

## Delegated Decision

### Sign off Sheet

|                                              |                                                                                                                                                                                                                            |                                        |                        |
|----------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|------------------------|
| <b>Ref. No:</b>                              | DM/25/0858                                                                                                                                                                                                                 | <b>Case Officer:</b>                   | Susan Dubberley        |
| <b>Application Type:</b>                     | Removal/Variation of Condition                                                                                                                                                                                             |                                        |                        |
| <b>Proposal:</b>                             | Variation of condition 2 of planning application DM/21/2136 - To enable works to commence on construction of access ahead of approval of details reserved by condition in relation to the Flood Emergency Evacuation Plan, |                                        |                        |
| <b>Site:</b>                                 | Land At Tulleys Farm, Turners Hill Road, Turners Hill, West Sussex, , , ,                                                                                                                                                  |                                        |                        |
| <b>Validation Date</b>                       | 28 Mar 2025                                                                                                                                                                                                                | <b>Overall Expiry Date:</b>            | 24 Apr 2025            |
| <b>Pre-Commencement Conditions Required:</b> |                                                                                                                                                                                                                            | <b>Pre-Com Conditions Date Agreed:</b> |                        |
| <b>Recommendation:</b>                       | Permission                                                                                                                                                                                                                 | <b>Recommendation Date:</b>            | 21 May 2025            |
| <b>Target Date:</b>                          | 27 Jun 2025                                                                                                                                                                                                                | <b>Recommending Officer Signature:</b> | <i>Susan Dubberley</i> |

|                                                        |  |                               |   |
|--------------------------------------------------------|--|-------------------------------|---|
| <b>Date Legal Agreement Completed: (if applicable)</b> |  | <b>No of Representations:</b> | 0 |
|--------------------------------------------------------|--|-------------------------------|---|

|                              |                        |              |             |
|------------------------------|------------------------|--------------|-------------|
| <b>Signed and Agreed By:</b> | <i>Stephen Ashdown</i> | <b>Date:</b> | 27 May 2025 |
| <b>Comments:</b>             |                        |              |             |

## MID SUSSEX DISTRICT COUNCIL

**DM/25/0858**

**Land At Tulleys Farm, Turners Hill Road, Turners Hill, West Sussex, , ,  
Variation of condition 2 of planning application DM/21/2136 - To enable works to commence on construction of access ahead of approval of details reserved by condition in relation to the Flood Emergency Evacuation Plan,  
BA Beare And Sons**

### **SUMMARY OF REPRESENTATIONS**

None received.

### **SUMMARY OF CONSULTATIONS**

#### **WSCC Lead Local Flood Authority:**

No objection to the variation of [as worded] Condition 2 as this is with respect to highways enabling works that is out of the LLFA remit with respect to surface water flooding.

#### **Turners Hill Parish Council**

Support the application.

### **INTRODUCTION**

This application seeks to amend a planning condition (condition 2) attached to a previous planning permission DM/21/2136 which gave consent for the creation of 3 fishing lakes for leisure. The variation of the condition is to enable works to commence on construction of access ahead of approval of details reserved by condition in relation to the Flood Emergency Evacuation Plan.

### **RELEVANT PLANNING HISTORY**

DM/21/2136 - Proposed creation of 3 fishing lakes for leisure use. Granted 24/11/2022.

DM/20/3790 - Application for the retention of 3 storage containers for a further 12 month period (renewal of DM/19/1140). Granted.

DM/19/1140 - Retrospective application for retention of 3 storage containers for a 12 month period. Granted.

### **APPLICATION DETAILS**

The application seeks to vary condition 2 of DM/21/2136 which states:

*The development hereby permitted shall not commence unless and until details of the Flood Emergency and Evacuation Plan have been submitted to and approved in writing by the local planning authority in conjunction with West Sussex Lead Local Flood Authority. The Flood Emergency and Evacuation Plan shall follow the format set out within the Flood Emergency and Evacuation Plan Framework submitted as part of planning and cover the lifespan of the development and needs to follow the best practice guidance set out in ADEPT & EA (2019) Flood risk emergency plans for new development. In addition, the Flood Emergency and Evacuation Plan shall include evidence of engagement with key stakeholders, including the results thereof. The development shall not be brought into use until all elements of the approved Flood Emergency and Evacuation Plan have been brought into effect. The Flood Emergency*

*and Evacuation Plan shall be reviewed annually (or as agreed as part of the Plan) by individuals with the relevant knowledge, skill and experience and is to remain in effect for the lifetime of the development.*

*Reason: To ensure that the development is safe and emergency measures are in place for the lifetime of the development and to comply Policy DP41 of the Mid Sussex District Plan (2014 - 2031).*

The application seeks variation of Condition 2 in order to allow the creation of the construction access and haul route, so that condition 2 would be amended to read as follows:

*No development hereby permitted, except for the works to form the revised means of access on to Turners Hill Road for construction works and the associated haul route, shall commence unless and until details of the Flood Emergency and Evacuation Plan have been submitted to and approved in writing by the local planning authority in conjunction with West Sussex Lead Local Flood Authority. The Flood Emergency and Evacuation Plan shall follow the format set out within the Flood Emergency and Evacuation Plan Framework submitted as part of the planning [application] and cover the lifespan of the development and needs to follow the best practice guidance set out in ADEPT and EA (2019) flood risk emergency plans for new development. In addition, the Flood Emergency and Evacuation Plan shall include evidence of engagement with stakeholders, including the results thereof.*

*The development shall not be brought into use until all elements of the approved Flood Emergency and Evacuation Plan have been brought into effect. The Flood Emergency and Evacuation Plan shall be reviewed annually (or as agreed as part of the Plan) by individuals with the relevant knowledge, skill, and experience and is to remain in effect for the lifetime of the development.*

*Reason: To ensure that the development is safe and emergency measures are in place for the lifetime of the development and to comply with policy DP41 of the Mid Sussex District Plan (2014 - 2031).*

The applicant has stated that the amended wording is required as the applicant wishes to commence work on constructing the amended access and the associated haul route over the next few months and the details have been agreed (including via a Section 278 Agreement).

As condition 2 is a pre-commencement condition that does not allow any works to take place before the condition is discharged the proposed wording would allow the access and the associated haul route to take place, prior to obtaining approval of details of the Flood Emergency and Evacuation Plan.

## **SITE AND SURROUNDINGS**

The application site, Tulleys Farm is located within the countryside and consists of farmland and woodland and has been diversified to include tourism and leisure activities. The main farmstead is located on the south-western side of Turners Hill Road and within the High Weald Area of Outstanding Natural Beauty, however the application site is located outside of the AONB but is within the countryside. The application site comprises open land and is located on the northern side of Turners Hill Road and is approximately 500m to the north of Turners Hill Road. To the south of the site is an established maize maze and pick your own pumpkin field and on all other sides the site is bounded by mature hedgerows and further open agricultural land. The application site is on sloping land that falls in a generally northerly direction, with the eastern part of the site also falling away in a north easterly direction. Beyond the western boundary of the application site land also falls away in a westerly direction.

The site lies within the countryside and there is a Public Rights of Way that runs adjacent to the western boundary of the application site leading from Turners Hill Road in a northerly direction and passes through an area of Ancient Woodland. To the east there is another PROW and to the north is Hundred Acre Wood and to the east Butchers Wood both of which are partly designated as areas of Ancient Woodland.

## **LEGAL FRAMEWORK AND LIST OF POLICIES**

Planning legislation holds that the determination of a planning application shall be made in accordance with the Development Plan unless material considerations indicate otherwise.

Specifically Section 70 (2) of the Town and Country Planning Act 1990 states:

*'In dealing with such an application the authority shall have regard to:*

- a) The provisions of the development plan, so far as material to application,*
- b) And local finance considerations, so far as material to the application, and*
- c) Any other material considerations.'*

Section 38(6) Planning and Compulsory Purchase Act 2004 provides:

*'If regard is to be had to the development plan for the purposes of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.'*

The requirement to determine applications "in accordance with the plan" does not mean applications must comply with each and every policy, but is to be approached on the basis of the plan taken as a whole. This reflects the fact, acknowledged by the Courts, that development plans can have broad statements of policy, many of which may be mutually irreconcilable so that in a particular case one must give way to another.

Under section 38(5) of the Planning and Compulsory Purchase Act 2004 if a policy contained in a development plan for an area conflicts with another policy in the development plan, the conflict must be resolved in favour of the policy which is contained in the last document to be adopted, approved or published.

Using this as the starting point the development plan for this part of Mid Sussex consists of the District Plan and Turners Hill Neighbourhood Plan.

National policy (which is contained in the National Planning Policy Framework and National Planning Policy Guidance) does not form part of the development plan but is an important material consideration.

### **Mid Sussex District Plan**

The District Plan was adopted on 28th March 2018.

Relevant policies include:

DP41: Flood Risk and Drainage

### **Site Allocations Development Plan Document**

The SADPD was adopted on 29th June 2022. It allocates sufficient housing and employment land to meet identified needs to 2031.

There are no relevant policies.

**Turners Hill Neighbourhood Plan** -Made March 2016.

There are no relevant policies.

### **National Policy and Legislation**

*National Planning Policy Framework (NPPF) December 2023*

*National Planning Policy Guidance (NPPG)*

### **ASSESSMENT**

Planning legislation holds that the determination of a planning application shall be made in accordance with the Development Plan unless material considerations indicate otherwise.

Specifically Section 70 (2) of the Town and Country Planning Act 1990 states:

*"In dealing with such an application the authority shall have regard to:*

- a) The provisions of the development plan, so far as material to application,*
- b) And local finance considerations, so far as material to the application, and*
- c) Any other material considerations."*

Section 38(6) Planning and Compulsory Purchase Act 2004 provides:

*"If regard is to be had to the development plan for the purposes of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."*

Using this as the starting point the development plan for this site comprises the Mid Sussex District Plan 2014-2031, the Site Allocation SPD and the Turners Hill Neighbourhood Plan.

Section 73(2) of the Town and Country Planning Act 1990 states *"On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—*

*(a) if they decide that planning permission should be granted subject to conditions differing from those subjects to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and*

*(b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application."*

As such it is only necessary to consider the specific changes that are proposed to the previously approved development. This application seeks an amendment to condition 2 which is a pre-commencement condition that currently prevents any works on site until the condition is discharged. The variation to the wording that is proposed would allow the formation of the revised construction access and haul route prior to the discharge of the condition.

In this case the main issues are drainage and potential flood risk. Condition 2 was attached to the planning permission due to the concerns of the then MSDC Flood Risk and Drainage team, who took advice from West Sussex Lead Local Flood Authority. It was accepted that the applicant had shown, that in principle, flood risk from the development could be managed. However, it was considered necessary for a pre-commencement condition which required a detailed Flood Emergency and Evacuation Plan to be produced for approval.

The variation to the condition now proposed would still require the applicant to submit a detailed Flood Emergency and Evacuation Plan before any works on the construction of the lakes began but would enable the construction of the access and the haul route, prior to any approval of details of the Flood Emergency and Evacuation Plan.

West Sussex Lead Local Flood Authority have been consulted on the application and have raised no objection commenting that:

*'as this is with respect to highways enabling works that is out of the LLFA remit with respect to surface water flooding.'*

In view of the above it is considered that the proposed variation to condition 2 is acceptable.

Biodiversity Net Gain

Biodiversity net gain is required under a statutory framework introduced by Schedule 7A of the Town and Country Planning Act 1990. This planning permission is being granted on an application made under Section 73 of the Town and Country Planning Act 1990 and the original planning permission to which the Section 73 planning permission relates was granted before 12th February 2024. This application is therefore exempt from the requirement to provide biodiversity net gain.

## **Conclusion**

In conclusion, it is considered that the proposed changes to the wording of condition 2 are acceptable as they would not alter the intention of the original condition since a detailed Flood Emergency and Evacuation Plan would still be required before any works on the construction of the lakes began. The proposal therefore complies with policies DP41 of the District Plan.

Decision:       Permission

Case Officer: Susan Dubberley