Horsham District Council

DELEGATED APPLICATIONS - ASSESSMENT SHEET

APPLICATION NO./ADDRESS:
DISC/24/0013
Grove House, Elm Grove Lane, Steyning, West Sussex, BN44 3SA

DESCRIPTION:
Approval of details reserved by conditions 8, 9 and 16 to approved application DC/20/0789

RELEVANT PLANNING HISTORY:

DC/20/0789	Demolition of existing buildings and erection of a residential building comprising 9no. houses and apartments and a B1 commercial office building with associated vehicle parking, cycle parking, bin storage and landscaping	Application Refused on 21.10.2020 Appeal Allowed on 07.07.2021

PLANNING ASSESSMENT

Planning Application ref: DC/20/0789 was granted consent by way of planning appeal (APP/Z3825/W/20/3264032) on 07.07.2021. Approval is now sought for details reserved by conditions 8, 9 and 16 attached to the appeal decision notice.

Subsequent to the grant of planning permission by way of planning appeal, the Authority has received a 'Position Statement' from Natural England (September 2021) addressing the effects of public mains-water abstraction within the Sussex North Water Supply Zone, which includes the application/appeal site. The appeal, therefore, was allowed without consideration of effects upon the Arun Valley Special Area of Conservation, Special Protection Area and Ramsar sites. Within its Position Statement of September 2021, Natural England advise that development within the Sussex North Water Supply Zone should demonstrate 'water neutrality' in order to avoid contribution to the possible existing adverse effect associated with public mains-water abstraction.

Conditions Precedent:-

Condition 16

Condition 16 reads as follows:-

"No development shall take place until full details of the finished levels, above ordnance datum, of the ground floors of the proposed buildings, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels."

In response to the above condition the applicant has provided a site-plan, with proposed floor levels detailed in relation to existing datum points. The submitted details reveal a proposed finished floor level of 18.65m to proposed dwellings, relative to an existing datum of ~18.5m at their southern extent and ~18.60m at their northern extent. The approved office building would be provided to a finished floor-level of 18.15m relative to an existing datum of ~18m.

The submitted details, therefore, reveal that the approved development would largely retain existing levels, and that proposed buildings would not incorporate internal floor-levels disproportionately greater than surrounding levels.

Condition 8

Condition 8 reads as follows:-

"No development above ground floor slab level of any part of the development 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 shall conform to those approved."

In response to the above condition the applicant has provided an 'external materials schedule' detailing external materials, colours and including links to relevant manufacturers specifications. The submitted materials schedule has been reviewed by the Council's Design and Conservation Officer, with the majority of submitted details considered acceptable with the exception of the specified reconstituted slate roof tile product, conservation-style rooflights and uPVC fascia/soffit features. These specified products are not considered of sufficient quality relative to surrounding development and to maintain local character and appearance within this part of the Steyning Conservation Area. It is not considered, therefore, that details submitted pursuant to Condition 8 are acceptable.

Condition 9

Condition 9 reads as follows:-

"No relevant works shall commence until the following details have been submitted to and approved in writing by the Local Planning Authority. The works must not be executed other than in complete accordance with these approved details: a) drawings to a scale not smaller than 1:5 fully describing: i) roof details including sections through: roof ridge, eaves, verges, verges and barge-boards, dormer roof perimeters and cheeks, ii) porches, iii) samples or specifications of external materials and surface finishes, iv) a sample panel of masonry, not less than 0.8 sqm, constructed on site. Before any further masonry is undertaken, the panel must be inspected and approved in writing by the local planning authority. All masonry must be executed in accordance with the sample panel, which shall remain on site until the works are complete and the condition discharged."

In response to the above condition the applicant has provided detailed plans of relevant components of proposed roof-construction and porches. The submitted details show modern roof-junction design including the installation of uPVC fascias and soffits. The Council's Design and Conservation Officer has objected to this design, requesting the introduction of traditional detailing in the form of exposed rafter feet and cut-verges reflective of traditional junction design. The proposed modern junction design is not considered to take adequate account of the sites situation within the Steyning Conservation Area and would fail to provide a development of adequate quality of design. The details submitted pursuant to Condition 9, therefore, are unacceptable.

Habitat Effects and *Fry* [2023]

The application site falls within the Sussex North Water Supply Zone (Supply Zone) where public-mains water is, in-part, supplied by way of groundwater abstractions underlying the Arun Valley Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar sites. Natural England issued a 'Position Statement' in respect of the Supply Zone on September 2021, addressing the effects of public groundwater abstraction upon the Arun Valley SAC, SPA and Ramsar.

The advice issued by Natural England, within the 2021 Position Statement, is that Planning Authorities within the Supply Zone pause decisions until a strategy is devised, in partnership with Natural England, to offset increased water-use associated with new development within the Supply Zone. Where it is

critical that individual applications proceed, Natural England advise that any application needs to demonstrate 'water-neutrality', such to provide certainty that new development will not further contribute to the existing adverse effect upon the integrity of Arun Valley sites associated with public groundwater abstraction.

Any development falling within the Supply Zone which would materially increase demand for the use of mains-water resources is considered to result in a potential significant effect upon the Arun Valley sites and contribute to the possible adverse effect upon integrity associated with public groundwater abstraction.

The appeal following the refusal of ref: DC/20/0789 pre-dates the Natural England Position Statement of September 2021. In allowing the appeal, therefore, the Inspector did not undertake consider the possible effects of development upon the Arun Valley sites by way of the use of mains-water resources or undertake an 'appropriate assessment' pursuant to Regulation 63 of the Protection of Habitats and Species Regulations (2017) (as amended).

The decision of the High Court pursuant to *CG Fry & Son Limited v Secretary of State for Levelling Up Housing and Communities and Somerset Council* [2023] EWHC 1622 (Admin), confirms that the provisions of the provisions of the Habitat Regulations (2017) apply in respect of all consents and/or authorisations, in requiring that an appropriate assessment be completed pursuant to Regulation 63 of the Habitat Regulations in advance of any determination to grant consent/authorisation which would prove tantamount to taking an implementing decision. As considered by the High Court this would include an approval of details reserved by condition where no appropriate assessment had been undertaken in advance of an initial determination to grant planning permission, deemed consistent with circumstances before the LPA in this instance.

Notwithstanding, Condition 16 prevents any development from taking place until relevant details of existing and proposed levels have been approved by the Local Authority. In addition, while details reserved by Conditions 8 and 9 do not prohibit commencement, the details reserved by these conditions are not considered capable of later correction were the development to be implemented in breach of the requirements of these conditions as integral to the structure of approved buildings.

The approval of details reserved by Conditions 8, 9 and 16, therefore, would form an implementing consent and would enable development to proceed without a prior demonstration of water-neutrality and the absence of possible adverse effects upon the integrity of designated Arun Valley sites. Pursuant to the judgement of the High Court in *CG Fry & Son Limited v Secretary of State for Levelling Up Housing and Communities and Somerset Council* [2023] EWHC 1622 (Admin) it is considered that details reserved by Condition 3 are incapable of approval in a manner concordant with the Authority's duties under the Protection of Habitats and Species Regulations (2017) (as amended) at Regulation 63.

A potential approval of details reserved by conditions 8, 9 and 16, therefore, would enable the creation of 9x dwellings and office floorspace in replacement of a former car-showroom. No evidence is available to the Authority to confirm that the approved development would avoid a material increase in demand for the use of mains-water resources in the absence of any mitigation measures. In any case, no mitigation measures are advanced in association with this application, nor is there any mechanism by which relevant mitigations could be secured in conjunction with this application for an approval of details reserved by condition. The Authority, therefore, cannot 'screen out' the possibility of significant effect upon the Arun Valley sites, or otherwise conduct a favourable appropriate assessment pursuant to Regulation 63(1) and 63(5) of the Habitats Regulations (2017). Consistent with the determination of the High Court in *Fry* [2023] and the Authorities duties pursuant to the Habitat Regulations (2017) at Regulation 63, the requested approval of details reserved by condition 16 must be refused.

Recommendation: Application Refused

Reasons for Refusal:

1.) The materials schedule submitted pursuant to Condition 8, including the specified roof-slate, conservation rooflight and soffit/fascia products, are not considered of sufficient quality to maintain the visual character and appearance of the Steyning Conservation Area

2.) The details of roof-junction design, including the installation of modern uPVC fascia and soffit fittings, submitted pursuant to Condition 9 are not considered to provide for a development of high-quality design which would maintain the character and appearance of the Steyning Conservation Area.

3.) Conditions 8, 9 and 16 are considered to form a conditions precedent. Following the determination of the High Court in CG Fry & Son Limited v Secretary of State for Levelling Up Housing and Communities and Somerset Council [2023] EWHC 1622 (Admin), the approval of details submitted pursuant to these conditions would constitute an implementing consent that would enable development to be delivered without a prior demonstration of water-neutrality. The development would consequently 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 demand for public mains-water resources, contrary to Policy 31 of the Horsham District Planning Framework (2015) and Paragraphs 185 and 186 of the National Planning Policy Framework (2023). The Local Planning Authority, therefore, 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).

POSITIVE AND PROACTIVE STATEMENT

Statement pursuant to Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015. The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received, in order to be able to, where possible, grant permission.

Plans list for: DISC/24/0013

(The approved plans will form Condition 1 on the Decision Notice of all Permitted applications)

Schedule of plans/documents **not approved**:

Plan Type	Description	Drawing Number	Received Date
Supporting Docs	External Finishes Schedule		06.02.2024
Plans	Ridge and Eaves	301	06.02.2024
Plans	Dormer	302	06.02.2024
Plans	Roof Verges	303	06.02.2024
Plans	Entrance Porch	304	06.02.2024
Plans	Site and Ground Floor Proposed	002	06.02.2024

DELEGATED

Case Officer sign/initial Giles Holbrook Date: 10.05.2024

Authorising Officer sign/initial Adrian Smith Date: 10/05/2024