Statement of the Local Planning Authority

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PLANNING INSPECTORATE REFERENCE	APP/Z3825/W/25/3362215
LOCAL PLANNING AUTHORITY REFERENCE	DC/24/0400

Town and Country Planning Act 1990

Planning appeal by Mr N Morris
Appeal to be determined by an Inspector appointed by the Secretary of State by way of **Written Representation**

The appeal proposal

The application sought permission for the "Erection of a commercial storage building (Class B8)".

The application was refused by the Council on 16/09/2024 under delegated powers for the following reasons:

Reason 1:

"The proposed development, by reason of its location on land currently used as an open field, would not be located within the boundaries of an established industrial estate or result in substantial environmental improvement and reduce the impact on the countryside, thereby leading to incremental expansion of the industrial estate outside of its current boundaries to the harm of the countryside, contrary to Policy 10 of the Horsham District Planning Framework (2015)."

Reason 2:

"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), Paragraph 186 of the National Planning Policy Framework (2023), 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 Officer's delegated report outlines the relevant local plan policies in full. The purpose of this Statement is not to reiterate the plan policies considered within the assessment but 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 proposed development would be acceptable within its countryside location
2. Whether the development would be water neutral.

Reason for refusal 1:

Policy 10 of the Horsham District Planning Framework (HDPF) states that sustainable rural economic development and enterprise within the District will be encouraged in order to generate local employment opportunities and economic, social and environmental benefits for local communities. In the countryside, development which maintains the quality and character of the area, whilst sustaining its varied and productive social and economic activity, will be supported in principle. Any development should be appropriate to the countryside location, and must contribute to the diverse and sustainable farming enterprises within the District, or in the case of other countryside-based enterprises and activities, contribute to the wider rural economy and/or promote recreation in, and the enjoyment of, the countryside; and either be contained wherever possible within suitably located buildings which are appropriate for conversion, or in the case of an established industrial estate, within the existing boundaries of the estate; or result in substantial environmental improvement and reduce the impact on the countryside, particularly if there are exceptional circumstances where new or replacement buildings are involved.

Policy 26 of the HDPF states that outside built-up area boundaries, the rural character and undeveloped nature of the countryside will be protected against inappropriate development. Any proposal must be essential to its countryside location, and in addition meet one of the following criteria: support the needs of agriculture or forestry; enable the extraction of minerals or the disposal of waste; provide for quiet informal recreational use; or enable the sustainable development of rural areas. In addition, proposals must be of a scale appropriate to its countryside character and location. Development will be considered acceptable where it does 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.

The increase in built form would not be on an existing area of hard standing or be regarded as an infill development. It was not demonstrated to the satisfaction of the local authority during the application process that the development was sufficiently evidenced in regards to how the development would contribute to sustainable farming enterprises given the site is a mixed use enterprise, with a florist, workshops, storage, and farm machinery store which is associated with the southern extent of the site. The appeal submission appears to highlight that the proposal should be considered acceptable given that it would represent an extension of an existing industrial site, however the proposal itself would be attached to a commercial building which does not appear to benefit from planning permission and would itself extend into the open countryside. Whilst no certificate of lawfulness has been submitted in regards to this building, it appears from satellite pictures that the building has been in place for at least 10 years. Nonetheless, the development would be sited beyond the boundaries of the existing estate. The development proposed would not be contained the existing boundaries of the estate or be contained within a suitably located building appropriate for conversion, or result in substantial environmental improvement and reduce the impact on the countryside. The proposal would not therefore be in accordance with policy 10 of the HDPF. Furthermore, in respect of policy 26 of the HDPF, given the proposal is not essential to its countryside location and would not be considered sustainable development in regards to both water neutrality and would be contrary to policy 10, the proposal would not be in accordance to policy 26 of the HDPF.

There does not appear to be new evidence or argument submitted as part of the appeal submission which was not considered at the point of the planning application, other than general disagreement about the conclusion drawn and as such, the council remain of the view that the development would be contrary to the development plan.

Reason for refusal 2:

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.

Demonstrating water neutrality is a requirement of many types of development. The Local Planning Authority undertook an Appropriate Assessment and communicated their assessment of the development which was subsequently reviewed by Natural England. It would be unreasonable for the council to condition that the application site would in perpetuity, for the lifetime of the development to not have access to water when the use permitted might reasonably require water for staff facilities. A development must demonstrate satisfactorily for there to be reasonable certainty that the proposal would not give rise to an increase in potential water usage. The submission did not demonstrate the potential for water use within a storage use, and submitted no dedicated Water Neutrality statement, did not present existing use and would indicate that the additional potential staff would for between 6-8 people. There has been no Appellant statement of case submitted to the LPA with additional information in this regard. 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 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 whilst this report outlines the rationale of the LPA in response to the appeal information submitted, 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 submission 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 submission in addition, and whether the mitigation measures outlined are capable of meeting the conditions tests. For the competent authority to conclude that the development is water neutral, they must have reasonable certainty that they have sufficient evidence so as to conclude that the development is water neutral.

Conclusion

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, understood and assessed. The Council are therefore of the view that the planning application was appropriately considered and determined.

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 and should be dismissed.

Should the Inspector be minded to allow the appeal, then the following conditions are suggested on a without prejudice basis:

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-Occupation Condition**: No part of the development hereby permitted shall be occupied until the parking, turning and access facilities necessary to serve the development have been implemented in accordance with the approved details and shall be thereafter retained as such.

Reason: To ensure adequate parking, turning and access facilities are available to serve the development in accordance with Policy 40 of the Horsham District Planning Framework (2015).

4 **Regulatory Condition:** No external lighting or floodlighting shall be installed without the prior written approval of the Local Planning Authority. Any that is installed with the permission of the Local Planning Authority shall be maintained in accordance with the approved details

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

5 **Regulatory Condition**: The premises hereby permitted shall not be operated on Sundays or Public Holidays or at any time other than between 0700 to 1800 hours. Mondays to Fridays inclusive and 0700 to 1300 house on Saturdays.

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

6 **Regulatory Condition**: No raw materials, finished or unfinished products or parts, crates, packing materials or waste shall be stacked or stored on the site at any time except within the building hereby approved by the Local Planning Authority.

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

7 **Regulatory Condition**: The premises hereby permitted shall not be subdivided or otherwise increased in floorspace without the prior consent of the Local Planning Authority by way of a formal application.

Reason: To ensure the development is water neutral and avoid an adverse impact on the Arun Valley SAC / SPA and Ramsar sites, and in the interests of amenity, in accordance with Policies 31 and 33 of the Horsham District Planning Framework (2015).

8 **Regulatory Condition**: The premises hereby permitted shall be used solely for purposes falling within Class B8 Storage as defined in the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and reenacting that Order with or without modification. The premises shall not be used for any alternative use without express planning consent from the Local Planning Authority first being obtained.

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 proximity to neighbouring properties and the economic benefit the approved use provides under Policies 12, 13 and 33 of the Horsham District Planning Framework (2015).