7 Thomas Turner Drive
East Hoathly
East Sussex
BN8 6QF

Telephone:01825 840082

E-mail: villageconcerns2016@gmail.com

Thursday, 28 July 2022

Dear Mr Robins,

Redrow Homes - Hesmond's Stud Detailed Planning Application WD/2022/0341/MAJ

Village Concerns Objection 7 - Extant Planning Condition on Hesmond's Stud Farm

1. We are writing to you as the Co-Chairs of Village Concerns, a local Action Group from East Hoathly with Halland Parish. We represent the views of over 200 supporters against the overdevelopment of our Parish.

2. We object to Planning Application WD/2022/0341/MAJ. We wish to restate our objection of 3 March 2022 that there are fundamental problems with this application:

   a. The application is incomplete and does not contain sufficient detail for a full planning application.

   b. The applicant's claim on their website (https://redrowconsults.co.uk/east-hoathly/|) to have begun the process of purchasing the site in early 2020. Elsewhere on the website they contradict this by saying they began the process of acquiring the site in Spring 2021. They also state on the website that they have exchanged contracts. At the public consultation event in November 2021 they went further and told many residents that they had purchased the site. We believe that this claim to be the owner of the site would amount to a breach of the planning obligation contained in the legal agreement that Planning Application WD/2020/2660/PO seeks to discharge.

3. We raised these matters with you on 3 March 2022 and you have not responded despite our request that you do so.

4. This objection covers matters relating to the extant planning obligation not to sever the legal or equitable ownership of the stud farm("the Planning Obligation"), which relates to the site. Further objections on other matters will follow. The sections highlighted in blue are quotes from Wealden District Council (WDC) documents or policy documents such as the National Policy Planning Framework (NPPF).

5. The Wealden Local Plan Core Strategy 2013 identified East Hoathly as "a Neighbourhood Centre which it defined as a settlement with limited, basic or no facilities but with access to another centre, or a settlement with facilities but poor accessibility or access only to a device or local centre". The Core Strategy 2013 also removed the Development Boundary from East Hoathly and proposed no growth for the Parish. In 2009, 75 homes were built in the Parish and since 2013 a further 16 have been built and 6 more are under construction. This equates to an average increase of 7 homes per year which is a 1.3% growth per year. In Wealden over this period the average growth has been 0.97%. It can therefore be seen that this Parish has already had more than its share of growth compared with Wealden. Fifty five new homes have been approved for South Street and if this application is approved it would amount to an additional 260 homes in the Parish.

6. For a Parish that WDC has identified for no growth, with no improvements in infrastructure and already a higher rate of housing growth than Wealden as a whole, it would be negligent to approve this application. This view is supported by a recent statement from the former Secretary of State for Levelling Up, Housing and Communities: "instead of creating and enhancing neighbourhoods we have seen dormitories planted in the wrong place in the wrong way".

Establishing the Extant Planning Obligation

7. Planning Committee South met on 13 October 2011 and approved Planning Application WD/2011/1560/MAJ provided that certain planning obligations were imposed. These obligations were set out in a Legal Agreement by Obligation dated 24 November 2011 (Hereafter referred to as the Principal Agreement). These Planning Obligations were imposed under Section 106 of the Town and Country Planning Act 1990, Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000 (as amended). This Legal Agreement remains in place and still serves a useful purpose. In essence this prevents the separation of the buildings from the remainder of the property and prevents the division of the property as a whole. The full wording of the Schedule of the Principal Agreement is:

"1. Not to sever the legal or equitable ownership of all dwellings and residential accommodation, stabling, office and the hospitality suite on the Property or any other part of the Property from the remainder of the Property by way of gift lease sale or other transaction nor to create any legal or equitable interest in all dwellings and residential accommodation stabling, office and the hospitality suite on the Property or any other part of the Property separate from the remainder of the Property.

2. Not to execute any disposition of any of the separate titles to the various parcels of land comprising the Property other than to vest the legal estate of the same into the name of one single transferee."

8. As part of the determination to impose these Planning Obligations, Planning Committee South were informed by The Officer's Report. This lays out a clear plan for the structure and operation of the Hesmond's Stud Farm business and the need for each of the four Yards. WDC commissioned the Rural Estates Surveyor to undertake an independent assessment of the proposal against the functional and financial criteria set out in Annex A of Planning Policy Statement 7. The Officer's Report states that "The proposed development will breathe life back into this once nationally renowned and respected Stud. It will provide a modest yet important increase in local employment which can only have a positive effect on the local economy. The proposals are for high quality bespoke stables, accommodation and corporate facilities for an active high level Stud. The development will have a positive effect on the wider landscape and on the residential amenities of neighbouring properties". The Planning Conditions imposed as a result of this were to ensure that the business could not be fragmented and would remain viable.

9. This matter had quite correctly been referred to Planning Committee South and it is they who approved the application subject to the imposition of the Planning Obligation. It should only be them who consider whether it is appropriate to discharge the Planning Obligation. Planning Application WD/2022/0341/MAJ suggests that it is a mere formality to discharge this Planning Obligation and the Planning Department have also indicated that they have no problem with this. We believe that this would be wrong and that such a decision should not be a delegated matter. These issues were not presented to Planning Committee South in 2020 when they determined planning application WD/2016/2796/MAO, and the matter should now be referred to them.

Extant Planning Obligation

10. We have considered the application to discharge the section 106 agreement dated 24 November 2011 between (1) Wealden District Council and (2) Swansea Enterprises Corp ("the Principal Agreement").

11. In particular, we have carefully read the Supporting Statement by Bourne Rural Planning Consultancy Ltd dated 10 December 2020.

12. Unfortunately, this statement fails to consider or correctly apply the correct legal framework for decisions under section 106A of the Town and Country Planning Act 1990 ("the 1990 Act").

13. Amongst the numerous legal errors in the statement, we draw the Council's attention to the following:

a. The statement relies extensively on the suggestion that the Principal Agreement was unnecessary, because the permission to which it relates (ref: WD/2011/1560/MAJ) ("the 2011 Permission") was policy compliant without the need for an agreement under section 106 of the 1990 Act: see, in particular, paragraphs 3.15-3.17; 3.20; 3.22-3.28; 3.29; 3.33-3.40 and 4.1-4.13.

b. We disagree with much of the analysis in these sections. However, legally it is irrelevant. These arguments seek to suggest that the obligation has never served a useful purpose, since it was not necessary to make the proposed development acceptable in planning terms. However, an argument to this effect was rejected by the High Court in R. (on the application of Mansfield DC) v Secretary of State for Housing, Communities and Local Government [2019] P.T.S.R. 540 at paragraphs 44-49. In particular, at paragraph 48, Garnham J noted that the contribution in that case was not necessary to make the development acceptable, but that was not the test under section 106A of the 1990 Act. In other words, an obligation may still have a useful purpose, even though when it was entered into it was not necessary to make the development acceptable in planning terms.

c. The statement devotes considerable effort to argue that, by reference to current local and national policy, the obligation does not serve a useful purpose: see, in particular, paragraphs 3.41-3.58. Again, this is not the correct approach. Section 38(6) of the Planning and Compulsory Purchase Act 2004 (which would require consideration of current local and national planning polices) does not apply to a decision under section 106A of the 1990 Act: see R. (on the application of Millgate Development Limited) v

Wokingham Borough Council [2011] EWCA Civ 1062 at paragraph 29 where it was held that "there is no need to revisit development plan policies" in a decision under section 106A of the 1990 Act.

d. In any event, whether or not a planning obligation serves a useful purpose, or would do so equally well if discharged, does not require that the useful purpose is related directly to the underlying development when it was imposed: see Mansfield (at paragraphs 42 and 43)). The focus of the application on the purpose of the Agreement by reference to the 2011 Permission is therefore misplaced.

14. The Council must ask itself (i) what purpose do the obligations in the Principal Agreement fulfil (ii) is that still a useful purpose. If it is, the application should be refused.

15. As the Planning Encyclopedia notes at P106A.06, the question of whether the obligation "serves a useful purpose" is not a high test.

16. Here, the purpose of the obligations is abundantly clear: to prevent the fragmentation of the "Property" as defined in the Principal Agreement. That is obviously still a useful purpose. There are many reasons for this, but it suffices to point to just one. At paragraph 3.63, the supporting statement says this:

> "It is evident that each yard has sufficient facilities to support the level of horses which generate the requirement for a worker to live on site to meet their welfare requirements. This means that any removal of the section 106 would not create circumstances whereby there is a worker's dwelling but no facilities associated with that dwelling. Each unit is a standalone yard and each is capable of functioning independently of all others".

17. If the Principal Agreement was discharged, the land in each yard associated with the dwelling permitted by the 2011 Permission could be sold off in its entirety separate from the dwelling. That would lead to a dwelling with no functional connection to the (now separate) yard.

18. There are of course, other reasons why it is still "useful" to retain the restrictions in the Principal Agreement. Not least, the benefits of avoiding the fragmentation of the wider stud into land held by separate landowners. This is undesirable in its own right. Further, it could impact the future viability of the stud and lead to pressure to change the use of the now fragmented land (not all of which could be controlled through the planning process – for example, a reversion to agricultural use would not require planning permission).

19. For all of these reasons, Planning Application WD/2020/2660/PO should be refused. Following on from this decision, Planning Application WD/2022/0341/

MAJ must also be refused as it proposes to demolish the residential accommodation at the American Barn Yard along with all the new equine facilities that were built less than a decade ago. Furthermore, it proposes to separate the American Barn Yard from the remainder of Hesmond's Stud Farm and this would be a clear breach of the Principal Agreement.

Deeds of Release from Planning Condition

20. There have been three occasions when a Deed of Release has been permitted to the Extant Planning Obligation on Hesmond's Stud Farm. This has been for very small transactions of land that have not challenged the viability of the Hesmond's Stud business and hence not challenged the "useful purpose" that caused the Planning Obligation to be imposed. The three occasions have been:

a. **Deed of Release 20 June 2012**

(1) This sought the transfer of two fields (Pine and Longfield totalling 3 Hectares) adjacent to the gardens of Hesmond's House from Hesmond's Stud Farm to the owners of Hesmond's House.

(2) This matter was related to Planning Application WD/2011/1560/MAJ approved by Planning Committee South. It was agreed and the land was released from the provisions of the Principal Agreement.

b. **Deed of Release 29 October 2012**

(1) This sought the demolition of Whyly Cottage and the building of a larger dwelling in its place and for the new dwelling and its curtilage to be released from the Principal Agreement.

(2) The legal agreement states that "The Owners are desirous that the Land be released from the provisions of the Principal Agreement (as amended) and the Council is agreeable to such a release being granted subject to the Owner agreeing to restrict the future use of the Land. That restriction on the future use is that The Owner covenants with the Council not to use or permit to be used the Land or any part thereof for any purpose whatsoever other than for the purpose of residential occupation by a person or persons employed in the management of the Land as defined in the Principal Agreement (as amended); or a person forming part of the same household of such a person referred to including his dependants".

(3) This matter was related to Planning Application WD/2011/1560/MAJ approved by Planning Committee South. It was agreed and the land was released from the provisions of the Principal Agreement.

c. **Deed of Release 30 April 2013**

(1) The Parish Council sought to exchange a portion of Harrison's Field amounting to 1.61 Hectares (then in the ownership of Hesmond's Stud Farm and subject to the Principal Agreement) and Long Pond amounting to 0.45 Hectares (then in the ownership of East Hoathly with Halland Parish Council). The objective being to provide a site suitable for the establishment of an allotment site for the Parish. Planning Application WD/2012/1190/F proposed the amendment of the Principal Agreement to enable this.

(2) This matter was referred to Planning Committee South. The Officer's Report for Planning Application WD/2012/1190/F was very clear in its Executive Summary "This field is on the very fringe of the Stud and the only land south of London Road, and the small area of 1.5 Hectares to be released is not required to ensure that the Stud is capable of continuing to operate effectively. Whilst it is important to be clear that this should not be the *"thin end of the wedge"* and that the majority of the land needs to stay within the Stud's control and usage, this land is only a very small portion of the wider land in the ownership of the Stud and would not compromise its operation".

(3) The case officer for this report was Chris Bending, now the Director of Planning, Policy and Environmental Services. Village Concerns wholeheartedly support his statement that this should not be the *"thin end of the wedge".* No other interpretation can follow from Mr Bending's statement other than to refuse Planning Application WD/2020/2660/PO. Following on from this decision, Planning Application WD/2022/0341/MAJ must also be refused.

(4) It is also of note that Planning Application WD/2012/1280/PO sought to modify a Section 106 Agreement for the Long Pond site by removing the requirement for the land to be a public open space. This application was referred to Planning Committee South and the reason for the referral cited in the Officer's Report dated 2 August 2012 was that "the original planning application (Planning Application WD/1991/2335/F) was subject to consideration of Members at planning committee in 1991". By this logic, the same should apply to Planning Application WD/2020/2660/PO and it should be referred to Planning Committee South as it was they who considered the original application.

Planning Department

21. Village Concerns is troubled by the performance of the Planning Department. There appears to be a loss of trust and effective working relationship with the members of planning committees. It is widely reported that planning officers are refusing to represent the Council if the planning committee have gone against the advice of the planning department. This seems to challenge the whole process of the planning system. Planning Officers are effectively saying that the planning committee should always do as they are told. The elected councillors are quite rightly exercising their judgement and the planning department should do what they are paid to do. It makes one wonder, who is running Wealden?

22. Village Concerns are also concerned that the staffing levels and turnover of staff in the Planning Department are impacting Wealden's duty to deal with public enquiries. Public enquiries are now normally met with delayed responses, excuses of staff shortages, holidays or an overload of work. We are not unsympathetic to the position staff find themselves in but we do not accept that it should impact on planning matters that are of significant importance to peoples lives. WDC should be implementing a plan to provide sufficient staff to cope with their duties to the public.

23. Village Concerns has made repeated requests that Planning Application WD/2020/2660/PO be referred to the Planning Committee. Planning Application WD/2022/0341/MAJ now implies that it is inevitable that you will approve the discharge of these Planning Conditions. Our District Councillor and Parish Council have also requested that this matter be referred to the Planning Committee. The Planning Department has repeatedly refused to do this and merely states that it is not obliged to do so. Notwithstanding all of the arguments and precedents made above, one has to ask, what is the planning department scared of? What would be at risk, if the issue is so straightforward, then let the Planning Committee decide based on the strength of the arguments. There is a significant level of public interest in this matter and to not allow the decision to be made in public after full and proper consideration would be scandalous and improper.

Conclusion

24. In 2011, planning obligations were set out in a legal agreement to prevent the fragmentation of Hesmond' Stud. This legal agreement remains in place and still serves a useful purpose. These planning obligations were imposed by Planning Committee South and it is them who should determine if this useful purpose remains valid.

25. The Planning Department have considered approving a Deed of Release from this legal agreement on 3 occasions since it was imposed. On each occasion the matter was referred to Planning Committee South. On the occasion of a proposed land swap in 2012 the Planning Officer made it clear that the approval of the land swap should not be the *"thin end of the wedge".* It is extraordinary that the Planning Department are continuing to refuse to accept that the separation of one whole yard and 13 hectares for the construction of 205 homes does represent the *"thick end of the wedge"*.

Katherine Gutkind and Kathryn Richardson
Co-Chairs
Village Concerns

cc

Councillor Draper
Parish Council

Director of Planning, Policy and Environmental Services
Councillor Stedman
Councillor Snell
Councillor Blake-Coggins
Councillor Bowdler
Councillor Cleaver
Councillor Grocock
Councillor Guyton-Day
Councillor Howell
Councillor Stephen Shing
Councillor Watts
Councillor White
Councillor Baker
Councillor Cade
Councillor Clark
Councillor Coltman
Councillor Doodes
Councillor Douglas
Councillor Hallett
Councillor Johnson
Councillor Lunn
Councillor Moss
Councillor Owen-Williams
Councillor Redman
Councillor Daniel Shing
Councillor Sparks