Horsham District Council

DELEGATED APPLICATIONS - ASSESSMENT SHEET

APPLICATION NO./ADDRESS:

DC/25/0736
Nightingale Farm , Sincox Lane, Shipley, West Sussex, RH13 8PT

DESCRIPTION:

Prior Notification for Change of Use of Agricultural Building to 8no. dwellinghouses.

RELEVANT PLANNING HISTORY:

DC/21/1472	Prior Notification for the change of use of an existing agricultural barn to residential (Class C3) to form 3no dwellings.	Prior Approval Required and REFUSED on 06.08.2021
DC/20/2046	Retrospective application for the Change of use of the land to create a glamping site.	Application Permitted on 03.03.2021
DC/22/1340	Prior Notification for Change of Use of Agricultural Building to residential (Use Class C3) to form 5no dwellinghouses.	Prior Approval Required and REFUSED on 01.09.2022
DC/24/1602	Variation of condition 9 of previously approved application DC/20/2046 (Retrospective application for the Change of use of the land to create a glamping site) to allow longer occupancy duration.	Application Refused on 21.01.2025
DC/24/1971	Prior Notification for Change of Use of Agricultural Buildings to a No.8 dwellinghouses.	Withdrawn

DETAILED DESCRIPTION:

This notification seeks prior approval under Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 to form 8 new dwellings.

RELEVANT PLANNING POLICIES

National Planning Policy Framework

Horsham District Planning Framework (HDPF 2015):
Policy 1 - Strategic Policy: Sustainable Development
Policy 24 - Strategic Policy: Environmental Protection
Policy 26 - Strategic Policy: Countryside Protection
Policy 33 - Development Principles
Policy 38 - Strategic Policy: Flooding
Policy 41 - Parking

REPRESENTATIONS AND CONSULTATIONS RESPONSES

Where consultation responses have been summarised, it should be noted that Officers have had consideration of the full comments received, which are available to view on the public file at www.horsham.gov.uk

Consultations:

WSCC Highways: No Objection

Sincox Lane is 'C' class rural public highway subject to national speed limit. The rural context, road geometry and width mean that speeds below the posted limit are likely. LHA has reviewed data supplied to WSCC by Sussex Police over a period of the last five years. There have been no recorded injury incidents at the access with Sincox Lane. There is no evidence to suggest that the access is operating unsafely, or that the proposed change of use would exacerbate an existing safety concern.

No changes are proposed to the existing access with the public highway. Vehicle movements anticipated with 8 x dwellings is not anticipated to have 'severe' impact on operational capacity of nearby road network and it is likely larger agricultural vehicle movements will decrease.

2 x car parking spaces per dwelling are shown. Under WSCC Guidance 1.7 space per 2-bed and 2.1 space per 3-bed unit = total demand 14.8 spaces plus 1.6 visitor spaces (total 16.4 spaces). As 16 x spaces are proposed the LHA are satisfied that parking on site meets demands of development.

The site is rural with no amenities/public transport in vicinity. Nevertheless, in order to promote sustainable/active travel in line with National Planning Policy Framework, the LHA would require that suitable bicycle storage is provided, details can be secured by condition.

The Local Highway Authority does not consider that the proposal would have an unacceptable impact on highway safety or result in 'severe' cumulative impacts on the operation of the highway network, therefore is not contrary to the National Planning Policy Framework (paragraph 115), and that there are no transport grounds to resist the proposal.

Southern Water: Comments

Construction of the development shall not commence until details of the proposed means of foul/surface water drainage disposal have been submitted to and approved in writing by the Local Planning Authority in consultation with Southern Water.

There are no public sewers in the vicinity of the proposed development. Under New Connections Charging it is the responsibility of the developer to provide the sewerage infrastructure up to the point of practical connection. The applicant is advised to investigate the feasibility of this connection or examine alternative means of foul sewage disposal in consultation with the appropriate authorities.

Parish Comments:

None received

Representations:

Three representations have been received. These are summarised as:

- Highways safety and capacity
- Over development
- Character
- Environmental impact
- Cumulative Impact

HUMAN RIGHTS AND EQUALITY:

The application has been considered having regard to Article 1 of the First Protocol of the Human Rights Act 1998, which sets out a person's rights to the peaceful enjoyment of property and Article 8 of the same Act, which sets out their rights in respect to private and family life and for the home. Officers consider that the proposal would not be contrary to the provisions of the above Articles.

The application has also been considered in accordance with Horsham District Council's public sector equality duty, which seeks to prevent unlawful discrimination, to promote equality of opportunity and to foster good relations between people in a diverse community, in accordance with Section 149 of the Equality Act 2010. In this case, the proposal is not anticipated to have any potential impact from an equality perspective.

PLANNING ASSESSMENT

The main issue is whether prior approval is required for the proposed change of use and conversion of the existing agricultural building to provide a single dwelling under Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Permitted development:

Q. Development consisting of—

(a) a change of use –

(i) a building that is part of an established agricultural unit and any land within that building's curtilage, or

(ii) a former agricultural building that was (but no longer) part of an established agricultural unit and any land within that building's curtilage

to a use falling within Class C3 (dwellinghouses) of Schedule 1 to the Use Classes Order,

(b) development referred to in sub-paragraph (a) together with the extension of the building referred to in sub-paragraph (a), or

(c) development referred to in sub-paragraph (a) together with building operations reasonably necessary to convert the building referred to in sub-paragraph (a) to a use falling within Class C3 (dwellinghouses) of the Schedule or to extend that building.

Development not permitted:

Q.1 Development is not permitted by Class Q if—

(a) in the case of a site that is part of an established agricultural unit, the site was not part of the established agricultural unit—

(i) on 24th July 2023

(ii) where the site became part of an established agricultural unit after 24th July 2023, for a period of at least 10 years before the date development under Class Q begins,

(b) in the case of a building that was (but is no longer) part of an agricultural unit —

(i) the site was part of an established agricultural unit on 24th July 2023,

(ii) where the site ceased to be part of an established agricultural unit after 24th July 2023, the site has not been part of the established agricultural unit for a period of at least 10 years before the date development under Class Q begins, or

(iii) since ceasing to be part of an established agricultural unit, the site has been used for any non-agricultural purpose.

Prior approval consent is sought to convert the existing agricultural building into 8 dwellings under Q(c) as above. The main concern for this application is whether the building is/ was part of an established agricultural unit or not.

Paragraph X of Part 3, Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015 ('interpretation of Part 3') states that 'agricultural building' means a building used for agriculture and which is so used for the purposes of a trade or business, and excludes any dwellinghouses, and 'agriculture use' refers to such uses.' 'Established agricultural unit' means agricultural land occupied as a unit for the purposes of agriculture.

Section 336(1) of the Town and Country Planning Act 1990 states that 'agriculture' includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where the use is ancillary to the farming of land for other agricultural purposes, and 'agricultural' shall be construed accordingly.

The principle qualifying criteria is that the building(s) must have been part of an established agricultural unit (e.g., a farm or vineyard) since 24 July 2023. Buildings which do not currently form part of an agricultural unit can also qualify but must have been last used for the purposes of agriculture and previously formed part of an agricultural unit for at least 10 years.

The applicants state that the site is part of an agricultural unit because:

-'The phrase "occupied as a unit for the purposes of agriculture" should be interpreted to mean land managed in a cohesive manner for any legitimate agricultural purpose, including low-intensity or seasonal operations.

-The sale of hay from the wider landholding satisfies the test for agricultural use

-The agricultural activity does not need to be the sole activity or primary land use

The western side of the building was granted permission in 1999 to be used as stables for keeping and training racehorses. These stables were in use in 2007 when planning permission was granted for their full livery use. In each case the approved plans show the western side of the building as part of the stables. Between 2000 and 2006 permission was granted for gallops and a manège on the wider site, as well as for a farm office in connection with farming and livery uses at Nightingale Farm. The approved plans each show the same large swathe of blue edged land around the complex of buildings at Nightingale Farm. This land comprised mostly fields or paddocks owned or controlled by the applicants, as well as the building and the site.

A site visit confirmed that the western barn is a livery/ stables and the eastern barn is used to store hay/ feed, bags of sand (presumably for the manège). An equestrian business (HRH Equestrian) is being operated from the site.

The LPA interpretation of the legislation differs from the applicants legal advice. In line with the dismissed appeal decision for DC/22/1340 (prior notification for change of use of the same agricultural building to residential (C3) to form 5no dwellinghouses) the Inspector stated the following relevant points, which remain the Council's position:

- Keeping racehorses or liveried horses in paddocks at Nightingale Farm would not have been within the definition of agriculture. There is no evidence that if horses were grazed at Nightingale Farm they were not connected to either of these equestrian uses.
- Given their scale, it cannot be inferred with any certainty that the aerial photographs 'clearly show cropping lines in connection with the hay' as opposed to, for instance, field or paddock boundaries, including temporary or permanent internal dividing fences.
- Taking such a crop to be used in connection with keeping and training racehorses or keeping horses at full livery, and even if hay, straw or silage was stored in any part of the building, would be ancillary to these equestrian uses.

A statutory declaration for a Lawful Development Certificate in 2017 related to land at Nightingale Farm. This refers to 'the whole equestrian yard' which included the site and buildings as well as the wider site.

Whilst the eastern barn could be seen to be storing hay and machinery, this is likely to be hay to feed the livery horses in the adjacent barn and wider site. It is acknowledged that some hay may be taken from a field, but this does not take away from the primary use on the site, which is equestrian, and does not result in the site being within an agricultural unit.

It is clear from the planning history of the site that the application site has an equine and glamping use, which is evident from previous planning applications. No Agricultural holding number has been provided. No agricultural activities were evident on visits to the site, however recreational equine use was apparent.

It has not therefore been demonstrated to the satisfaction of the Local Planning Authority that the land and building have been used for purposes falling within a definition of agriculture (S.336, TCPA 1990) and cannot be considered to form part of an established agricultural unit.

Any restrictive conditions on previous planning permissions also need to be taken into consideration. To benefit from a planning permission granted by Article 3 of the GPDO, the development must not be contrary to any condition on an existing planning permission (Article 3(4)). In this case condition 1 attached to planning permission SP/53/99 restricts the western side of the building to the keeping and training of racehorses. Condition 3 attached to planning permission DC/05/2547 restricts the western side of the building to stabling used for full livery purposes and for no other purpose. Accordingly, the effect of either of these conditions is to exclude a grant of permission relating to this part of the building by the operation of statutory provision under the GPDO.

(c) the floor space of any dwellinghouse under Class Q having a use falling within Class C3 (dwellinghouses) of Schedule 1 to the Use Classes Order exceeds 150 square metres,

None of the proposed dwellings would have a floorspace of over 150 square metres

(d) the development under Class Q, together with any previous development under Class Q, within the original limits of an established agricultural unit (see Paragraph Q.3(2) of this Part) would result in –

(i) the cumulative number of separate dwellinghouses having a use falling within Class C3 (dwellinghouses) of Schedule 1 to the Use Classes Order exceeding 10, or

(ii) the cumulative floor space of dwellinghouses having a use falling within Class C3 (dwellinghouses) of Schedule 1 to the Use Classes Order exceeding 1,000 square metres.

The development would comprise of 8 new dwellings with a cumulative floor space of 747.70 square metres

(e) the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained;

The site is not occupied under an agricultural tenancy

(f) less than 1 year before the date development begins—

(i) an agricultural tenancy over the site has been terminated, and

(ii) the termination was for the purpose of carrying out development under Class Q,

unless both the landlord and the tenant have agreed in writing that the site is no longer required for agricultural use;

The site is not occupied under an agricultural tenancy

(g) development under Class A(a) or Class B(a) of Part 6 of this Schedule (agricultural buildings and operations) has been carried out on the established agricultural unit during the period which is 10 years before the date development under Class Q begins,

No development under Class A(a) or Class B(a) of Part 6 of this Schedule (agricultural buildings and operations) has been carried out

(h) the development would result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point, other than—

(i) extension of the building allowed by paragraph Q.1(i);

(ii) protrusions of up to 0.2 metres to accommodate building operations allowed by paragraph Q.1(j)(i),

No development would result in external dimensions extending beyond the existing building.

(i) the development under Class Q(b) would result in an extension that—

(i) has more than one storey,

(ii) is sited anywhere other than to the rear of the existing building,

(iii) extends beyond the rear wall of the existing building by more than 4 metres,

(iv) has eaves the height of which exceed the height of the eaves of the existing building,

(v) is higher than whichever is the lower of—

(aa) the highest part of the roof of the existing building, or

(bb) a height of 4 metres above the ground,

(vi) extends beyond a wall that forms a side or principal elevation of the existing building, or

(vii) would be sited on land that, before the development under Class Q(b), is not covered by a hard surface that was provided on the land by virtue of any development, and—

(aa) the hard surface was not provided on the land on or before 24th July 2023, or

(bb) where the hard surface was provided on the land after 24th July 2023, the hard surface has not been situated on the land for a period of at least 10 years before the date development under Class Q(b) begins,

No development would result in external dimensions extending beyond the existing building.

(j) the development under Class Q(b) would consist of building operations other than—

(i) the installation or replacement of—

(aa) windows, doors, roofs, or exterior walls, or

(bb) water, drainage, electricity, gas, or other services, to the extent reasonably necessary for the building to function as a dwellinghouse; and

(ii) partial demolition to the extent reasonably necessary to carry out building operations allowed by paragraph Q.1(i)(i);

No information has been provided in regard to the structural integrity of the building, with no information provided regarding the strength of the concrete posts for the loading associated with the mezzanine floor. While limited information is therefore available to demonstrate that the building is capable of conversion, it is recognised that the building appears to be in good condition with no evidence of structural issues. On this basis, it is considered that the building as existing could be converted, with the external alterations and additions as proposed reasonably necessary to convert the building to a dwelling. From a site visit the buildings do appear to be structurally sound and the applicant has stated that the work would be restricted to those listed above.

(k) the site is on article 2(3) land;

The site is not on article 2 (3) Land

(l) the site is, or forms part of—

(i) a site of special scientific interest;

(ii) a safety hazard area;

(iii) a military explosives storage area;

The site does not.

(m) the site is, or contains, a scheduled monument; or

The site is/ does not.

(n) the building is a listed building

The site is not.

(o) the existing building, excluding any proposed extension under Class Q(b) but including any proposed building operations under Class Q(c), would not be capable of complying with the nationally described space standard issued by the Department for Communities and Local Government on 27th March 2015 as read with the notes dated 19th May 2016 which apply to it, or

All proposed dwellings would comply with the nationally described space standards

(p) the building does not have suitable existing access to a public highway.

The building would make use of the existing access to the public highway

Conditions

Q.2—(1) Where the development proposed is development under Class Q(a) together with development under Class Q(b), development is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to—

(a) transport and highways impact of the development

The proposal would utilise the existing access to the public highway. Following consultation with WSCC Highways as the Highways Authority, no objection to the proposal has been raised. The proposal is not considered to result in harm to the function or safety of the public highway network.

(b) noise impacts of the development

Paragraph 187 of the NPPF states that planning decisions should contribute to and enhance the natural and local environment by preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of noise pollution. Paragraph 198 continues that planning decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions, and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so, they should mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development, and avoid noise giving rise to significant adverse impacts on health and the quality of life.

The subject building is located within a cluster of other buildings used for equestrian purposes, including as stabling. It is however recognised that there are a number of residential dwellings within the site, and in close proximity to these buildings, that have been subject of Lawful Development Certificates and planning permissions for change of use. If these buildings were lost to residential use, there would not be many buildings left to keep horses at any intensity.

While acknowledged that there is the potential for conflicts to arise through the equestrian use of the wider site, as discussed in further detail below, it is not considered that the proposed development itself would result in demonstrable harm to the amenities of surrounding residential properties.

(c) Contamination risks on the site

Paragraph 198 continues that planning decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions, and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development.

Commercial or agricultural buildings can be subject to significant contamination risks arising from their use, construction and storage of machinery equipment fuels or other chemicals. Potentially hazardous materials may also be incorporated in made ground, yards and hard standings.

No information in respect of Contamination Risk has been submitted in support of the application. While it would be beneficial to provide this information up front, it is considered that a suitably worded condition could be imposed if the application were approved.

(d) flooding risks on the site

None

(e) whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order

Paragraph 109 of the Planning Practice Guidance states that *"Impractical or undesirable are not defined in the regulations, and the local planning authority should apply a reasonable ordinary dictionary meaning in making any judgment. Impractical reflects that the location and siting would "not be sensible or realistic", and undesirable reflects that it would be "harmful or objectionable".*

The subject building is located within a cluster of other buildings used for equestrian purposes, including as stabling. It is however recognised that there are a number of residential dwellings located within the wider site, and specifically to the north, that have been subject of Lawful Development Certificates and planning permissions for change of use. The site as a whole therefore comprises a mix of residential and equestrian uses.

The proposed dwellings would be located in close proximity to a number of buildings used by the nearby equestrian facility. Given this context, there is the potential for future occupiers of the dwelling to be adversely impacted by any equestrian activities undertaken immediately adjacent to the site, and within the wider site. Of particular concern, these activities have the potential to adversely impact future occupiers through noise and odour caused by the keeping of horses and general maintenance within the yard area. Any potential occupiers of the dwelling would have no control over the use of any equestrian buildings on the wider site, or any uses operating in the immediate area which may adversely impact on the residential amenity of future occupiers. For these reasons, there is some concern regarding the location and siting of the building and the potential impact that would have on future occupiers.

(f) the design or external appearance of the building, and the provisions of paragraph W (prior approval) of this Part apply in relation to that application

The proposed external alterations, including the installation of timber clad walls and brick plinth, are considered to retain the overall character and appearance of the building. While the proposal would introduce a number of domestic styled window openings, which would further domesticate the building, it is considered on balance that these are acceptable. The proposal is therefore considered to retain the overall rural and utilitarian character of the building.

(g) the provision of adequate natural light in all habitable rooms of the dwellinghouses.

The submitted Floor Plans indicate that all habitable rooms would benefit from a windows and/or rooflights. It is therefore considered that the proposal would ensure an adequate provision of natural light in accordance with the requirements of (g).

the provisions of paragraph W (prior approval) of this Part apply in relation to that application.

Part X of Part 3 Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 defines "curtilage" for the purposes of Class Q as:

"the piece of land, whether enclosed or unenclosed, immediately beside or around the agricultural building, closely associated with and serving the purposes of the agricultural building, or an area of land immediately beside or around the agricultural building no larger than the land area occupied by the agricultural building, whichever is the lesser"

It is unclear how the curtilage would apply in this case, as the red line has been drawn widely around the parking and other garden areas. Small private gardens are proposed but there are other areas of garden that are not clear if they are communal or what they are for. Drawing number 2405-06-004 includes a table that lists the square metres of each unit's curtilage including parking. This is listed as a figure below the size of the agricultural building existing area and would comply with paragraph W.

Other Matters

Water Neutrality

The Applicant is advised that Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended states that:

'Subject to the provisions of this Order and regulations 73 to 76 of the Conservation of Habitats and Species Regulations 2010 (general development orders), planning permission is hereby granted for the classes of development described as permitted development in Schedule 2.'

Section 75 of the Conservation of Habitats and Species Regulations 2017 states that *'it is a condition of any planning permission granted by a general development order made on or after 30th November 2017, that development which -*

(a) Is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and

(b) Is not directly connected with or necessary to the management of the site, must not be begun until the developer has received written notification of the approval of the local planning authority under regulation 77 (approval of local planning authority).'

The application site falls within the Sussex North Water Supply Zone as defined by Natural England which draws its water supply from groundwater abstraction at Hardham. Natural England has issued a Position Statement for applications within the Sussex North Water Supply Zone which states that it cannot be concluded with the required degree of certainty that new development in this zone would not have an adverse effect on the integrity of the Arun Valley SAC, SPA and Ramsar sites.

In order to demonstrate water neutrality, an application under Section 77 of the Conservation of Habitats and Species Regulations 2017 would be required to be submitted, and development subject of this Prior

Approval application could not be carried out until a decision of such application has been made. Further details can be found through:-

https://www.horsham.gov.uk/planning/water-neutrality-in-horsham-district/regulation-77-conservation-of-habitats-and-species-regulations

Conclusion

The proposal has been considered in relation to all relevant conditions, limitations, and restrictions of Class Q in Part 3. As reasoned in detailed above, it is considered that the proposal would not comply with all relevant limitations of Class Q. Prior approval is therefore required and refused.

To benefit from a planning permission granted by Article 3 of the GPDO, the development must not be contrary to any condition on an existing planning permission (Article 3(4)). In this case condition 1 attached to planning permission SP/53/99 restricts the western side of the building to the keeping and training of racehorses. Alternatively, condition 3 attached to planning permission DC/05/2547 restricts the western side of the building to stabling used for full livery purposes and for no other purpose. Accordingly, the effect of either of these conditions is to exclude a grant of permission relating to this part of the building by the operation of statutory provision under the GPDO.

Recommendation: Prior Approval Required and refused

1 It has not been demonstrated to the satisfaction of the Local Planning Authority that the land was used for agricultural purposes on 24th July 2023**,** or ten years prior, and that the building was in agricultural use as part of an established agricultural unit for the purpose of trade or business as set out in Paragraph X of Part 3. The notification therefore does not comply with paragraph Q.1.(a) of Part 3, Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.

2 The building is subject of condition 1 of planning permission reference SP/53/99 and condition 3 of planning reference DC/05/2547, which restricts the use of the western side of the building to the keeping and training of racehorses and full livery stabling purposes respectively. The proposed development would be contrary to the condition imposed by the planning permissions granted. The proposal would not therefore constitute permitted development under Article 3(4) of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.

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: DC/25/0736
(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
Elevation plan	Proposed Elevations	2405-06-007 REV B	02.05.2025
Location plan	Site Location Plan	2405-06-001A	02.05.2025

Floor plan	Existing Floor Plan	2405-06-002	02.05.2025
Elevation plan	Existing Elevations	2405-06-003	02.05.2025
Site plan	Proposed Site Plan	2405-06-004 REV B	02.05.2025
Floor plan	Proposed Ground Floor Plan	2405-06-005 REV B	02.05.2025
Floor plan	Proposed First Floor Plan	2405-06-006 REV B	02.05.2025

DELEGATED

Case Officer sign/initial Kate Turner Date: 25.06.2025

Authorising Officer sign/initial Guy Everest Date: 26.06.2025