RODWAY PLANNING
CONSULTANCY LIMITED

PLANNING STATEMENT

IN RELATION TO:

'Variation of the Approved Plans (detailed under Condition 'A' of the Decision Notice) under DC/14/0413, and as amended by Condition 1 on DC/15/0834 (Minor Material Amendments to Plot 2); condition 1 on DC/15/1712 (Minor Material Amendment to Plot 3); condition 1 on DC/21/2359 (Minor Material Amendments to the Site Area and Access), and DC/23/0069 (Minor Material Amendments to internal layout of both dwellings, with associated fenestration changes; and increase in size of the permitted garages), to allow for changes to the alignment and position of the access drive and refuse collection point. The access position remains unchanged.'

Site to the rear of former Longfield House, East Street, Rusper, West Sussex

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July 2024

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1.0 INTRODUCTION

1.1 This application is submitted on behalf of the landowner, Mr. John Sage of Mansion Acquisitions Limited.

1.2 Pursuant to Section 73 of the Town & Country Planning Act 1990, this application seeks permission for amendments to the development of 3 houses at the former Longfield House on the south side of East Street in Rusper. The site originally had permission in 2012 for a large replacement dwelling. Subsequently in 2014, permission was granted for 3 dwellings (reference: **DC/14/1413**), one property to replace Longfield House at the front of the site (Plot 1), and two further properties to the rear (Plots 2 and 3). The following year, two Minor Material Amendment applications (MMAs) were granted in respect to Plots 2 and 3 (references: **DC/15/0834** & **DC/15/1712**). Then another S73 application was permitted by the Council for a revised site area to accommodate a separate access to serve the 2 permitted dwellings, together with minor amendments to Plot 1 (application **DC/21/2359** refers). Most recently, a further S73 application was approved by the Council for amendments to include changes to the internal layout of the dwellings, resulting in Plot 2 becoming a 5-bed (previously 4-bed) property, with associated fenestration changes and the increase in size of the permitted garages serving both Plots 2 and 3 to include first floor home office space (application **DC/23/0069** refers).

1.3 The development was lawfully commenced in May 2017, in accordance with Condition 1 of the original 2014 permission.

1.4 This application now seeks to vary the Conditions relating to the approved drawings attached to these existing and extant consents for redeveloping the site.

1.5 The application seeks to vary:

- Condition 'A' as listed on the decision notice for DC/14/0413 (overarching permission for 3 dwellings), which lists the approved plans,
- Condition 1 of DC/15/0834 (MMA relating to Plot 2)
- Condition 1 on DC/15/1712 (MMA relating to Plot 3)
- Condition 1 on DC/21/2359 (MMA relating to site area and access).
- Condition 1 on DC/23/0069 (MMA relating to internal layout of houses, fenestration, and size of the garages)

The amendment now sought is material, but is of a very minor nature. Essentially it is now proposed to slightly readjust the position of the approved driveway. It will now be located 3 metres further to the east, but within the previously approved red line area. Further the crossover onto East Street is not proposed to be altered, and this will therefore remain in the same position as that previously approved. The proposed refuse collection point serving Plots 2 and 3 will be repositioned closer to the access into the site, now shown on the west side of the driveway. The previously approved passing bay will be retained further into the site on the east side of the driveway.

1.6 This Planning Statement is submitted in support of the above application. This statement should be read in conjunction with the documents detailed below:

- Drawing No. 1412/51/ Rev C – Site Plan
- Drawing No. 2120/05 Rev C - Site Plan; and
- Arboricultural Impact Assessment & Method Statement (dated 6th March 2024), prepared by Arbortrack Systems Ltd.

2.0 SITE CIRCUMSTANCES

2.1 The Application Site comprises a parcel of land that is accessed on its northern boundary from East Street, Rusper. The site comprises the curtilage of the former Longfield House (now demolished). The northern part of the Application Site benefits from separate, extant planning permission for a block of 6 flats (application reference: DC/15/2552), however it is not the Applicant's intention to now proceed with this. Instead are continuing to build out the 3 dwellings approved originally via application DC/14/0413, with work on Plots 2 and 3 at the rear (south) of the site now advanced.

2.2 The site borders open fields to the east. The land immediately to the northeast is in the same ownership as the Application Site. This neighbouring site now benefits from a planning permission for 6 dwellings (application reference: DC/21/2172). There are residential dwellings on large plots immediately to the west, with higher density housing beyond - all fronting onto East Street.

2.3 The original site access is set back from the road frontage. The site is relatively flat and well screened by trees and hedgerows.

2.4 The Rusper Conservation Area follows the same boundary line as the settlement edge of Rusper. The application site relates to land that is outside of the Conservation Area and the Built-up Area Boundary, as per the adopted Horsham District Planning Framework (2015). However, it is understood that the draft Local Plan (which is understood to be imminently submitted for independent examination), is proposing to extend the settlement boundary of Rusper to encompass this site.

3.0 PLANNING HISTORY

3.1 According to the Council's online planning records the Application Site has an extensive planning history. Having reviewed the cases it is considered that the most relevant planning permissions in respect to this S73 submission are as follows:-

- **Planning ref: DC/14/0413:** Erection of two detached dwellings and garages (to the rear of the site) and revisions to approved dwelling (permitted under DC/12/0353 dated 16/04/2012) together with a new access road. Application Permitted – 14th May 2014.
- **Planning ref: DC/15/0834:** Minor material amendments to detached dwelling (plot 2) previously approved under DC/14/0413. Application Permitted – 10th July 2015.
- **Planning ref: DC/15/1712:** Minor Material Amendment to detached house previously approved under DC/14/041 to create additional bedroom in roof with 2 x rear dormers. Application Permitted – 6th October 2015.
- **Planning ref: DC/21/2359:** Variation of condition A to previously approved application DC/14/0413 (Erection of two detached dwellings and garages (to the rear of the site) and revisions to approved dwelling (permitted under DC/12/0353 dated 16/04/2012) together with a new access road)) to allow for a revised site area to accommodate a separate access to serve the previously permitted 2no. dwellings at the rear of the former Longfield House site and additional minor amendments to Plot 1. Application Permitted – 11th March 2022
- **Planning ref: DC/23/0069:** Variation of condition A to previously approved application DC/14/0413 (Erection of two detached dwellings and garages (to the rear of the site) and revisions to approved dwelling (permitted under DC/12/0353 dated 16/04/2012) together with a new access road)) to allow for amendments include changes to the internal layout of the dwellings, resulting in Plot 2 becoming a 5-bed (previously 4-bed) property, with associated fenestration changes and the increase in size of the permitted garages serving both Plots 2 and 3 to include first floor home office space. Application Permitted – 24th March 2023

3.2 This Section 73 submission is required as the Applicant now proposes to make Minor Material Amendments to the previously permitted scheme. These amendments are set out below.

4.0 THE PROPOSALS

4.1 This s73 application seeks to vary the 'approved plans' conditions pursuant to the original permission for 3 houses on this site (**DC/14/0413**), and the subsequent MMA approvals relating to Plots 2 and 3 only (**DC/15/0834**, **DC/15/1712, DC/21/2359, and DC/23/0069**). The amendments now sought are material, but are all of a minor nature. They comprise:

- The repositioning of the driveway 3 metres to the east within the site; and
- The relocation of the refuse store to the west side of the realigned access drive, closer to the approved (and unchanged) site access point.

4.2 In all other respects the development is to remain as previously permitted, most recently via MMA application DC/23/0069.

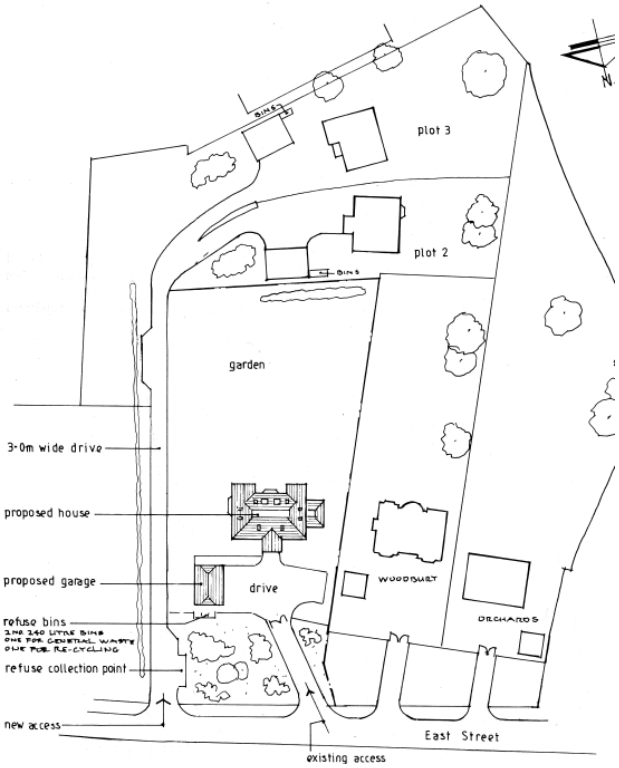

Fig 1. New proposed layout

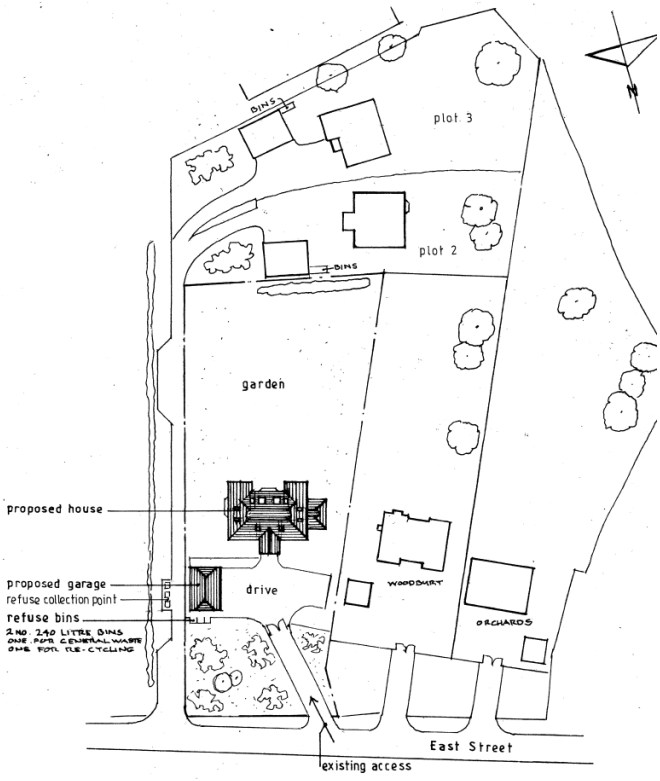

Fig 2. Previously approved layout plan (DC/23/0069)

4.3 All pre-commencement conditions attached to **DC/14/0413** have been discharged by the District Council and construction works commenced on site in May 2017, and works are now progressed substantially in respect of Plots 2 and 3 at the rear (south end) of the site. The relevant legislation confirms, however, that S73 applications can be made post grant of this application in respect of the same details, if appropriate.

4.4 The planning condition applicable to planning permission **DC/14/0413** is that detailed as Condition 'A'. In addition, this application also seeks to vary the approved drawing conditions referenced in the granting of subsequent MMA applications **DC/15/0834**, **DC/15/1712**, **DC/21/2359** and **DC/23/0069** (all are Condition 1).

5.0 PLANNING POLICY

(i) National Planning Policy Framework

5.1 The National Planning Policy Framework (NPPF) was originally published in 2012, and has been subject to a number of revisions, most recently in December 2023.

5.2 The NPPF confirms that planning law, as set out at Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990, requires that applications for planning permission to be determined in accordance with the development plan, unless material considerations indicate otherwise.

(ii) National Planning Policy Guidance

5.3 The following extracts of the National Planning Policy Guidance are considered relevant to this s73 application:

Amending the conditions attached to a permission including seeking minor material amendments (application under Section 73 TCPA 1990)

How are the conditions attached to a planning permission amended?

An application can be made under section 73 of the Town and Country Planning Act 1990 to vary or remove conditions associated with a planning permission. One of the uses of a section 73 application is to seek a minor material amendment, where there is a relevant condition that can be varied.

Paragraph: 013 Reference ID: 17a-013-20140306

Revision date: 06 03 2014

Are there any restrictions on what section 73 can be used for?

Planning permission cannot be granted under section 73 to extend the time limit within which a development must be started or an application for approval of reserved matters must be made. Section 73 cannot be used to change the description of the development.

Paragraph: 014 Reference ID: 17a-014-20140306

Revision date: 06 03 2014

What is the effect of a grant of permission under section 73?

Permission granted under section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. The new permission sits alongside the original permission, which remains intact and unamended. It is open to the applicant to decide whether to implement the new permission or the one originally granted.

A decision notice describing the new permission should clearly express that it is made under section 73. It should set out all of the conditions imposed on the new permission, and, for the purpose of clarity restate the conditions imposed on earlier permissions that continue to have effect. Further information about conditions can be found in the guidance for use of planning conditions.

As a section 73 application cannot be used to vary the time limit for implementation, this condition must remain unchanged from the original permission. If the original permission was subject to a planning obligation then this may need to be the subject of a deed of variation.

Paragraph: 015 Reference ID: 17a-015-20140306

Revision date: 06 03 2014

Is there a definition of 'minor material amendment'?

There is no statutory definition of a 'minor material amendment' but it is likely to include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved.

Pre-application discussions will be useful to judge the appropriateness of this route in advance of an application being submitted.

Paragraph: 017 Reference ID: 17a-017-20140306

Revision date: 06 03 2014

Can section 73 be used to make minor material amendments if there is no relevant condition in the permission listing approved plans?

Section 73 cannot be used to make minor material amendments if there is no relevant condition in the permission listing the originally approved plans.

It is possible to seek the addition of a condition listing plans using an application under section 96A of the Town and Country Planning Act 1990. This would then enable the use of a section 73 application to make minor material amendments.

Paragraph: 018 Reference ID: 17a-018-20140306

Revision date: 06 03 2014

Use of Planning Conditions

What are the main legal powers relating to use of conditions?

The main powers are in sections 70, 72, 73, 73A, and Schedule 5 of the Town and Country Planning Act 1990. Powers to impose conditions on appeal are also given to the Secretaries of State or their Inspectors by sections 77, 79, 177, and Schedule 6 of the Act. In some areas there may also be powers under local Acts which complement or vary the powers in the 1990 Act.

Section 70(1)(a) of the Act enables the local planning authority in granting planning permission to impose "such conditions as they think fit". This power needs to be interpreted in light of material considerations such as the National Planning Policy Framework, this supporting guidance on the use of conditions, and relevant case law.

A pre-commencement condition must not be imposed on the grant of permission (other than a grant of outline planning permission within the meaning of Section 92 of the 1990 Act) without the written agreement of the applicant except in the circumstances set out in the Town and Country Planning (Pre-commencement Conditions) Regulations 2018.

Paragraph: 002 Reference ID: 21a-002-20190723

Revision date: 23 07 2019

What options are available to an applicant who does not wish to comply with a condition?

Following the decision of a local planning authority to grant planning permission subject to conditions, an applicant may consider taking the following actions if they do not wish to be subject to a condition.

These options remain available where the applicant has agreed a pre-commencement condition, or the pre-commencement condition has been imposed where the applicant has not responded within the time limit set out in a notice served under the Town and Country Planning (Pre-commencement Conditions) Regulations 2018:

- *Some or all of the conditions could be removed or changed by making an application to the local planning authority under section 73 of the Town and Country Planning Act 1990. In deciding an application under section 73, the local planning authority must only consider the disputed condition/s that are the subject of the application – it is not a complete re-consideration of the application. A local planning authority decision to refuse an application under section 73 can be appealed to the Secretary of State, who will also only consider the condition/s in question.*
- *Appeal to the Secretary of State against the decision of the local planning authority to grant planning permission subject to conditions. An appeal must be received within 12 weeks of the date on the decision notice for householder planning applications or 6 months for other planning decision types. A Planning Inspector on behalf of the Secretary of State will re-determine the whole application (not only the decision to impose the conditions) – so there is a risk that the Inspector could refuse planning permission and therefore reverse the decision of the local planning authority. Further guidance on appeals.*

Development that is taken forward in breach of conditions may be subject to local authority enforcement action. It is also possible to apply for retrospective planning permission under section 73A of the Town and Country Planning Act 1990.
Further guidance on enforcement (including section 73A).

Paragraph: 031 Reference ID: 21a-031-20180615

Revision date: 15 06 2018

How are conditions treated under section 73?

The original planning permission will continue to exist whatever the outcome of the application under section 73. The conditions imposed on the original permission still have effect unless they have been discharged. In granting permission under section 73 the local planning authority may also impose new conditions – provided the conditions do not materially alter the development that was subject to the original permission and are conditions which could have been imposed on the earlier planning permission. For the purpose of clarity, decision notices for the grant of planning permission under section 73 should set out all of the conditions imposed on the new permission, and restate the conditions imposed on earlier permissions that continue to have effect.

Any pre-commencement conditions may not be imposed without the written agreement of the applicant to the terms of the condition (except in the case of a condition imposed on the grant of outline planning permission within the meaning of section 92 of the 1990 Act or in the circumstances set out in the Town and Country Planning (Pre-commencement Conditions) Regulations 2018). Further guidance on section 73.

Paragraph: 040 Reference ID: 21a-040-20190723

Revision date: 23 07 2019

(iii) Horsham District Planning Framework (HDPF 2015)

5.4 The following policies are considered relevant:

- **Policy 1** - Strategic Policy: Sustainable Development.
- **Policy 2** - Strategic Policy: Strategic Development.
- **Policy 3** - Strategic Policy: Development Hierarchy.
- **Policy 4** - Strategic Policy: Settlement Expansion.
- **Policy 15** - Strategic Policy: Housing Provision.
- **Policy 16** - Strategic Policy: Meeting Local Housing Needs.
- **Policy 24** - Strategic Policy: Environmental Protection.
- **Policy 25** - Strategic Policy: The Natural Environment and Landscape Character.
- **Policy 26** - Strategic Policy: Countryside Protection.
- **Policy 31** - Green Infrastructure and Biodiversity.
- **Policy 32** - Strategic Policy: The Quality of New Development.
- **Policy 33** - Development Principles.
- **Policy 37** - Sustainable Construction.
- **Policy 38** - Strategic Policy: Flooding.
- **Policy 39** - Strategic Policy: Infrastructure Provision.
- **Policy 40** - Sustainable Transport.
- **Policy 41** - Parking.

(iv) Neighbourhood Plans

5.5 A referendum was held for Rusper's Neighbourhood Plan 2018-2031 on Thursday 6th May 2021, where 88.03% of people voted in favour of the plan. The plan has therefore been made and can be afforded weight accordingly. The following policies are considered to be of relevance to this proposal:-

- **Policy RUS1**: Spatial Plan;
- **Policy RUS3:** Design;
- **Policy RUS5:** Green Infrastructure and Biodiversity;
- **Policy RUS11:** Promoting Sustainable Transport.

6. PLANNING ASSESSMENT

6.1 Section 73 of the Town & Country Planning Act 1990 allows applications to be made for permission to develop without complying with conditions previously imposed on a planning permission. The local planning authority can grant such permission unconditionally or subject to different conditions, or they can refuse the application if they decide that the original conditions should continue.

6.2 The original planning permission, as amended by the 4 no. subsequent MMA approvals, will continue to subsist whatever the outcome of this further application under section 73.

6.3 Section 73 cannot be applied if the period in the previous condition limiting the duration within which the development could begin has now expired without the development having begun.

6.4 In this case, the original planning permission (**DC/14/0413**) was approved by the Council via decision notice dated 14/05/2014. We can confirm that this original approval has had all pre-commencement conditions discharged, and initial development works commenced on-site in May 2017. The Applicant confirmed this via formal correspondence with the Council at that time. More recently works have advanced in respect of the construction of Plots 2 and 3 at the rear of the site.

6.5 The following material changes to the extant permission are included within this S73A application submission:

- The repositioning of the driveway 3 metres to the east within the site; and
- The relocation of the refuse store to the west side of the realigned access drive, closer to the approved (and unchanged) site access point.

6.6 Accompanying this S73 application are revised drawings that relate to these changes. Those drawings that have been previously permitted by the Council that are unaffected by these revisions are not consequently altered, and therefore we have not resubmitted these with this submission. Please refer to the most recent MMA approval (DC/23/0069) for the other approved drawings.

6.7 The changes to site layout that are now proposed will be barely perceived. These changes will not harm the visual amenities of the locality, with the streetscene being unaffected by the revisions. The repositioned driveway and refuse collection point will continue to be set a sufficient distance away from the neighbouring dwellings. The amenities of adjacent occupiers will not be adversely affected by these proposed revisions.

6.8 Arbortrack have provided a Tree Report given the repositioning of the driveway is close to frontage trees adjacent to East Street. The tree report confirms that *"The revised driveway does not require the removal of additional trees other than a small clump of blackthorn. Trees G20 & 4 are already consented for removal, as is tree 5, a dead oak. The footpath to the west of tree 6 has also been approved… The root protection areas (RPAs) of the on-site trees have been morphed (yellow lines) away from the main road to reflect existing site conditions. The revised driveway line does not influence the morphed RPA of tree 6, a roadside oak. On this basis, the driveway can be constructed to a conventional specification… The great majority of site works will take place beyond the RPAs of retained trees and canopies. Retained trees will be protected through the course of development by fencing to the specifications recommended by BS5837:2012."*

6.9 It is our opinion that the revised proposals would continue to represent a high quality development, which would visually enhance the character and appearance of the village of Rusper and its surrounding countryside setting. The application proposals would still protect of the intrinsic beauty and character of the rural area,

and it would accord with the design and landscape protection aims of policies 2, 4, 25, 26, 32 and 33 of the HDPF, whilst also being compliant with Policy RUS3 of the Rusper NP, and the NPPF.

6.10 It is considered pertinent that the site is set to be set within the settlement boundary when the new Local Plan is adopted, and further, the adjacent land to the east now has a separate planning permission for 6 dwellings. Therefore, there is an acknowledgement that the character of the site has shifted from rural to urban (albeit edge of settlement), with the site now contained by existing and approved residential development.

6.11 The description of the development is not proposed to be altered. The number and mix of units is to remain as per the original and subsequent permissions (**DC/14/0413; DC/15/0834**; **DC/15/1712; DC/21/2359;** and **DC/23/0069**). The proposals incorporate modest alterations to the approved driveway position and layout within the site. The approved access onto East Street is unchanged. Therefore, the proposals will not cause any discernible impact to the character of the surrounding area or the visual quality of the development site itself.

6.12 Consequently the proposed alterations will ensure that the development will continue to be of a high quality design and layout, which is in keeping with the East Street streetscene and the pattern of development in this part of Rusper generally. Therefore the proposals will accord with the relevant Development Plan policies.

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6. CONCLUSIONS

6.1 In submitting this application regard has been given to the relevant Local and Neighbourhood Plans, in addition to the guidance contained in the NPPF and NPPG.

6.2 Paragraph 56 of the revised NPPF states that *"planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects".* It is considered that the proposed revision to conditions numbered 1 of planning permissions **DC/15/0834**, **DC/15/1712**, **DC/21/2359** and **DC/23/0069** is entirely compliant with the NPPF's guidance in this respect.

6.3 The proposed alterations to the approved plans constitute 'minor material amendments' in the context of the development as a whole. **Importantly the quantum of development remains unchanged, and the application description also is unaltered by these revisions.** The scale and/or nature of the proposed amendments result in a development which is not substantially different from the one which has been approved. The application therefore accords with the guidance set out in the NPPG. As the proposal meets all the necessary policy requirements, and will cause no harm to any matter of identified acknowledged importance. In our opinion the overwhelming weight of evidence supports the granting of permission.

July 2024