7 Thomas Turner Drive
East Hoathly
East Sussex
BN8 6QF

Telephone: 01825 840082

E-mail: villageconcerns2016@gmail.com

Wednesday, 17 February 2021

HESMOND STUD FARM, EAST HOATHLY

1. The Steering Group of the Village Concerns Action Group represent the views of over 200 supporters from our community.

2. Planning Committee South (PCS) considered Planning Application WD/2016/2796/MAO for 205 homes at Hesmonds Stud in East Hoathly on 16 July 2020. You resolved to grant Outline Consent for this Application although a Decision Notice has not yet been issued. Planning Application WD/2020/2660/PO now seeks to discharge planning conditions for the whole of the Hesmonds Stud Farm land. These matters are interrelated and we ask that you consider returning this matter to PCS for full consideration.

Planning Application WD/2011/1560/MAJ

3. The Planning Conditions were imposed by WDC in 2011 as a result of Planning Application WD/2011/1560/MAJ. This Application identified the four stable yards and their different functions. It proposed the provision of yard manager accommodation at each yard and the upgrading of the facilities. Also the creation of The Lake House where the owner of the Stud would live. The four yards and The Lake House were one business. The investment was met with approval by the local community and hence there were no objections. There was no suggestion that it was anything other than one business.

4. Within 5 years the Stud decided that it no longer needed the American Barn Yard. An Application was submitted (WD/2016/2796/MAO) in 2016 to build 205 homes. Part of that proposal included the demolition of the recently refurbished American Barn, Stables and yard managers accommodation. Within hours of the Planning Committee voting to approve the Outline Consent for this Application in 2020, Hesmonds Stud put the Tourles Farm Yard up for sale as a working Stud Farm. The remaining 2

Yards have been put forward for housing in the most recent “call for sites” in the Wealden Local Plan SHELAA process. The bulk of the livestock at the Stud has been relocated to France with the clear intention of running down the stud business in East Hoathly.

5. It is quite clear that the Conditions were imposed on the 2011 Planning Application precisely to prevent the breaking up of the existing Hesmonds Stud business. There was never any suggestion in 2011 that all four yards were not part of an integrated business. There was no suggestion that the American yard was superfluous and was about to be put up for housing development. When the Hesmonds application was submitted in 2016 and when it was determined in 2020, there was no suggestion that the Stud was about to put Tourles Farm up for sale. There is no mention in this current Application that the Stud business has mostly already been relocated to France and that the owner has offered up the remaining 2 yards up for housing development.

Planning Application WD/2020/2660/PO

6. This Application proposed the discharge of all planning conditions for the whole of Hesmonds Stud Farm. If approved it will allow Hesmonds Stud business to cease. The continued viability of the Stud business was raised by many villagers and Village Concerns in objections to the Application to build 205 homes. These views were not represented by the Planning Officer in his summary of Third Party Responses nor his oral presentation. The 2011 Application was mentioned in his report but the planning conditions were not detailed nor their effect on the permitted use of the land nor the fragmentation of the land and buildings.

7. This Application also ignores the general principle of Agricultural Land Use. This land is for agricultural use. The current Stud business is one form of agricultural use. If the Stud business changes then it remains land for agricultural use and should revert to other forms of farming as it has done for at least the last 400 years.

8. Paragraph 3.12 of this Application states that: In terms of financial viability, the rural estates surveyor concluded that: “I consider it is fair to conclude that these proposals for the continuation and development of the stud are indeed genuine, reasonably likely to materialise, and are capable of being sustained for a reasonable period of time.” We argue that 2011 to 2016 is not a reasonable period of time. We suspect that the intention all along was for the constructive asset stripping of this land and that it was always intended to put the land up for housing development. As such, the 2011 Application was disingenuous and the 2016 Application also concealed the full scope of the plans that have now emerged.

9. This Application is legally unsound and should be refused. It appears that this matter has been delegated to a planning officer for decision. We believe that this matter would have been germane to your consideration of the Application WD/2016/2796/MAO in 2020 and that you should revisit this.

10. We have sought legal advice on this Application and our objection is attached at Annex A.

Planning Application WD/2016/2796/MAO

11. In addition to this, it has also come to light that the legal owner of the land was incorrectly identified on Planning Application WD/2016/2796/MAO and the legal owner was not therefore informed of the Planning Application.

12. We have significant concerns that you were not made aware of all the details related to the planning conditions on this land when you resolved to grant Outline Consent for 205 homes in 2020. Those of you who sat on PCS on 16 July 2020 may well have voted differently if you had been aware of these matters.

Conclusion

13. We believe that this maladministration and the unsound application to discharge planning conditions are grounds to re-examine Planning Application WD/2016/2796/MAO and that this would give you the opportunity to reconsider the decision to ignore the advice of Historic England, your own Conservation Officer and a significant number of people who object to this Application.

Katherine Gutkind and Tania Freezer
Co Chairs
Village Concerns

Annex A

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East Hoathly
East Sussex
BN8 6QF

Telephone: 01825 840082

E-mail: villageconcerns2016@gmail.com

Wednesday, 17 February 2021

PLANNING APPLICATION WD/2020/2660/PO

Application WD/2020/2660/PO for the: Discharge of the Planning Agreement by Obligation between Wealden District Council and Swansea Enterprises Corp (dated 24 November 2011). Site: Hesmonds Stud, London Road, East Hoathly, Lewes, BN8 6EL. Bourne Rural Planning Consultancy Ltd December 2020

1. The Steering Group of the Village Concerns Action Group represent the views of over 200 supporters from our community. We object to Planning Application WD/2020/2660/PO for the Discharge of the Planning Planning Agreement by Obligation between Wealden District Council and Swansea Enterprises Corp (dated 24 November 2011). Site: Hesmonds Stud, London Road, East Hoathly, Lewes, BN8 6EL. Bourne Rural Planning Consultancy Ltd December 2020.

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

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

4. 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").

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

(1) The statement relies extensively on the suggestion that the 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.

(2) 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 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, a contribution still have a useful purpose, even though when it was entered into it was not necessary to make the development acceptable in planning terms.

(3) 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.

(4) 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.

6. In truth, cutting through the arguments in the supporting statement, it is plain that the application must be refused. The Council must ask itself (i)

what purpose do the obligations in the Agreement fulfil (ii) is that still a useful purpose. If it is, given that the application seeks to discharge the Agreement in its entirety, the application should be refused.

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

8. Here, the purpose of the obligations is abundantly clear: to prevent the fragmentation of the "Property" as defined in the Agreement. That obviously is 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".

9. If the 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 a dwelling with no functional connection to the (now separate) yard.

10. There are of course, other reasons why it is still "useful" to retain the restrictions in the 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 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).

11. For all of these reasons, the application should be refused.

Katherine Gutkind and Tania Freezer
Co Chairs
Village Concerns