Horsham District Council

DELEGATED APPLICATIONS - ASSESSMENT SHEET

APPLICATION NO./ADDRESS:
DC/24/0962
The Owl Barn, The Mount, Ifield, West Sussex, RH11 0LF

DESCRIPTION:
Variation of Conditions 1, 2, 3, and 4 of previously approved application DC/21/1274 (Demolition of existing agricultural barn and erection of a detached barn style dwelling house) variation sought on Water Neutrality, Contamination, removal and disposal of asbestos containing material, and materials.

RELEVANT PLANNING HISTORY:

DC/21/1274	Demolition of existing agricultural barn and erection of a detached barn style dwelling house	Application Permitted on 08.09.2021
DISC/22/0082	Approval of details reserved by condition 2a and 3 to approved application DC/21/1274	Split Decision on 27.06.2022

SITE AND SURROUNDS
The application site is located to the north of The Mount, outside any defined built-up area. The site is therefore within a countryside location in policy terms. The site is located approximately 2.2km from the built-up area of Rusper, and approximately 2km from the built-up area of Crawley. The site is located immediately to the north of a cluster of residential and agricultural buildings, with the wider surroundings characterised by paddocks, agricultural fields, and woodlands. Grade II listed The Mount Farm sits to the southeast to the opposite side of the road.

DETAILED DESCRIPTION
The application is made pursuant to the provisions of S.73 of the and Country Planning Act 1990, and seeks to vary conditions 1, 2, 3 and 4 of DC/21/1274.

RELEVANT PLANNING POLICIES
The National Planning Policy Framework (NPPF)

Horsham District Planning Framework (2015):
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 34 - Cultural and Heritage Assets
Policy 35 - Strategic Policy: Climate Change
Policy 36 - Strategic Policy: Appropriate Energy Use
Policy 37 - Sustainable Construction

Policy 40 - Sustainable Transport
Policy 41 - Parking

Rusper Neighbourhood Plan
Policy RUS1 – Spatial Plan
Policy RUS3 – Design
Policy RUS5 – Green Infrastructure and Biodiversity

Planning Advice Notes:
Facilitating Appropriate Development
Biodiversity and Green Infrastructure

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:

Southern Water: No objection
Following the review of the submitted documents. Southern Water has no objections to discharge condition 1 relating to (Water Neutrality) using Rainwater Harvesting.

WSCC Highways: No objection
This application seeks the Variation of Conditions 1, 2, 3 and 4 of approved application DC/21/1274 for details relating to water neutrality, contamination, removal and disposal of asbestos and materials. Having reviewed the submitted application documents, the proposals are not anticipated to impact highway safety and as such, no concerns would be raised to the proposed Variation of Conditions 1, 2, 3 and 4.

In summary, the LHA does not consider that this 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.

Ecology Consultant: No objection
We have reviewed the Covering Letter (Squires Planning, June 2024) and do not consider that the amended proposal will have any further impacts on ecology.

We have no further comments on this variation of condition application. Any remaining conditions relating to ecology for this consented development should be retained.

Natural England: Objection
The proposed development falls within the Sussex North water supply zone; As set out in Natural England's Advice Note regarding Water Neutrality within the Sussex North Water Supply Zone, the existing water supply in the Sussex North water supply zone cannot be ruled out as contributing to the declines in wildlife within internationally protected sites in the Arun Valley SPA, SAC and Ramsar site. Achieving water neutrality is recognised as a suitable method to rule out potential adverse effects on the integrity of these sites arising from development.

Considering the supporting information provided by the applicant and your authority's appropriate assessment our advice is as follows.

We concur with the conclusion of your authority's HRA appropriate assessment, insofar that further information is required in order to determine the significance of impacts on designated sites and the scope for mitigation, chiefly:

- Sufficient evidence that meter readings and dates are accurate, and further details of the animals present at the site.

Environmental Health: Comment
We have reviewed the Motion Rainwater Harvesting Management and Maintenance Plan dated 30.05.24, submitted as Appendix H of the Motion Technical Note 1: Water Neutrality Statement dated 16.07.24, and we have the following comments to make.

1. The fact that a report of this nature has been provided is welcomed. We note however that the following is stated in section 7.2 of the above-mentioned report It is understood that the system will be considered as a private water supply and, therefore, will be governed by the Private Water Supply Regulations 2016. These are regulated by the local council's Environmental Health Officer or Pollution Control Officer. However, the regulations in England and Wales do not require monitoring to be undertaken where the water supply is to a single domestic dwelling, unless the local authority is requested to do so by the owner or occupier of the dwelling, or if they are concerned that the supply presents a potential danger to human health. We appreciate that this is what is stated in the private water supply regulations, however given that the proposed rainwater harvesting system is crucial to the implementation of the proposed development and taking into account the potential risks associated with rainwater harvesting systems we are of the view that some testing of the rainwater harvesting system is required. Further information on the likely contaminants and proposed testing is therefore required in support of the application.

2. We ask that the above information is provided prior to determination.

3. We have also reviewed the letter from Squires Planning dated 24.06.24, including the information in relation to the land contamination and asbestos removal, and once we are satisfied with the above mentioned amendments then we would be happy to move to conditions and the proposed conditions are accepted.

Parish Comments:
It was RESOLVED no comment and to defer to the HDC planning officers for compliance of technical submissions regarding conditions imposed.

Representations:
One letter has been received in support of the application

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

Principle of development:

Planning Application DC/21/1274 was granted consent on 08/09/2021 with condition 2 stating that the development shall commence within three years- ie by 08/09/2024. This period has now expired and it does not appear that works to implement this permission have commenced.

In any event, it is noted that a pre-commencement conditions 2 and 3 were attached to this permission. A discharge of condition application was submitted in regards to conditions 2a and 3 (DISC/22/0082 refers). This was a split decision with the details pursuant to condition 2a not being sufficient and details for condition 3 being approved. Pre-commencement condition 2 relates to land contamination therefore it is considered to 'go to the heart' of the planning permission and without the details being approved and the permission enacted, the permission cannot be lawfully implemented. Therefore, even if a technical commencement has occurred prior to 08/09/2024, that would not have been in accordance with the planning permission. Accordingly it is not considered that planning permission DC/21/1274 can be lawfully implemented.

As planning permission DC/21/1274 has now lapsed, it is not possible to vary this permission under S73 of the and Country Planning Act 1990, as any s.73 consent would create a new planning permission that would not be capable of complying with condition 2 of the host permission DC/21/1274. Furthermore, S73 prohibits extending the lifetime of a permission. This application is therefore refused on this basis.

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 application reference DC/21/1274 pre-dates the Natural England Position Statement of 14 September 2021 therefore the Council did not consider the possible effects of development upon the Arun Valley sites by way of main-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. Consequently, the outstanding pre-commencement condition referred to above would not be capable of being discharged absent of an acceptable water neutrality strategy. This adds further evidence to planning permission DC/21/1274 being no longer capable of being lawfully implemented.

Conclusions:

Given the above considerations, the application would seek to vary a permission that has now lapsed without having been lawfully implemented. Conditions 2 is considered to form a conditions precedent and this condition has not been satisfied. Permission DC/21/1274 has now lapsed such that it is not possible to vary this condition under S73 of the and Country Planning Act 1990.

Recommendation: Application Refused

Reason(s) for Refusal:

1. Planning permission DC/21/1274 lapsed on 08/09/2024 with there being no evidence this permission was lawfully implemented. Accordingly, it is not possible under S73 of the Town and Country Planning Act 1990 to vary a planning permission that is itself no longer capable of being implemented within the initial statutory time period of three years.

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/24/0962
(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 Docs	Agent Cover Letter	NONE	25.06.2024
Supporting Statement	Water Neutrality Statement	NONE	25.06.2024
Supporting Statement	Method Statement for the removal and disposal of asbestos containing material	NONE	25.06.2024
Supporting Statement	Contamination Assessments	NONE	25.06.2024
Supporting Statement	Materials Assessment	NONE	25.06.2024

DELEGATED

Case Officer sign/initial Hannah Darley Date: 17/09/2024

Authorising Officer sign/initial Adrian Smith Date: 17/09/2024