Horsham District Council

DELEGATED APPLICATIONS - ASSESSMENT SHEET

APPLICATION NO./ADDRESS:
DISC/23/0240
Grove House, Elm Grove Lane, Steyning, West Sussex, Bn44 3SA,

DESCRIPTION:
Application for approval of details reserved by conditions 3,4,6A, 14, 17 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 3, 4, 6A, 14, and 17 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 3:

Condition 3 reads as follows:-

"No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for: i) the parking of vehicles of site operatives and visitors;

ii) loading and unloading of plant and materials;

iii) storage of plant and materials used in constructing the development;

iv) the erection and maintenance of security hoarding including decorative displays

and facilities for public viewing, where appropriate;

v) wheel washing facilities; and other works required to mitigate the impact of construction upon the public highway (including the provision of temporary Traffic Regulation Orders);

vi) details of public engagement both prior to and during construction works.

vii) measures to control the emission of dust and dirt during construction;

viii) a scheme for recycling/disposing of waste resulting from demolition and construction works;

ix) details of access through the site during the construction period

x) delivery, demolition and construction working hours

The approved Construction Method Statement shall be adhered to throughout the construction period for the development."

In response to the above condition the applicant has provided a Construction Method Statement, considered sufficiently detailed to address the various details/components addressed under Condition 3.

The Local Highways Authority and Council's Environmental Health team have reviewed the submitted Construction Method Statement, and are satisfied that the measures detailed within would acceptably maintain highway safety and operation and prevent unacceptable disturbance to nearby occupiers of land/property during construction operations.

Notwithstanding, Condition 3 prevents any development (including demolition) from taking place until relevant details of construction practices/management measures are approved by the Local Planning Authority.

The approval of details reserved by Condition 3, 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.

Condition 4:

Condition 4 reads as follows:-

"No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the Local Planning Authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:

i) a survey of the extent, scale and nature of contamination;
ii) the potential risks to:
• human health;
• property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
• adjoining land;
• ground waters and surface waters;

- *ecological systems; and*
- *archaeological sites and ancient monuments"*

In response to the above condition the applicant has provided a 'Stage 1' Site Investigation Report. The recommendations of the Report at section 1.11 include that further surveys are undertaken to establish the extent of made ground and potential degree of heavy metal, TPH and PAH contaminants. The Report, additionally, recommends that further testing of sample location 'WS6' for hydrocarbons, potentially including groundwater testing, is necessary to verify existing risk modelling following the demolition of existing structures. The submitted details do not contain a commitment to undertake further testing at location WS6, notwithstanding the recommendations of the Report in this regard.

The Council's Environmental Health team have reviewed the submitted Report and are not satisfied the details available fully characterise the extent of contamination present at the site and potential risk to future occupiers. In the absence of adequate detail, a reliable remediation strategy (as required by Condition 5) cannot be designed and implemented. The submitted details therefore, are insufficient to satisfy the requirements of Condition 4.

Even if the details submitted pursuant to Condition 4 were capable of approval, Condition 4 operates to prevent the commencement of development unless and until contamination risks have been assessed and approved by the Local Planning Authority. The approval of details reserved by Condition 4, therefore, would form an implementing consent and would enable development to proceed without a prior demonstration of water neutrality and the absence of 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 4 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.

Condition 6:

Condition 6 reads as follows:-

"No development (including demolition) shall commence until the following components of a scheme to deal with the risks associated with asbestos, have been submitted to and approved in writing by the Local Planning Authority: (a) an intrusive pre-demolition and refurbishment asbestos survey (in accordance with HSG264); (b) a verification report prepared by a competent person which confirms all asbestos or suspected asbestos containing materials have been removed."

Condition 6 is split into two parts (a) and (b), with the former requiring pre-demolition asbestos surveys and the later requiring a verification report upon completion of demolition operations.

Consent is sought to discharge only part (a) of condition 6, which follows logically from the 'pre-commencement' nature of the condition.

The applicant has provided an asbestos survey in support of this application, which has been reviewed by the Council's Environmental Health with no concerns raised as to its content and/or method.

Notwithstanding, Condition 6 prevents any development (including demolition) from taking place until an asbestos survey has been completed and approved.

The approval of details reserved by Condition 6, 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 6 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.

Condition 14:

Condition 14 reads as follows:-

"No development shall take place until a programme of archaeological work has been secured in accordance with a Written Scheme of Archaeological Investigation which has been submitted to and approved in writing by the Local Planning Authority."

In response to the above condition the applicant has provided a professionally conducted Written Scheme of Investigation. This has been reviewed by the Council's consultant archaeologists, who have raised no concern with its method and/or content.

Notwithstanding, Condition 14 prevents any development from taking place until a scheme of relevant archaeological investigations have been submitted and approved by the Authority. The approval of details reserved by Condition 14, 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 6 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.

Condition 17:

Condition 17 reads as follows:-

"No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved."

In response to the above condition the applicant has provided an arboricultural method statement, which includes a plan detailing the positions of relevant trees and their respective root-protection areas at page 8. The submitted details have been reviewed by the Council's arborist, who considers further detail necessary to establish the efficacy of mitigation measures outlined within the submitted arboricultural method statement. Detail of the position/extent of proposed tree protection fencing was considered necessary, as omitted from the plan included at page 8 to the method statement, together with section plans and build-specifications for 'no-dig' pathway construction and piled foundation construction (with associated ground beam), as proposed at section 2.3 to the method statement, in order to verify that relevant construction techniques can be implemented, including for a building of the approved height.

It is, therefore, considered that insufficient information is available to confirm that the measures proposed within the method statement are practicable and would ensure the successful retention of existing trees.

Even if the details submitted pursuant to Condition 17 were capable of approval, Condition 17 operates to prevent the commencement of development unless and until a scheme for the protection of retained trees has been submitted and approved by the Local Planning Authority.

The approval of details reserved by Condition 17, therefore, would form an implementing consent and would enable development to proceed without a prior demonstration of water neutrality and the absence of 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 4 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.

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.

A potential approval of details reserved by conditions 3, 4, 6A, 14, and 17, 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 must be refused.

Recommendation: Application Refused

Reasons for Refusal:

1.) It is not considered that the 'Phase 1' ground contamination survey submitted in response to the requirements of Condition 3 is sufficient to enable a full understanding of contamination risk. In the absence of sufficient detail an appropriate remediation strategy cannot be designed and assessed. The details submitted pursuant to Condition 6, therefore, are unacceptable.

2.) It is not considered that sufficient detail accompanies the submitted arboricultural method statement to establish the efficacy of recommended mitigation measures, and that such measures can be successfully implemented in the context of the approved development. Insufficient detail, therefore, is available to satisfy the requirements of Condition 17, and to establish the successful retention of existing trees.

3.) Conditions 3, 4, 6, 14 and 17 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/23/0240

(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 Statement	Asbestos demolition survey		08.11.2023
Supporting Statement	Construction method statement		08.11.2023
Supporting Statement	Archaeological evaluation excavation report		08.11.2023
Supporting Statement	arboriculture method statement		08.11.2023
Supporting Statement	Stage 1 tier 2 site investigation		08.11.2023
Supporting Statement	Planning Statement		08.11.2023

DELEGATED

Case Officer sign/initial Giles Holbrook Date: 22.03.2024

Authorising Officer sign/initial Adrian Smith Date: 23/04/2024