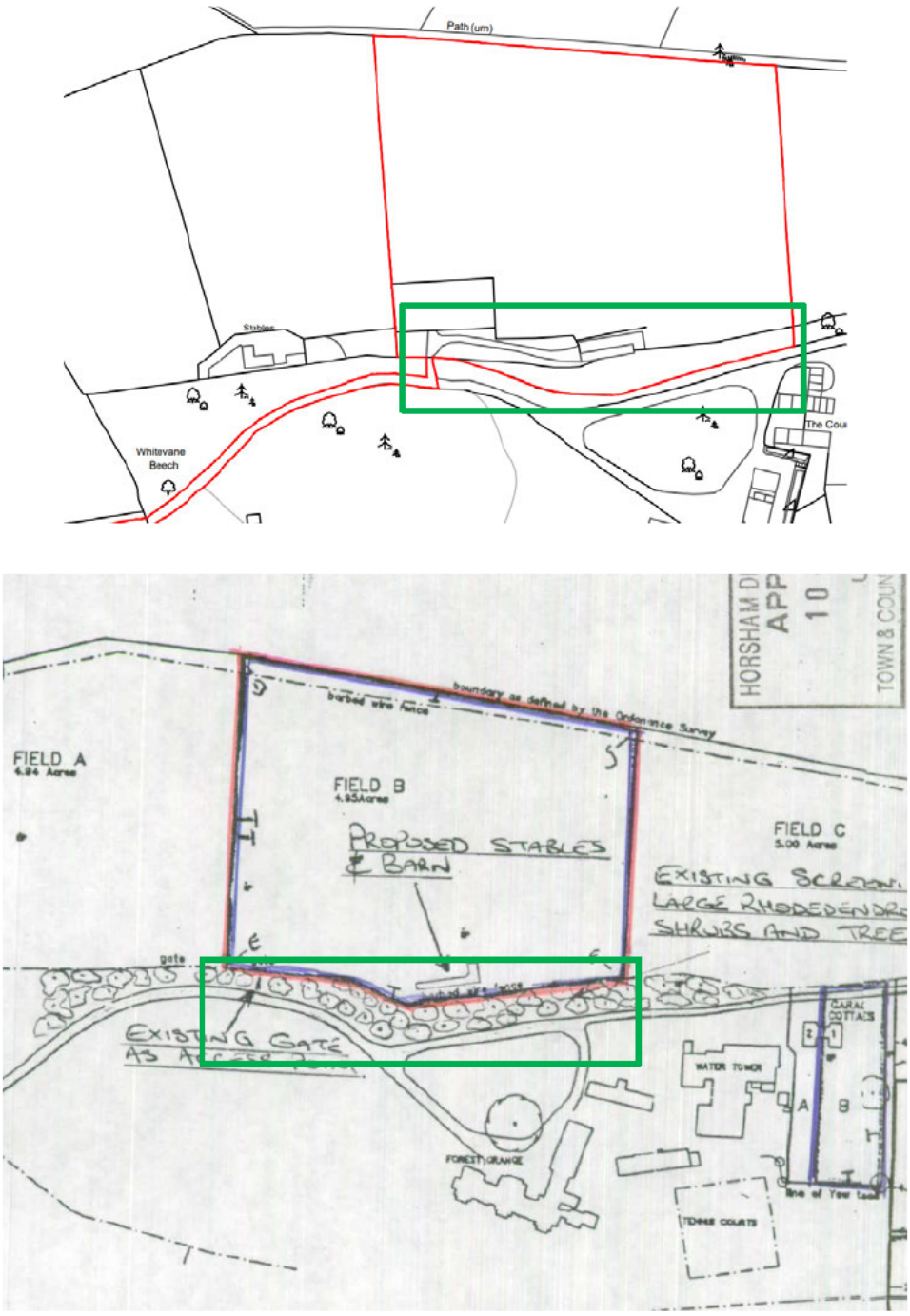

Figure 1 Submitted Existing Location Plan (top) and Approved Location Plan (bottom)

The scope of a Section 73 application is tied to the application already granted i.e. CG/33/94, and it cannot seek to incorporate other land not previously part of the application. The applicant should therefore be required to amend their Existing Location Plan to ensure that it correctly shows the extent of the originally granted planning permission.

Type of Application and Description of Development:

The Applicant has stated within their application form (Description of the Proposal) that the application seeks the *"Removal of Condition 4 of previously approved application CG/33/94 (Erection of stables and haybarn Site: 1 Garage Cottages St Leonards Forest Horsham) to allow for the removal of the tie to the existing dwelling at Tanglewood".*

They have further stated within this section of the application form that the development was commended on 1 October 1994 and completed on 1 November 1994. These dates relate to the date when planning permission CG/33/94 was implemented and completed, and not when the breach of planning condition 4 first occurred.

As noted earlier, until recently, Tanglewood Equestrian has not only been tied by planning condition to the dwelling known as Tanglewood but also by Land Registry Title. The Land Registry online records have not been updated and as such, at the time of writing, the title has not yet been split however, the dwelling (i.e. Tanglewood) was sold by the Applicant's parents to its current owners in June 2024 and Tanglewood Equestrian transferred by the Applicant's parents to the Applicant. The breach occurred on or around this time. It has not gathered immunity under Section 171B of The Town and Country Planning Act 1990 (as amended).

As the Applicant has stated that the breach has occurred, the application must be considered under Section 73A of the Town and Country Planning Act 1990 (as amended). Section 73A relates to planning permission for development already carried out.

The Development Description for the development is for the 'removal' of condition 4. This is at odds to the Applicant's planning statement which variously requests the removal of the condition yet proffers the alternative to 'vary' the condition. This terminology, whilst both captured under the provision of Section 73A, are important as the implications for the use of the land, impacts

arising on amenity, and control by the LPA are considerable. This is set out in greater detail below, and we ask that the LPA give very careful consideration to these implications.

Planning History

There are a number of applications associated with Tanglewood Equestrian, many of which have been sought retrospectively. These applications set a backdrop as to the Applicant's intentions for the land, including commercial and residential uses. To date, the commercial uses (including boot camp) and residential uses (settled gypsy accommodation) have been refused by the LPA, as being unsuitable to the sensitive location of the site.

Planning permission CG/33/94 was granted in 1994 for the 'erection of stables and haybarn' subject to compliance with 5 conditions. Condition 4 stated:

> *"The stables hereby permitted shall only be used in association with the use of 1 Garage Cottages as a dwelling and* ***shall not be let or used for commercial purposes or in connection with any form of riding establishment. Reason: In the interests of amenity and to enable the Local Planning Authority to regulate and control the development****" (bold emphasis added).*

Separately, planning permission CG/15/00 for the sand school was granted 20/06/2000, and also subject to conditions. Condition 4 in that instance restricts the use of the sand school:

> *"The sand school hereby permitted shall not be used* ***for any commercial purposes or in connection with any form of riding establishment. Reason: In the interests of amenity and to enable the Local Planning Authority to regulate and control the development"*** *(bold emphasis added).*

It is clear that the intention for both Condition 4 pursuant to CG/33/94 and Condition 4 pursuant to CG/15/00 is to allow the LPA to regulate development which is in the interest of amenity. The Applicant's disregard to the planning process is clear from this planning history, such that the removal of Condition 4, as proposed, would lead to the unfettered use of the site for commercial equine (or other) uses to the detriment of the amenity of nearby residences (and potential lead to proliferation of development sprawl.

Planning Policy

Section 70 of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004 require that planning applications should be determined in accordance with the Development Plan unless material considerations indicate otherwise. In the case of this site, the relevant Development Plan consists of Horsham District Planning Framework (2015).

The statutory test for considering the impact on a listed building (i.e. Forest Grange Manor), the setting of a listed building and the impact on a conservation area is set out in the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) and therefore, though the generic policy of the Development Plan and the National Planning Policy Framework must be taken into account, the statutory tests of the aforementioned Act are of most relevance.

The relevant part of the Development Plan for this part of Horsham District comprises the Horsham District Planning Framework (HDPF) which was adopted November 2015. There is no Neighbourhood Plan operative in the parish of Colgate.

The following policies of the HDPF are considered relevant in the determination of this application:

- Policy 1: Sustainable Development
- Policy 3 and Policy 4: Development Hierarchy and Settlement Expansion
- Policy 24: Environmental Protection
- Policy 25: District Character and the Natural Environment
- Policy 26: Countryside Protection
- Policy 29: Equestrian Development
- Policy 30: Protected Landscapes
- Policy 32: The Quality of New Development
- Policy 33: Development Principles
- Policy 34: Heritage Assets and Managing Change within the Historic Environment
- Policy 40: Sustainable Transport
- Policy 41: Parking

The Council has prepared an update to the HDPF due to the age of the local plan exceeding 5 years. The Council formally submitted the draft Local Plan to the Secretary of State on 26 July 2024. The policies within the emerging Local Plan have not been subject to examination and therefore, do not yet carry full weight, however, given the advanced stage of the Local Plan, the policies and its supporting evidence do carry some weight. The policies within the emerging plan considered to be material are set out below:

- Emerging Policy 1: Sustainable Development
- Emerging Policy 2: Development Hierarchy
- Emerging Policy 3: Settlement Expansion
- Emerging Policy 11: Environmental Protection
- Emerging Policy 13: The Natural Environment and Landscape Character
- Emerging Policy 14: Countryside Protection
- Emerging Policy 16: Protected Landscapes
- Emerging Policy 19: Development Quality
- Emerging Policy 20: Development Principles
- Emerging Policy 21: Heritage Assets and Managing Change within the Historic Environment
- Emerging Policy 24: Sustainable Transport

The National Planning Policy Framework (2023) and its accompanying practice guidance are also material considerations. The Government published on 30 July 2024 a consultation which seeks views on their proposed approach to revising the NPPF in order to achieve sustainable growth in our planning system. The consultation closed on 24 September 2024 and an updated NPPF is anticipated before Christmas 2024. The proposed amendments to the NPPF and the accompanying Ministerial Statement are a material consideration.

ASSESSMENT OF APPLICATION

Heritage:

Forest Grange Manor is located approximately 85m to the southeast of the Application Site. 'Central Wing' in the manor house relies on its allocated amenity space in the area north of the

house up to the boundary with the private road separating this property from the application site known as Tanglewood Equestrian. This reduces the distance between the two properties to 10-12m. Use of the amenity space will therefore be susceptible to noise and overlooking when activities are taking place in Tanglewood Equestrian. Further, each of the paddocks/ pastures forming part of the wider estate were historically tied to the listed building, as a former school and then subsequently to the dwellings, as ancillary equestrian uses.

Section 16(2) and 66(1) of The Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) sets out the basic legal test for the decision maker requiring that "*in considering whether to grant listed building consent for any works the local planning authority or the Secretary of State shall have special regard to the desirability of* ***preserving*** *the building or* ***its setting*** *or any features of special architectural or historic interest which it possesses*" (bold emphasis added).

Setting is defined within the NPPF glossary as: '*The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral'.*

The Historic England Advice Note (The Setting of Heritage Assets) states: *"The extent and importance of setting is often expressed by reference to visual considerations. Although views of or from an asset will play an important part,* ***the way in which we experience an asset in its setting is also influenced by other environmental factors such as noise, dust and vibration from other land uses in the vicinity, and by our understanding of the historic relationship between places.****"* (bold emphasis added)

Separately, the NPPF paragraph 200 requires "*an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance*." The Applicant has failed to undertake any assessment of the historic environment within which the Application Site sits. Whilst this application may 'only' be for the removal of a planning condition, it is the potential impact of

such a change which may affect the setting of the heritage asset, and which requires consideration under Section 73A.

The NPPF further requires, once an assessment on significance and setting has been undertaken, to determine the degree of harm arising from the development proposed. This sliding scale considers substantial harm (the most harm) or alternatively, less than substantial harm. Where less than substantial harm has been identified, then a further evaluation exercise is required to determine if public benefit accrued outweighs any harm to the heritage asset.

The Applicant fails to acknowledge the historic relationship the site has with Forest Grange Manor and the change the removal of the condition may have on the historic setting. Whilst the planning statement has inferred a variation to the condition, this is not what has been applied for, and as such the removal of all control of the use of the land through the removal of this condition could introduce unfettered commercial activity where presently there is none, and which could have the potential to change to the setting of the asset. These fields, as already identified, have been used ancillary to the established residential properties (such as Tanglewood) and prior to that ancillary to the former school use. There are no public benefits arising from the development which can remotely come close to tipping the balance in favour of the Applicant's proposal to introduce unfettered commercial use in this location.

Development in the Countryside

The site is located outside of a defined settlement and therefore it falls within the countryside. Policy 26 of the HDPF seeks to protect the countryside against inappropriate development. Development must meet one of the following criteria:

1. *Support the needs of agriculture or forestry;*
2. *Enable the extraction of minerals or the disposal of waste;*
3. *Provide for quiet informal recreational use; or*
4. *Enable the sustainable development of rural areas.*

The application to remove Condition 4 to allow for unrestricted commercial use of this field does not satisfy any of these policy requirements. Additionally, this policy stipulates proposals must be of a scale appropriate to its countryside character and location, stating that development

should not: *"lead, either individually or cumulatively, to a significant increase in the overall level of activity in the countryside, and protects, and/or conserves, and/or enhances, the key features and characteristics of the landscape character area in which it is located, including;*

1. *The development pattern of the area, its historical and ecological qualities, tranquillity and sensitivity to change;*
2. *The pattern of woodlands, fields, hedgerows, trees, waterbodies and other features; and*
3. *The landform of the area"*

Again, the application as proposed for the removal of the condition fails on all of these policy grounds as it would introduce the ability to use the site for commercial purposes which would be unregulated, and as such the application should be refused.

Whilst not subject to this application, it is clear from the planning and enforcement history relating to this site, since the applicant took ownership, that there has been a disregard to the planning process and the introduction of unauthorised structures, not least the mobile home which is being occupied unlawfully, therefore the removal of Condition 4 would allow for further uncontrolled development within the countryside, where policy seeks to control development.

Landscape:

The site is located within the High Weald National Landscape (formerly Area of Outstanding Natural Beauty). Policy 25 requires all developments to "*Protects, conserves and enhances the landscape and townscape character, taking into account areas identified as being of landscape importance, the individual settlement characteristics, and maintains settlement separation*".

The purpose of a National Landscape designation is to conserve and enhance the natural beauty of the designation. Policy 30 specifically addresses this obligation, stating that *"Development proposals will be supported in or close to protected landscapes where it can be demonstrated that there will be no adverse impacts to the natural beauty and public enjoyment of these landscapes as well as any relevant cross boundary linkages [...] and must demonstrate:*

a. *How the key landscape features or components of natural beauty will be conserved and enhanced. This includes maintaining local distinctiveness, sense of place and setting of the protected landscapes, and if necessary providing mitigation or compensation measures.*

b. *How the public enjoyment of these landscapes will be retained.*

c. *How the proposal supports the economy of the protected landscape and will contribute to the social wellbeing of the population who live and work in these areas".*

The proposed development would not satisfy any of these policy requirements and would result in further encroachment into the countryside by inappropriate development. The development would neither conserve nor enhance this part of the High Weald National Landscape.

The Council's Landscape Character Assessment 2003 has identified that one of the key issues which faces this area are the continuing loss of heathland through development pressure and poor management; **expansion of horse paddocks**; urban fringe development; and suburbanisation e.g. pastiche architecture; **inappropriate fences, boundaries and gates**. The removal of condition 4 would allow the applicant to use the equine facilities without restriction potentially leading to an intensification of the use of the land which would otherwise not be acceptable, and to the detriment of the wider character of the area.

Overall, therefore the application fails to accord with policies 25, 26 and 30 of the HDPF.

Highways and Parking

The site is accessed via a private lane with no footpath or lighting leading to Forest Road. This private lane is approximately 970m in length. The road has not been constructed for the purposes of commercial traffic, particularly large vehicles. The removal of the condition to allow for unfettered commercial equine use of the site would reinforce unsustainable travel patterns and unrestricted vehicle movements harmful to the character of the area and local amenity contrary to policy 40 of the HDPF.

Alternative Option

It is evident that the removal of Condition 4 would be harmful to local amenity for the various reasons set out above and would be contrary to the original purpose for which the condition was applied.

It is evident that the land has been sold separately to the dwelling, Tanglewood, and the Land Registry application to create two separate titles has been submitted. Additionally, and as previously mentioned, the application site is accessed via the private road which is subject to a separate Land Registry title and covenants. The covenant over the land states that the Applicant shall *"not to use [the application site] or allow or permit it to be used for any purpose other than as agricultural or pastureland with appurtenant outbuildings erected in accordance with paragraph 3 of this Schedule".* Whilst covenants are governed under separate legislation to planning and therefore, with limited exceptions, are not a material consideration, **it is put on record here that the Applicant appears to be in breach of the covenants running with the land and our client does not relinquish the covenants over the land.**

It is therefore important that the purpose for which the condition was originally applied to the planning permission is not lost through this separate private sale and separation of Land Registry titles.

To this end, the Council should consider a 'variation' to the condition. The applicant's planning agent has intimated this through their Planning Statement however their statement is not consistent with the application form, and indeed they have variously interchanged the terminology 'removal' with 'variation'.

Conditions should only be imposed (or re-imposed as is the case here) where they are: Necessary, Relevant to planning; Relevant to the development to be permitted; Enforceable; Precise; and Reasonable in all other respects. In this case, a variation to Condition 4 would need to be explicit within the Development Description and through the redrafting on the condition. The benefit of a variation to Condition 4 is that it would, subject to the wording, allow for the LPA to retain the necessary control which is to ensure that the equine use is not unrestricted. It is suggested therefore, in a similar vein to the Planning Agent's suggestion that Condition 4 be **varied**:

The stables and use of the site hereby permitted shall not be used for any commercial purposes or in connection with any form of riding or livery establishment. Reason: In the interests of amenity, to enable the Local Planning Authority to regulate and control the development and in accordance with Policy 33 of the Horsham District Planning Framework (2015).

CONCLUSIONS

At the heart of the NPPF is a presumption in favour of sustainable development which should be seen as a foundation for both plan-making and decision-taking. The NPPF and the Development Plan direct new development to sustainable locations.

The condition was applied to the original permission CG/33/94 in the interest of amenity and to control development. Those reasons still apply in this case irrespective of whether the land and its equine use is tied to Tanglewood. The implications of removing the condition thereby allowing for unregulated use for commercial and livery purposes would be harmful for the reasons which have been set out in this letter.

The requirement for the condition therefore remains to be Necessary; Relevant to planning; and Relevant to the development to be permitted. The recommended variation to the condition wording, as set out above, would meet the tests of Precision and Enforceable.

The application for the removal of Condition 4 should therefore be refused unless the application Description of Development is amended and the condition varied, as suggested, in the interest of amenity and to control future development.

Yours sincerely,

[redacted]

KAREN TIPPER BA(Hons) MA MRTPI
Senior Associate
[redacted]

Sent on behalf of Forest Grange Private Road Limited and Forest Grange (Horsham) Management Company Ltd