



D&M PLANNING Ltd
Chartered Town Planners

1A High Street, Godalming Surrey GU7 1AZ | 01483425705 | info@dm-planning.co.uk
www.dm-planning.co.uk

Direct e-mail: [REDACTED]

Planning Department
Horsham District Council
Albery House
Springfield Road
Horsham
RH12 2GB

Dear Sirs

RE: RESPONSE TO DC/26/0945

PROPOSAL: VARIATION OF CONDITION 1 OF PREVIOUSLY APPROVED APPLICATION REFERENCE DC/22/0773 (VARIATION OF CONDITION 1 OF PREVIOUSLY APPROVED APPLICATION DC/19/1707 (REVISED LAYOUT FOR PHASE 3 OF THE ABINGWORTH MEADOWS DEVELOPMENT (ORIGINAL APPLICATION REF: DC/10/1314) TO PROVIDE FOR 75 DWELLINGS INCLUDING 26 AFFORDABLE DWELLINGS AND COMMUNITY STUDIO WORKSHOPS). AMENDMENT TO BUFFER STRIP TO REFLECT AN ADDITIONAL SWALE WITH LANDSCAPING (PART RETROSPECTIVE).

ADDRESS: ABINGWORTH NURSERIES, STORRINGTON ROAD, THAKEHAM, WEST SUSSEX

I am instructed to provide this consultation response concerning the application currently being determined under DC/26/0945. This application concerns the variation of condition 1 of DC/22/0773 to vary the approved plans. Specifically, it is a change for the plans concerning soft landscaping.

Our client is a neighbouring freehold landowner of the swale to the east, the building occupied by the shop/veterinary practice and the development at High Bar Lane. We have previously written to the enforcement team about the works which have been undertaken without the benefit of planning permission for which this application seemingly seeks to remedy.

In our correspondence to the Council's Enforcement Team, we raised the matter that the approach to allowing the works to continue was clearly in conflict with the need for suitable

consultation and transparency in the planning system. We are therefore concerned that as objectors we were not advised of the submission of the application and instead have had to find out about such through neighbouring property owners. A Freedom of Information request was made regarding the unauthorised works and would inform any further action taken by our client on such matters.

On the substantive grounds of the application, we write to raise a number of concerns about the submission as set out below under the relevant headers.

Nature of the Application

Firstly, we draw attention to the fact that the application is retrospective in nature being made under Section 73a. While it is recognised that the planning system does not distinguish in judgement between proposed and retrospective works (though there may be other planning implications), it would be reasonable to expect that the works listed in the statement and plans are comprehensive of those retrospective works.

The Covering Letter makes it appear that the only change to the proposal is the introduction of a swale to help mitigate flood risk that was only realised post-flooding of constructed properties. Despite this, it is highlighted that the plans clearly indicate other retrospective works which have also been carried out including those along and beside the adjacent public right of way. We therefore consider that the description of works within the Covering Letter is wilfully misleading.

Further, and of critical importance to this application, the wording as put forward in the Covering Letter for justification is: *As a result, it was agreed to deliver a new swale in the buffer zone to alleviate the flood risk.* Evidently, therefore the justification for the change is to do with the flood risk on site and how this could be addressed. We highlight, however, that whilst this is the case the variation sought is for condition 1 being the plans, **not** for any of the conditions relating to the drainage scheme notably condition 15 of DC/22/0773.

The absence of a variation of the details of this condition means that we are unable to critically explore a revised flood risk assessment and provide commentary on it. This has significant impacts as all of the landowners within the wider development are responsible for contribution towards the management company, who in turn have responsibility for the management of the flood risk systems. It does not allow for any consideration of downstream impacts, the financial increases that may be required, or any other matter relating to the flood risk procedures. It is wholly inappropriate to utilise a variation to conditions relating to the soft landscaping as an attempt to resolve a flood risk issue without seeking to vary that condition.

Fundamentally, such an approach deliberately shies away from the main matter of flooding to the extent that public consultation and engagement on the matter is not being undertaken. There is ample established case law regarding the lawfulness of decision making without due consultation relating to the prejudicial impacts of such. In this instance our client is prejudiced against in their inability to consider the revised flood risk assessment and strategy and the implications for their own interests. Any variation to the approved plans should not mitigate the need and instance of the Council for the variation of those conditions relating to flood risk so that they can be properly considered in the public realm. Any advancement that this does

not need to be the case is tantamount to decisions behind closed doors without regard to the public interest and the principles of consultation. Should this matter not be considered in the determination of the Council, and no subsequent application is forthcoming, then our client will explore legal intervention in the form of the Judicial review.

It is acknowledged that the Lead Local Flood Authority have not sought to raise objection to the scheme. We highlight that through our submitted FOI request we are in receipt of correspondence from the LLFA indicating that they could not approve the flood detailing without an application and due consultation. This, however, we contend simply highlights that this is not an application to amend the flood risk strategy but one to amend the plans to simply permit the swale. In light of this position the Council should not conflate any approval of the swale by virtue of varying Condition 1 to an agreed variation of Condition 15 relating to Flood Risk. We contend that to do so would be *fait accompli* to any future issues that arise as the enforceability of condition 15 would be questionable particularly once the developer no longer has control over the site. The position the Council would find themselves in is that they would have to seek enforcement of an approved flood risk strategy that, by the developer's own admission to the extent this application has been made, does not work.

Details of the Application

Notwithstanding the above, it is highlighted that there are a number of procedural flaws in the application which should be considered; some may be remedied but others are fundamental and cannot be resolved.

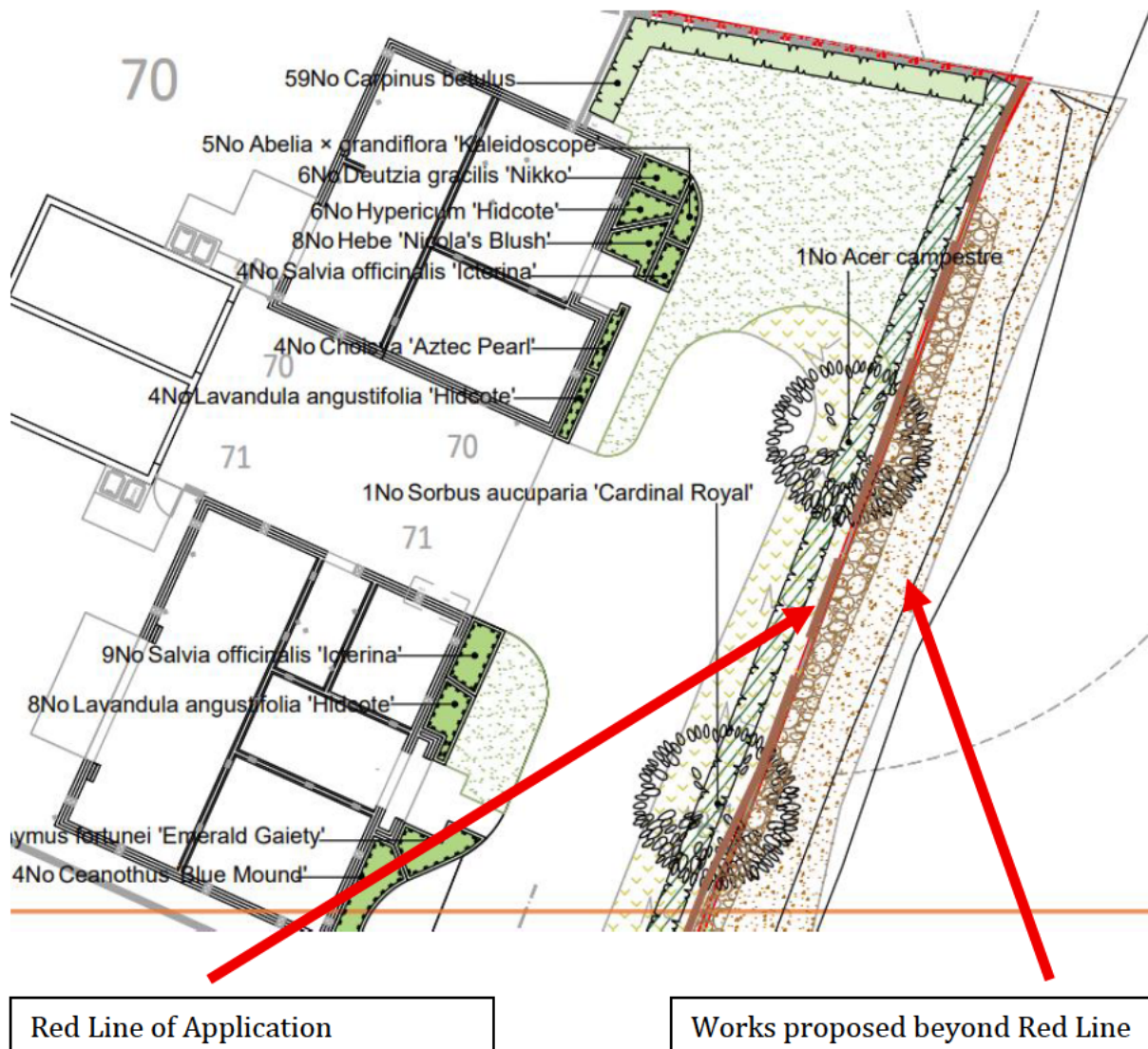
Firstly, it is highlighted that if regard is given to the red line of the application, it would appear that the location plan includes land outside of the applicant's control and for which Certificate B has not been served. This does not relate to our client's land owning but, nevertheless, it is an important procedural requirement that certificates are served on all relevant parties.

Of greater importance, we highlight, as per the image below taken from Sheet 2, that the application clearly proposes work outside of the red line of the application site. This fundamentally is not something which can be undertaken. As per the key of Sheet 2 the work proposed outside of the red line is for *Self draining Breendon Gravel, 200mm thick, applied to PROW*. Given the wording of the material and also the works which have been undertaken it would appear that these works form part of the critical flood risk strategy (though in the absence of those details being varied as part of the application this cannot be confirmed). Section 327A of the Town and Country Planning Act is clear on such matters that such applications should not be entertained.

In this scenario we do not consider there to be a way in which this conflict can be resolved. As a Section 73a, the red line of the location plan cannot be amended as this would constitute a new standalone application. Meanwhile, if this is omitted from the plan then these works would remain unauthorised and the area could not be relied upon to address the ongoing flood risk issues as they could not be relied on through proper management and maintenance. Any attempt to allow these to remain without recourse to the action would undermine the legitimacy of the application particularly when it relates to such fundamental matters as surface water drainage and flood risk alleviation. This is more pertinent if existing contributions for the

management company are expected to maintain this area when no formal consent from the landowner or Council seems to have been given for such.

The application is accompanied by a statement regarding the swale, but this really is solely for health and safety of its operation, not its actual function in the drainage strategy. It is not of any real relevance to the matters that the application states it is seeking to resolve.



It is our contention that this application should only really be considered as it is submitted, namely, for the installation of a swale for landscaping purposes. That swale, however, should not be relied upon for the alleviation of the flood risk/mitigation that it seeks to address. It should only be considered for purposes of landscaping as it is submitted for. This evidently does not address the matters that is given as justification for the retrospective works.

We do not consider that this application would regularise the unauthorised works that have been carried out and is quite frankly an attempt to bypass the due consideration and public scrutiny of the proposed revisions to the Flood Risk Strategy.

As per established practice and case law, it is the responsibility of the decision maker to give due consideration to all submissions about the application. The matters raised within this submission must therefore be considered. It is our view that there are limited outcomes from such and none of them resolve the unauthorised work that has been carried out, particularly when such work is prejudicial to our client's interests in the area and the wider estate. We emphasise that these points have been made several times to the Council without sufficient response or resolution.

If there are any questions or matters of clarification, please do not hesitate to contact me directly.

Yours sincerely,



D&M Planning Ltd