



DELEGATED APPLICATIONS - ASSESSMENT SHEET

APPLICATION NO./ADDRESS:

DC/26/1153

Abingworth Nurseries, Storrington Road, Thakeham, West Sussex,

DESCRIPTION:

Amendment of Condition 8 of previously approved application DC/18/2594 (Alterations to an existing building; retention for use as a village shop (class a1) with ancillary café facilities to part of ground floor, use of part of ground floor as veterinary practice (class D1) and change of use of upper floor to two flats (use class C3)) relating to Use Classes.

RELEVANT PLANNING HISTORY:

DC/10/1314	Demolition of existing buildings and redevelopment of the Abingworth Nursery site for 146 dwellings, comprising of open market dwellings, 51 dwellings for the 55 plus age group, 12 affordable dwellings, 20 key worker dwellings, village hall building (including shop and doctors surgery), pre-school facility, community workshops/studio (957.5sq metres), sports pitches and changing rooms, cricket pitch and pavilion, children's play area, access roads, open space and landscape areas (including footpaths).	Application Permitted on 19.04.2013
DC/16/2835	Variation of conditions No 1 to previously approved application DC/16/0871 by altering the housing mix and increase the housing number by 11, and provide a flat above the village shop.	Application Permitted on 08.08.2018
DC/18/2594	Alterations to an existing building; retention for use as a village shop (class a1) with ancillary café facilities to part of ground floor, use of part of ground floor as a veterinary practice (class D1) and change of use of upper floor to two flats (use class C3) relating to Use Classes.	Application Permitted on 23.04.2019

DESCRIPTION OF THE SITE

The building is part of the Abingworth development site permitted under application DC/10/1314 located within the Parish of Thakeham and accessed from Storrington Road. Works have largely been completed at the site with the development comprising 157 dwellings, including 123 open market dwellings, 16 affordable units and 20 local worker units as well as a number of community facilities. The village shop was permitted under application DC/10/1314, though subsequent applications have led to changes to its design and layout including DC/18/2594 which resulted in the addition of a veterinary practice and an additional second floor flat.

It should be noted that following changes to the Use Class Order in September 2020, both the village shop and veterinary practice now fall under Use Class E(a) and E(e) respectively (previously A1 and D1).

DESCRIPTION OF THE APPLICATION

The applicant is seeking to remove condition 8 of previously approved application DC/18/2594 which restricted the use of the two commercial premises on the ground floor. Condition 8 reads:

Regulatory Condition: *Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order amending or revoking and/or reenacting that Order), the ground floor of the premises hereby permitted shall be used for a veterinary surgery and retail unit and no other purposes whatsoever, (including those falling within Classes D1 or A1 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 re-enacting that Order with or without modification) without express written 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 potential amenity impact on adjacent residents under Policy 33 of the Horsham District Planning Framework (2015).

This condition currently requires an application to be made to the Council should the building be used for anything other than an A1 village shop or D1 veterinary surgery.

RELEVANT PLANNING POLICIES

The National Planning Policy Framework (NPPF)

Horsham District Planning Framework (2015):

Policy 7 - Strategic Policy: Economic Growth
Policy 9 - Employment Development
Policy 10 - Rural Economic Development
Policy 11 - Tourism and Cultural Facilities
Policy 12 - Strategic Policy: Vitality and Viability of Existing Retail Centres
Policy 13 - Town Centre Uses
Policy 14 - Shop Fronts and Advertisements
Policy 33 - Development Principles
Policy 43 - Community Facilities, Leisure and Recreation

Horsham District Local Plan (2023-40) (Regulation 19):

Strategic Policy 19: Development Quality
Strategic Policy 20: Development Principles
Policy 22: Shop Fronts and Advertisements
Strategic Policy 27: Inclusive Communities, Health and Wellbeing
Policy 28: Community Facilities, Leisure and Recreation
Strategic Policy 30: Enhancing Existing Employment

Planning Advice Notes:

Shaping Development in Horsham District (SDPAN)

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:

HDC Environmental Health: Comment

[Summary] There is no objection in principle to the proposal to remove condition 8 of approved application DC/18/2594 however the proposal to include all uses of the class E use class is a concern. It is recommended that the following uses are excluded from any permission given:

- E(b) sale of food and drink for consumption (mostly) on the premises
- E(d) indoor sport, recreation or fitness
- E(f) creche, day nursery or day centre (not including residential use)
- E(g)(ii) research and development of products or processes
- E(g)(iii) industrial processes.

PUBLIC CONSULTATIONS:

Representations:

2 letters of Objection have been received from 2 addresses, objecting to the application on the following grounds:

- Assuming there is a planned changed of use we have no information about what changes are being proposed, and fear that any changes would not be subject to consultation.
- One of the main reasons planning permission was granted was because a local shop would be provided to the village. Both the shop and vets are very much appreciated and necessary.

No letters of Support have been received.

Parish Comments:

Thakeham Parish Council: None received

Member Comments:

None received

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

As discussed above, the applicant is seeking the removal of Condition 8 of DC/18/2594 which would allow for permitted development rights to become applicable at the site, which is currently restricted in use to a village shop and veterinary practice. The reasons given in the submitted Planning Statement (ref. 131/26/MS) for this removal include: the condition is not reasonable or necessary; there is limited justification for the condition in the Officer Report; and the fact that other conditions exist to protect neighbouring amenity that would remain unchanged by this application (e.g. opening hours).

Should the removal of Condition 8 occur then the village shop and/or veterinary practice could change to one of the following uses within Use Class E without the requirement to seek planning permission from the Council:

- (a) Display or retail sale of goods, other than hot food;
- (b) Sale of food and drink where consumption is mostly undertaken on the premises;
- (c) Provision of the following kinds of services:
 - i) Financial,
 - ii) Professional (other than health or medical), or

- iii) Any other services which it is appropriate to provide in a commercial, business or service locality.
- (d) Indoor sport, recreation or fitness, not involving motorised vehicles or firearms;
- (e) Provision of medical or health services, except the use of premises attached to the residence of the consultant or practitioner;
- (f) Crèche, day nursery or day centre, not including a residential use;
- (g) For:
 - i) An office to carry out operational or administrative functions,
 - ii) The research and development of products or processes, or
 - iii) Any industrial process, being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

As noted in representations, the provision of a village shop was an important consideration in the granting of the original permission (DC/10/1314) as community facilities in Thakeham were limited and the location was therefore not seen as sustainable. Though ultimately the shop was reduced in size under permission DC/18/2594 due to lack of interest from larger businesses, no information has been submitted to suggest that the shop is no longer necessary or viable. It is therefore the view of Officers that the complete removal of Condition 8 would not be appropriate given the importance of the village shop in obtaining planning permission originally, and to the community more generally.

Officers do though consider it reasonable to amend the wording of Condition 8 to allow for more flexibility with the part of the building currently in use as a veterinary practice, given that this was a later addition and thus did not undermine the principles of the original permission. In line with the recommendations of the Environmental Health team to ensure the amenity of the residents on the 1st floor of the building is protected, Officers would consider the following uses within Class E to be acceptable:

- E(a) Display or retail sale of goods, other than hot food;
- E(c) Provision of the following kinds of services:
 - i) Financial,
 - ii) Professional (other than health or medical), or
 - iii) Any other services which it is appropriate to provide in a commercial, business or service locality.
- E(e) Provision of medical or health services, except the use of premises attached to the residence of the consultant or practitioner;
- E(g)(i) An office to carry out operational or administrative functions.

However, despite the above being considered acceptable by Officers it was initially unclear as to whether Condition 8 could be varied to include other uses given how specific the original description was. The original description for DC/18/2594 read:

'Alterations to an existing building; retention for use as a village shop (class a1) with ancillary café facilities to part of ground floor, use of part of ground floor as a veterinary practice (class D1) and change of use of upper floor to two flats (use class C3) relating to Use Classes.'

However, *Freddie Reid v SSLUHC & others [2022] EWHC 3116* is relevant where it was found that what can lawfully be done with a piece of land is not strictly confined to the description on the planning document but rather by operation of law (i.e. if a restrictive condition was removed, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 would continue to operate irrespective of the development description). This is relevant in this case as, if Condition 8 were to be removed, as the development has been first occupied in accordance with these uses, no planning permission would subsequently be required for a change of use within Class E despite the express reference to both A1 and D1 in the description.

It is acknowledged that in this case Officers are seeking to vary Condition 8 rather than remove it in its entirety and that case law states that you cannot add conditions inconsistent with the operative part of the development. While on face value allowing some Class E use is inconsistent with the references to

A1 and D1 in the description, because these uses have been implemented the Use Classes Order states that these uses can freely change within Class E absent of any restrictive condition.

It is therefore considered appropriate to vary Condition 8 to read:

Regulatory Condition: *Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 and the Town and Country Planning (Use Classes) Order 1987 (as amended by The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020) (or any order amending or revoking and/or re-enacting these Orders):*

- *The ground floor of the premises originally permitted as a veterinary surgery shall be used for Class E(a), (c), (e) and (g)(i) Use only and for no other purposes whatsoever without express planning consent from the Local Planning Authority by way of application; and*
- *The ground floor of the premises originally permitted as a retail unit shall be used for Class E(a) Use only and no other purposes whatsoever without express written consent from the Local Planning Authority by way of application.*

Reason: To ensure the village shop is retained in line with the original planning permission and as other 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 potential amenity impact on adjacent residents under Policy 33 of the Horsham District Planning Framework (2015).

Conclusions:

As set out above, Condition 8 has been amended to allow for a more flexible use of the building permitted for use as a veterinary practice under application DC/18/2594.

Whilst a consent under s73 creates a new planning permission for the site, government guidance set out in the PPG is clear that only the matters being amended are to be considered. It is not the purpose or function of a s73 consent to revisit the principle of development on the site. Accordingly, the principle of development on this site remains settled and acceptable, along with all other matters not subject to these proposed amendments.

The conditions attached to the planning permission are otherwise repeated in their entirety, except where details have subsequently been submitted and agreed under separate applications.

Recommendation: Application Permitted

Conditions:

- 1 Plans
- 2 N/A
- 3 **Regulatory Condition:** External lighting for the relevant uses shall be installed in line with details agreed under application DISC/20/0239 and thereafter retained as such.

Reason: To safeguard the amenities of the site and surrounds in accordance with Policies 32 and 33 of the Horsham District Planning Framework (2015)

- 4 **Regulatory Condition:** The dog waste bin shall be provided in line with the External Works Plan (ref. 1868 5180 REV C) agreed under application DISC/20/0239 and thereafter retained as such.

Reason: To secure adequate waste facilities for dog waste in accordance with Policy 33 of the Horsham District Planning Framework (2015)

- 5 **Regulatory Condition:** External plant shall be implemented in accordance with the Proposed Ground Floor Mechanical Ventilation Layout Plan (ref. 1868 6143) agreed under application DISC/20/0239 and no further plant shall be installed without the prior written approval of the Local Planning Authority.

Reason: In the interests of amenity of adjacent residents and in accordance with Policy 33 of the Horsham District Planning Framework (2015)

- 6 **Pre-Occupation Condition:** Provision for the storage of refuse and recycling shall be made in accordance with the submitted External Works Plan (ref. 1868-5180 REV C) and retained thereafter for use at all times.

Reason: To ensure the adequate provision of recycling facilities in accordance with Policy 33 of the Horsham District Planning Framework (2015)

- 7 **Regulatory Condition:** No dwelling hereby permitted shall be occupied or the uses hereby permitted commenced until the cycle parking facilities serving the development have been constructed and made available for use in accordance with approved drawing number 1868 2110 REV A. The cycle parking facilities shall thereafter be retained as such for their designated use.

Reason: To ensure that there is adequate provision for the parking of cycles in accordance with Policy 40 of the Horsham District Planning Framework (2015).

- 8 **Regulatory Condition:** Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 and the Town and Country Planning (Use Classes) Order 1987 (as amended by The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020) (or any order amending or revoking and/or re-enacting these Orders):
- The ground floor of the premises originally permitted as a veterinary surgery shall be used for Class E(a), (c), (e) and (g)(i) Use only and for no other purposes whatsoever without express planning consent from the Local Planning Authority by way of application; and
 - The ground floor of the premises originally permitted as a retail unit shall be used for Class E(a) Use only and no other purposes whatsoever without express written consent from the Local Planning Authority by way of application.

Reason: To ensure the village shop is retained in line with the original planning permission and as other 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 potential amenity impact on adjacent residents under Policy 33 of the Horsham District Planning Framework (2015).

- 9 **Regulatory Condition:** No work for the implementation of the development hereby permitted shall be undertaken on the site except between 08.00 hours and 18.00 hours on Mondays to Fridays inclusive and 08.00 hours and 13.00 hours on Saturdays, and no work shall be undertaken on Sundays, Bank and Public Holidays unless otherwise agreed in writing by the Local Planning Authority.

Reason: To safeguard the amenities of nearby residents in accordance with Policy 33 of the Horsham District Planning Framework 2015.

- 10 **Regulatory Condition:** Deliveries to and collections from the retail shop and veterinary premises (including any subsequent occupier as permitted by this consent) shall not take place other than between the hours of 0800-1800 Monday to Saturday and at no time on Sundays or Bank or Public Holidays.

Reason: In the interests of the amenity of adjacent residents and in accordance with Policy 33 of the Horsham District Planning Framework 2015.

- 11 **Regulatory Condition:** The veterinary premises (including any subsequent occupier as permitted by this consent) hereby permitted shall not be open for trade or business except between the hours of 0800 and 1900 Monday to Sunday.

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

- 12 **Regulatory Condition:** The retail unit premises hereby permitted shall not be open for trade or business except between the hours of 07.30 to 22.00 Monday to Friday and 08.00 to 22.00 on Saturday and Sundays.

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

- 13 **Regulatory Condition:** The outside seating area as indicated on drawing no.1868 2110 Rev A shall not be used except between the hours of 09.00 to 20.00 daily.

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

NOTE TO APPLICANT

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/26/1153

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

Schedule of plans/documents **approved:**

Plan Type	Description	Drawing Number	Received Date
Elevation plan	Existing Elevations	1868 2020	06.12.2018
Floor plan	Existing Floor Plans	1868 2010	06.12.2018
Floor plan	Proposed Floor Plans	1868 2110 A	17.12.2018
Location & Site plan	Location and Proposed Site Plan	1868 2101 B	17.12.2018
Elevation plan	Proposed Elevations	1868 2120 A	17.12.2018

DELEGATED

Case Officer sign/initial Sophie Moore Date: 10/09/2026

Authorising Officer sign/initial Adrian Smith

Date: 11/09/2026