

Planning Statement

**Section 73 Application for Proposed Amendments to Condition 2 (Flood
Emergency and Evacuation Plan) of Planning Permission DM/21/2136 for
the Creation of 3 Fishing Lakes for Leisure Use**

Land at Tulleys Farm, Turners Hill Road, Turners Hill

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1. INTRODUCTION

- 1.1. This Planning Statement has been prepared in support of an application submitted under Section 73 of the Town and Country Planning Act 1990, for variation of Condition 2 (Flood Emergency and Evacuation Plan) attached to planning permission DM/21/2136 in respect of the creation of 3 fishing lakes for leisure use on land at Tulleys Farm, Turners Hill Road, Turners Hill, West Sussex.
- 1.2. The works for the construction of the 3 fishing lakes was granted planning permission in a Decision Notice dated 22nd November 2022 (Local Planning Authority (LPA) reference DM/21/2136) (hereafter referred to as the 'planning permission scheme'). This was the subject of a number of planning conditions, including Condition 2, comprising the requirement to obtain approval of a Flood Emergency and Evacuation Plan prior to the commencement of development.
- 1.3. Since that date, dialogue has taken place with the Mid Sussex District Council (MSDC), and in particular their Drainage Officers, in respect of the work required to secure a discharge of the condition. In February 2024, details were submitted to MSDC, setting out the proposed scope of works to be undertaken as part of the preparation of the Flood Emergency and Evacuation Plan, including stakeholder engagement.
- 1.4. No meaningful response has yet been received to these submissions. There is now a need to commence works for the new construction access onto Turner Hill Road and associated haul route, that is to be formed as part of the approved works.
- 1.5. This application seeks a minor variation to Condition 2, to enable works in respect of the formation of the construction access and associated haul route, to be commenced, prior to the approval of the Flood Emergency and Evacuation Plan.
- 1.6. This statement describes the site in its surroundings, sets out relevant planning background, describes the amendments under this application proposal, summarises relevant planning policies, and assesses the scheme in accordance with the requirements of the development plan and other material considerations, including the National Planning Policy Framework.

2. SITE AND SURROUNDINGS

- 2.1. Tulleys Farm is located east of Crawley, to the south of the village of Copthorne, and northwest of Turners Hill. The application site is located to the north of Turners Hill Road, and to the west of the B2028 (also known as Turners Hill Road at this point).
- 2.2. It is in a rural context, and is bordered to the north by woodland, a covered reservoir, and agricultural land; to the east by woodland; to the south by a treeline, beyond which is agricultural land; and to the west by a double line of trees, beyond which is grassland.
- 2.3. Beyond the woodland to the north of the site is a commercial industrial estate known as 'Rowfant Business Centre,' which is accessed from the north, via Wallage Lane.

- 2.4. Land to the south and west of the site falls within the applicant's ownership. This includes land immediately to the north of Turners Hill Road that has a lawful leisure use in association with the creation of an annual maize maze, and/or the growing of pumpkins for PYO, with associated structures serving visiting members of the public to these attractions. Immediately to the north of this area and south of the application site is a woodland block, which contains a number of ponds, which is the subject of woodland walks as part of the adjoining leisure attractions.
- 2.5. The application site is set within an area of undulating topography. The local high point is located a short way to the south of the application site in the adjoining field parcel, and 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 northeasterly direction. Beyond the western boundary of the application site land also falls away in a westerly direction.
- 2.6. There are a limited number of Public Rights of Way (PRoWs) within the vicinity of the site. This includes a PRoW that runs adjacent to the western boundary of the application site leading from Turners Hill Road in a northerly direction. This is initially defined by a hardcore track which terminates adjacent to the southwest corner of the main application field parcel. At this point the PRoW becomes a pathway running between two treelines northward, into woodland. Beyond this it runs adjacent to the western boundary of the Rowfant Business Centre, and then along the access road to that site, to Wallage Lane. To the north of the Business Centre, the PRoW connects to the east-west running Worth Way, which at this point is along the route of a disused railway line.
- 2.7. A PRoW is located to the northeast of the application site beyond the covered reservoir connecting Turners Hill Road to Worth Way via a route through woodland and to the northeast of the Rowfant Business Centre.
- 2.8. A further PRoW is located immediately to the east and southeast of the approved haul route of the application site. This runs from Turners Hill Road in a broadly north easterly direction, connecting (through Butchers Wood) to the built up area of Turners Hill.

3. BACKGROUND TO TULLEYS FARM

- 3.1. The application site comprises part of Tulleys Farm, and falls within the ownership of the Beare family. It is part of a family run enterprise that dates back to 1937.
- 3.2. The agricultural activities have evolved over time from an initial dairy herd operation into a market garden. In the early 1970s, the family commenced operation of PYO fruit and vegetables, available to visiting members of the public. This activity took place from 1972 until 2009. Crops grown on, and within the vicinity of, the application site over this period included strawberries, raspberries, potatoes, sunflowers, asparagus, tayberries, peas, broad beans and sweetcorn.
- 3.3. The overall holding includes land on either side of Turners Hill Road and contains a number of diversified activities. These include activities focussed on the farm buildings at Worth Hall Farm, located to the west, on the south side of Turners Hill Road.

- 3.4. The diversification activities at Worth Hall Farm initially comprised the creation of a farm shop approved in April 1991 (LPA reference TH/007/91). This was followed by applications to create tearooms (LPA reference TH/047/92 and TH/051/95), together with the creation of an all-weather car parking area for PYO customers and overflow for the farm shop in October 1997 (LPA reference TH/038/97). Further applications to extend the farm shop (LPA reference TH/050/99), extend the all-weather car park (LPA reference TH/01/01922/FUL), convert a boiler house to toilets and convert an open cattle shelter to barbecue and seating area (LPA reference TH/02/1045/FUL), and convert a building to create a country-craft gift shop (LPA reference TH/05/00829/COU) were approved in 2000, 2001, 2002 and 2005. Planning permission was granted for the conversion of agricultural buildings together with the construction of an extension to the tearooms in 2010 (LPA reference TH/10/00251/COU).
- 3.5. Subsequently, the area at Worth Hall Farm has become the focus for the annual 'Shocktober Fest' which takes place around halloween each year. An extension of the overflow car park to serve this use was approved in July 2017 (LPA reference DM/17/2105). The Shocktober Fest has repeatedly won the title of the UK's No. 1 halloween attraction.
- 3.6. As a discrete, but related activity, the creation of a maize maze occurred on the field immediately to the west of the application site in 1998. Planning permission was first granted for this use for a temporary (three year) period in January 1999 (LPA reference TH/002/99). Further temporary planning permissions were then obtained to continue this use, until permanent planning permission was granted in 2010, together with the permanent retention of associated structures and facilities (LPA reference 10/02137/FUL).
- 3.7. In 2018, the site of the maze was first used for the growing of pumpkins. These were harvested on a PYO basis, focussed around halloween.
- 3.8. A full application to enable use of this land for the creation of an annual maze of maize or for PYO produce and use of associated leisure structures by visiting members of the public was submitted in April 2019 (LPA reference DM/19/1606). This was subsequently granted planning permission in a Decision Notice dated 24th June 2019. Since then the site has continued to be used on an annual basis for the growing of pumpkins, and for their harvesting on a PYO basis by visiting members of the public.
- 3.9. In August 2023, a Section 73 planning application was submitted seeking a variation of Condition 4 (operating hours) and Condition 6 (external lighting) in respect of planning permission DM/19/1606, in relation to use of the land for creation of an annual maze of maize or for PYO produce and use of associated structures by visiting members of the public (LPA reference DM/23/2057). The application sought to enable the use of the site in relation to PYO pumpkins to operate on a limited basis for up to 22 evenings during the year, up to 22:00, in addition to the opening hours during the day. The application also sought to provide external lighting in association with the evening operations.
- 3.10. Planning permission for this variation of conditions was granted in a Decision Notice dated 14th December 2023.
- 3.11. More recently, in 2024, an outline planning application was submitted on land to the south east of the application site (and immediately to the east of the proposed haul route). This comprised

land that had historically been within the ownership of the applicant, but had been in the ownership of a third party (who had submitted a large number of planning applications and secured consent for works in relation to the creation of a natural burial ground, chapel reception, and maintenance building), before being re-acquired by the Beare family.

- 3.12. The application sought demolition of an existing building and construction of buildings comprising agricultural cafe, retail museum and event space for use and association with surrounding land for horticultural and agricultural activities by visiting members of the public (together with a surrender of planning permission for construction of crematorium chapel and natural burial site) including formation of car parking, minor upgrade of access and provision of surface water attenuation basin, landscaping and infrastructure works (LPA reference DM/24/1165).
- 3.13. The application was validated on 15th May 2024. It is the subject of ongoing consideration by the Local Planning Authority and remains undetermined at this time.

4. BACKGROUND TO THE APPLICATION SCHEME

- 4.1. The application for the creation of 3 fishing lakes for leisure use on the application site was registered by the LPA on 24th June 2021 (LPA reference DM/21/2136).
- 4.2. The supporting submissions set out that the site comprises part of the wider Tulleys Farm agricultural enterprise, which comprises a number of diversified leisure uses.
- 4.3. It detailed that the application site and adjoining land to the south had previously been used in association with PYO activities and that evidence of this remained in the form of the hardcore track, which leads from Turners Hill Road to the southwest corner of the application site, and a timber building located in the field parcel immediately to the south of the application site.
- 4.4. It noted that the PYO soft fruit activities on the holding had ceased and that in their place alternative leisure activities had emerged in response to, and reflecting, customer preferences. It noted that this included an annual maze of maize, and more recently the growing of pumpkins for PYO, the associated Shocktober Fest activities and PYO sunflowers.
- 4.5. It was noted that whilst the leisure activities that support the wider Tulleys farm agricultural activities have evolved over time, they remain predominantly land-based (and in recent years increasingly seasonal in focus).
- 4.6. In order to broaden the extent of diversification activities at the holding, the application scheme proposed the introduction of a new land-based leisure use, comprising the the creation of fishing lakes.
- 4.7. It envisaged the creation of two main lakes, to be hydrologically linked (to ensure permanence of the western water body), together with a smaller lake that would be used for breeding and stocking purposes. The main water body would have an average depth of 1 metre with variation particularly around the lake margins.

- 4.8. The lakes would be accessed by visiting members of the public via the existing hardcore access route, leading from Turners Hill Road north to the southwest of the application site (with the access junction onto the public highway the subject of modest widening).
- 4.9. This route and the adjacent hard standing area formerly served the PYO soft fruit enterprises that existed on the land.
- 4.10. The fishing enterprise is to be operated throughout the year. It would have a low intensity of use amounting to a maximum of some 20 anglers at any one time. No other facilities beyond the car parking area would be provided in conjunction with the use.
- 4.11. The application submissions noted that, given the sloping topography of the land, the fishing lakes would be constructed using a cut and fill operation. It would also necessitate the importation of material amounting to some 94,000 cubic metres.
- 4.12. The proposed operational access route for the fishing lakes was not considered suitable for construction purposes. On this basis, the requisite material is proposed to be delivered to the site via a temporary construction access road. This would lead from Turners Hill Road over the applicant's land holding to the northern edge of the site. The routeway (but not the revised access junction onto the public highway) is to be removed upon completion of the construction of the scheme.
- 4.13. The application proposal set out works for a landscaping scheme around the margins of the lake to assist in integrating the development into its surroundings. These proposals include extending the woodland and tree line margins around the periphery of the lakes.
- 4.14. The proposal set out that the lakes would be filled and maintained using ground water extraction, with some modest overland flow arising via a watershed from the higher ground, immediately to the south of the application site.
- 4.15. The application submissions noted that in the drier summer months, it is likely water levels will drop through evapotranspiration. As a result, the two larger lakes are to be hydrologically linked, so that the water in the eastern lake can be used as a reservoir, to maintain the water level in the western lake. On this basis, only the western lake is to be stocked with fish. The potentially ephemeral nature of the eastern lake will provide a high quality ecological habitat. The smaller lake will be used for breeding fish and support stocking the main lake.
- 4.16. The design of the lakes has been influenced by the infrastructure pipeline that runs from the underground reservoir immediately to the north of the site, and across the application site in a broadly southerly direction. The scheme ensures that the pipeline would be unaffected by the proposed works.
- 4.17. Planning permission for the scheme was granted in a decision notice dated 24th November 2022.
- 4.18. The permission is the subject of a number of planning conditions.

- 4.19. In March 2023, an application was submitted for approval of details reserved by Condition 1 (timetable covering the construction of the vehicular and non-vehicular accesses), and Condition 3 (Construction Management Plan) in respect of the planning permission,.
- 4.20. These details were approved in a Decision Notice dated 11th April 2023 (LPA reference DM/23/0635).
- 4.21. In July 2023, a further application was submitted for approval of details reserved by Condition 4 (hard and soft landscaping) and Condition 5 (Public Right of Way surfacing details).
- 4.22. These details were approved in a Decision Notice dated 29th February 2024 (LPA reference DM/23/1991).
- 4.23. In parallel with these submissions, discussions were undertaken with MSDC in in respect of the requirements of Condition 2 of the planning permission (Flood Emergency and Evacuation Plan).
- 4.24. This condition 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 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....”*
- 4.25. Flood risk consultants, Aegaea, were commissioned to undertake a breach assessment in order to inform the work of preparing the Flood Emergency Evacuation Plan. The consultants liaised with MSDC’s Drainage Engineer in respect of the proposed breach model methodology. Hydraulic modelling was subsequently undertaken in accordance with the feedback received.
- 4.26. Upon completion of this, MSDC were re-contacted and requested to provide feedback on the proposed scope and format of public consultation that was to be undertaken in accordance with the requirements of the planning condition.
- 4.27. In response, MSDC’s Drainage Engineer requested further information prior to endorsing the proposed approach to public engagement. It was stated that this would need to include a copy of the flood model results and identification of the potential impact on third parties, together with a proposed engagement letter and details of a flood evacuation plan for each impacted landowner.
- 4.28. In light of this, further work was undertaken to identify all potential properties that might be affected informed by the breach modelling exercise. The results of this and the proposed scope of stakeholder engagement as part of the preparation of the Flood Emergency and Evacuation Plan was submitted to MSDC and a cover of letter dated 26th February 2020. Feedback on the

proposed approach was requested, and it was confirmed that the subsequent flood evacuation plans and engagement letters would be prepared in light of comments received.

- 4.29. MSDC's Drainage Engineer confirmed they would review the submissions and revert with feedback.
- 4.30. Despite this promise, no meaningful feedback has ever been received.

5. APPLICATION PROPOSAL

- 5.1. The planning permission for the creation of three fishing lakes was granted on 22nd November, 2022. Since that date all pre-commencement conditions have discharged, except Condition 2 (Flood Emergency and Evacuation Plan).
- 5.2. Concerted attempts have been made over the last 2 years to agree and undertake the works required to enable approval of the details reserved by this condition. In excess of 12 months ago feedback was sought from MSDC on the scope and content of stakeholder engagement required as part of the planning condition. Despite this, it has not been possible to secure meaningful feedback from MSDC.
- 5.3. Separate to this, details have been agreed (including via a Section 278 Agreement) for the works required to construct the revised access onto Turners Hill Road, that is to be used for the importation of material required in the implementation and construction of the development.
- 5.4. The applicant's seek to commence work on constructing the amended access and the associated haul route over the next few months.
- 5.5. At present, the wording of Condition 2 of the planning permission prohibits this work to the access and haul route being undertaken. This is on the basis that Condition 2 is expressed as a pre-commencement condition, and thus no works in the implementation of the planning permission can be lawfully undertaken until the details reserved by the condition have been approved by the LPA.
- 5.6. Given this, and the need to commence construction of the revised access and haul route, and the impending expiry of the planning permission, this application seeks a minor variation of Condition 2.
- 5.7. The variation would enable the construction of the access and the haul route, prior to obtaining approval of details of the Flood Emergency and Evacuation Plan.
- 5.8. Following informal discussions with the LPA, the variation of the condition does not seek authorisation for works to import material or commence formation of the lakes, prior to approval of details reserved by the condition.
- 5.9. The application seeks variation of Condition 2 only in so far as it would allow the formation of the revised construction access and haul route. On this basis, it is requested that condition two of planning permission DM/21/2136 be amended to state:

"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)."

6. PLANNING POLICY

- 6.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990 state that planning applications should be determined in accordance with the Development Plan, unless material considerations indicate otherwise. Material considerations include the National Planning Policy Framework.
- 6.2. The approved Development Plan, in relation to this application, for the purposes of the Act, comprises the Mid Sussex District Plan (2018), and the 'Made' Turners Hill Neighbourhood Plan (2016).

7. NATIONAL PLANNING POLICY FRAMEWORK

- 7.1. The National Planning Policy Framework (NPPF) sets out the Government's planning policies for England and how these are expected to be applied. It was most recently updated in December 2024.
- 7.2. It sets out that the purpose of the planning system is to contribute to the achievement of sustainable development, made up of the three dimensions of economic, social and environmental objectives, which are interdependent and need to be pursued in mutually supportive ways so that opportunities can be taken to secure net gains across each of the three objectives (paragraphs 7 - 8).
- 7.3. Paragraph 10 states that *'so that sustainable development is pursued in a positive way, at the heart of the framework is a presumption in favour of sustainable development.'*

7.4. Paragraph 11 notes that Plans and decisions should apply a presumption in favour of sustainable development. This notes that for decision-taking, this means:

- Approving development proposals that accord with an up-to-date Development Plan without delay; or
- Where there are no Development Plan policies, or the policies which are most important for determining the application are out of date, granting permission unless:
 - The application of policies in this framework that protect areas or assets of particular importance provides a strong reason for refusing the development; or
 - Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.

7.4. Section 6 sets out policies for building a strong, competitive economy. Paragraph 85 states that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.

7.5. Paragraph 88 relates to supporting a prosperous rural economy and states that planning policies and decisions should enable, amongst other things:

- The sustainable growth and expansion of all types of business in rural areas, both through the conversion of existing buildings and well-designed new buildings;
- The development and diversification of agricultural and other land based rural businesses; and
- Sustainable rural tourism and leisure developments which respect the character of the countryside.

7.6. Paragraph 89 notes that planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to, or beyond existing settlements, and in locations that are not well served by public transport. It notes that in these circumstances, it will be important to ensure development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable, for example, by improving the scope for access on foot, by cycling or by public transport.

8. MID SUSSEX DISTRICT PLAN

8.1. The Mid Sussex District Plan (MSDP) was adopted in March 2018, and seeks to guide development up to 2031.

- 8.2. Policy DP12 states that the countryside will be protected in recognition of its intrinsic character and beauty. It notes that development in such areas will be permitted, provided it maintains and where possible enhances, the quality of the rural landscape and character of the district and is necessary for the purposes of agriculture, or is supported by a specific policy reference elsewhere in a Development Plan Document.
- 8.3. Policy DP14 seeks to support sustainable rural development and the rural economy. It notes that provided it is not in conflict with Policy DP12 and DP13, new small scale economic development, including tourism related development, within the countryside will be permitted provided it supports sustainable growth and the vitality of the rural economy; and where possible, utilises previously developed sites. The policy notes that diversification of activities on existing farm units will be permitted provided they are of a scale which is consistent to the location of the farmholding; and would not prejudice the agricultural use of the unit.
- 8.4. Policy DP19 states that tourism development in the countryside, including extensions to existing facilities, visitor accommodation, and the re-use of rural buildings will be permitted provided it supports growth of the rural economy; and maintains and where possible enhances the quality of the rural and landscape character of the district, in accordance with DP12.
- 8.5. Policy DP21 relates to transport. It requires development to support the objectives of the West Sussex Transport Plan 2011 - 2026. It notes that to meet these objectives, decisions on development proposals will take account of a range of criteria including that the scheme is suitably located to minimise the need for travel, noting there might be circumstances where development needs to be located in the countryside, such as rural economic uses (e.g. in relation to Policy DP14).
- 8.6. Policy DP22 relates to Rights of Way and other recreational routes. It notes that these will be protected by ensuring development does not result in the loss of, or does not adversely affect, Rights of Way or other recreational routes, unless a new route is provided which is of at least equivalent value and which does not sever important routes.
- 8.7. Policy DP24 relates to leisure and cultural facilities and activities. It notes that proposals for new and/or enhanced facilities in accordance with the strategic aims of the District Council will be supported.
- 8.8. Policy DP26 relates to character and design. It requires all development to be well-designed and reflect the distinctive character of the towns and villages whilst being sensitive to the countryside. It requires development amongst other things, to demonstrate that it is of high quality in design and layout and includes appropriate landscaping and green space; protects open spaces, trees and gardens that contribute to the character of the area; protects valued landscapes; does not harm local residential amenity; and incorporates well integrated parking.
- 8.9. Policy DP37 relates to trees, woodland and hedgerows. It states that the Council will support the protection and enhancement of trees, woodland and hedgerows and encourage new planting. It notes that development that will damage or lead to the loss of such features that contribute either individually or as part of a group, to the visual amenity value or character of an area and/or that have landscape, historic or wildlife importance, will not normally be permitted. It notes that proposals for new trees, woodland and hedgerows should be of suitable species,

usually native, and where required for visual, noise or light screening purposes, they should be of a size and species that will achieve this purpose. The policy notes that development should be positioned as far as possible from Ancient Woodland with a minimum buffer of 15m maintained between Ancient Woodland and the development boundary.

- 8.10. Policy DP38 relates to biodiversity. It notes that this will be protected and enhanced by ensuring development contributes and takes opportunities to improve, enhance, manage and restore biodiversity and green infrastructure, so that there is a net gain in biodiversity within development; and protect existing biodiversity, so that there is no net loss of biodiversity. It notes opportunities should be taken to enhance and restore ecological corridors to connect natural habitats and increase coherence and resilience.
- 8.11. Policy DP41 relates to flood risk and drainage. It states that proposals for development will need to follow a sequential risk based approach to ensure development is safe across its lifetime and not increase the risk of flooding elsewhere. It notes that particular attention will be paid to those areas of the district that have experienced flooding in the past and proposals for development should seek to reduce the risk of flooding by achieving a reduction from existing run-off rates. It includes recommendations for the inclusion of sustainable drainage systems and for these to be sensitively designed and located to promote improved biodiversity, enhanced landscape and good quality spaces.

9. TURNERS HILL NEIGHBOURHOOD PLAN

- 9.1. The Turners Hill Neighbourhood Plan (THNP) was formally 'Made' on 24th March 2016. It covers the geographic extent of the parish of Turners Hill and seeks to cover the period 2014 - 2031.
- 9.2. The vision for the parish set out in the Plan is that *"It is intended that through a process of careful evolution and considered design our history and heritage will continue to be maintained. Our aim is for Turners Hill to thrive as a modern and flourishing village which maintains the rural feel and setting of which we are rightly proud."*
- 9.3. This vision is supported by a number of Aims and Objectives which include protecting the rural character of the parish and making it an attractive place for business and to protect and support local businesses providing essential service offerings for the local community including the development of a sustainable visitor and tourism sector; and to sustain and enhance the diverse selection of club society, sports, and worship for all age groups.
- 9.4. Chapter 9 of the Neighbourhood Plan relates to local employment and business development. It notes that local businesses include Tulleys Farm. The Plan notes that the priorities are to maintain and encourage the parishes local economy and support the ongoing sustainability of the community. It notes this includes support for the sustainable growth of all types of business and enterprise in the parish, and support for rural tourism and leisure facilities that benefit local businesses, residents and visitors, and which respect the character of the countryside.
- 9.5. Policy THP8 of the Plan relates to countryside protection. It notes that outside the built-up area priority will be given to protecting and enhancing the countryside from inappropriate development. It notes that proposals in such areas will be permitted where it complies with a

number of criteria including not having an adverse impact on the landscape setting of Turners Hill.

- 9.6. Policy THP11 relates to recreational space. This notes that within the countryside, proposals for sporting and recreational facilities will be permitted provided they do not have an adverse effect on amenities of local residents; do not result in the loss of the best and most versatile agricultural land; are not prominent or exposed, being conspicuous from roads, Public Rights of Way or viewpoints; and do not result in increased levels of traffic that is unacceptable on the local road network or would prejudice highway safety.

10. CONSIDERATIONS

- 10.1. Section 73 of the Town and Country Planning Act 1990 sets out provisions for the submission and determination of applications for variation or discharge of conditions attached to planning permissions.
- 10.2. The National Planning Practice Guidance notes that an application made under Section 73 can be used to make a material amendment by varying or removing conditions associated with a planning permission. It notes that there is no statutory limit on the degree of change permissible to conditions under Section 73, but the change must only relate to conditions and not to the operative part of the permission.¹
- 10.3. Section 73(2) of the Town and Country Planning Act 1990 states that:

“On such an application the Local Planning Authority shall consider only the question of the condition subject to which planning permission should be granted, and:

- a) If they decide the planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they should 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.”*

- 10.4. Both planning law and guidance set out that such a planning permission cannot be granted to the extent that it extends the time limit by which the planning permission must be started.²
- 10.5. The intention of an application under Section 73 of the Town and Country Planning Act is not for the LPA to revisit the key principles of the scheme, as these have already been considered and accepted under the previous grant of planning permission.
- 10.6. The permissible scope of Section 73 applications has been considered in a number of court judgments.

¹ Paragraph Reference ID: 17a-013-20230726

² Section 73 (5) of the Town and Country Planning Act 1990 and Paragraph Reference ID17A-014-20140306 of National Planning Practice Guidance

- 10.7. In a judgment handed down by the Court of Appeal in *Finney v Welsh Ministers [2019]*, it was confirmed that the variation of a condition under Section 73 of the Town and Country Planning Act 1990 must not result in conflict with the original description of development.
- 10.8. The scope of a Section 73 application has been more recently considered in the High Court in *Armstrong v SSLUHC & Cornwall Council [2023]*. In that case, the High Court quashed an Inspector's decision relating to plan changes to the design of a house. The court ruled that national planning guidance in England on Section 73 applications was misleading. Such applications are intended to vary, modify or discharge planning conditions, but the guidance also states that it can be used to seek minor material amendments where they are related to a condition.
- 10.9. The Court held that Section 73, was clearly intended to be a provision which enables an applicant to remove or vary a condition, provided that it did not change the nature of the development which had been permitted.
- 10.10. Having regard to law and guidance on Section 73 applications, it is considered that the proposed scheme amendments detailed in this application are permissible to be considered under this submission.
- 10.11. On this basis, in the assessment of this application, having regard to the key issues identified by the LPA in the determination of the original application for development of this site, it is considered that the main issues are:
- Principle of Development;
 - Design and Impact on Landscape Character;
 - Amenity;
 - Ecology and Arboriculture;
 - Hydrology; and
 - Highway Safety.
- 10.12. Each are now considered in turn.

11. PRINCIPLE OF DEVELOPMENT

- 11.1. In consideration of the principle of development of the planning permission scheme, the Case Officers Delegated Report (CODR) set out that Policy DP12 of the MSDP and Policy THP8 of the THNP seek to protect and enhance the countryside, whilst Policy DP14, DP19 DP24 of the MSDP, Policy THP13 of the THNP, and Chapter 6 of the NPPF seek to support economic and tourism-related development within rural locations.
- 11.2. The CODR set out that:

“There is therefore broad support for this type of development in rural locations. The proposed development is a relatively low key leisure rural use, but will enable Tulleys Farm to extend and enhance the tourism and leisure activities on the site. As such, the principle of development is supported by the aforementioned policies in the NPPF subject to the proposal protecting and potentially enhancing the rural and landscape character of the district.”

- 11.3. The application proposal does not envisage any physical alteration to the design of the approved scheme. The proposed variation of condition relates to the timing of the details required to be approved in relation to the Flood Emergency and Evacuation Plan.
- 11.4. On this basis, it is considered that, that the principle of development, under this application, remains acceptable in the same way as it did under the planning permission scheme.

12. DESIGN AND IMPACT ON LANDSCAPE CHARACTER

- 12.1. In consideration of the design and impact on the character of the area of the planning permission scheme, the CODR set out that Policy DP26 and DP12 of the MSDP and Policy THP8 of the THNP seek to protect and enhance the character of the countryside and require applications to demonstrate that development is of a high design quality.
- 12.2. The CODR set out that:

“The site is undeveloped and currently consists of an open area of grassland with trees and vegetation on the boundaries. In this case, the proposal would not result in any buildings or structures on the site. Whilst the appearance of the land would alter through the formation of the lakes, due to the nature and appearance of the proposal, there would be no significant visual change to the character of the area. In addition, landscaping is proposed to further mitigate the impact, and this could be controlled through a condition. The proposed planting and lakes are also considered to offer the opportunity for enhanced landscaping and biodiversity. In view of the above, it is considered that the proposal complies with Policy DP26, DP12 of the District Plan and THP8 of the Neighbourhood Plan.”

- 12.3. The application proposal does not envisage any physical alteration to the design of the approved scheme.
- 12.4. The proposed works, including the post development landscaping proposals, would all continue to be delivered in the same way as envisaged under the planning permission scheme.
- 12.5. The application for variation of Condition 2 relates to the timing of the delivery of the construction access and associated haul route. No changes are proposed to its design. The application solely seeks to be able to implement this, ahead of approval of the Flood Emergency and Evacuation Plan.
- 12.6. On this basis, it is considered that the design and impact on the character of the area under this application remains acceptable in the same way as it did under the planning permission scheme.

13. AMENITY

- 13.1. In consideration of the impact on neighbouring amenities of the planning permission scheme, the CODR set out that Policy DP26 of the MSDP seeks to ensure application proposals do not cause significant harm to the amenities of nearby residents or future residents, taking into account the impact on privacy, outlook, daylight and sunlight, noise, air and light pollution.
- 13.2. The CODR set out that:
- “Due to the location of the development set away from residential properties, and the quiet nature of fishing, it is considered that the proposal would not result in significant detriment to the amenities of nearby properties through noise or disturbance. The nearest residential properties are those near to the access onto Turners Hill Road and given the low numbers that would use the lakes at any one time, it is not considered that the traffic from the development would give rise to any significant impact on amenity. The proposal is thereby considered to comply with Policy DP26 of the District Plan.”*
- 13.3. The application proposal does not envisage any amendment to the design of the scheme or the subsequent use and operation of the lakes. The impact of the development, post-completion, will therefore remain the same under this application as under the planning permission scheme.
- 13.4. The application seeks to enable part of the approved works, comprising the formation of the construction access and associated haul route to be implemented as a first phase ahead of discharge of Condition 2.
- 13.5. No changes are proposed in relation to the location or design of the access and haul route. The application also does not seek any change in the relative timing of the construction of the lakes or the associated importation of soils required to form them. This would continue to occur post-approval of the Flood Emergency and Evacuation Plan.
- 13.6. It is therefore submitted that the amendments to the approved scheme under this application, would have no material effect in relation to the impact of the development (both during construction and in subsequent operation) on local amenity, in comparison to the planning permission scheme.

14. ECOLOGY AND ARBORICULTURE

- 14.1. In consideration of the impact of the planning permission scheme on arboriculture and biodiversity, the CODR set out that Policy DP37 of the MSDP seeks to protect and enhance trees, woodland and hedgerows and encourage new planting, whilst Policy DP38 seeks to ensure biodiversity is protected and enhanced in conjunction with the implementation of development.
- 14.2. The CODR set out that the supporting information that accompanied the planning permission scheme demonstrated that it would have little impact on surrounding trees, subject to the use of tree protection measures during construction works, and it was noted that proposals for additional soft landscaping were acceptable subject to the imposition of a condition controlling the detail of this.

- 14.3. It is material to note that a detailed soft landscaping scheme to be implemented in conjunction with the development was the subject of subsequent submissions to the LPA via an application for discharge of Condition 4 of the planning permission scheme. This was approved by the LPA in a Decision Notice dated 29th February 2024 (LPA reference DM/23/1991).
- 14.4. In respect of ecology, the CODR noted the ecological impact assessment that accompanied the application, demonstrated that the scheme would have no undue impact on biodiversity interest and through the formation of the lakes and the associated planting provided the opportunity for enhancements. As detailed above, this additional landscaping was subsequently approved by the LPA in February 2024.
- 14.5. This application proposal does not envisage any alteration in the design of the works or the provision of landscaping. The details of the latter have been the subject of approval following the original grant of the planning permission scheme.
- 14.6. On this basis, is considered that the arboricultural and ecological impact of the scheme will remain the same under this application, as the planning permission scheme.

15. HYDROLOGY

- 15.1. The original application for the planning permission scheme was accompanied by a Flood Risk Assessment prepared by RAB Consultants. This evidenced that the application site is located within Flood Zone 1 and thus the development passes both the sequential and exception tests. The FRA concluded that subject to the application of the recommendation measures set out within the report, the development would remain safe for its lifetime and not increase flood risk elsewhere.
- 15.2. In consideration of the application, the CODR noted that West Sussex County Council as the Lead Local Flood Authority had responded on the application to state that *'due to the nature of this development and the majority of this site being at low surface water flood risk, we have no objection to this application'*. It was also noted that the feedback of the MSDC drainage engineer was *'No objection subject to conditions'*. It is understood that the latter referred to the imposition of Condition 2, which is the subject of this application.
- 15.3. This requires the submission and approval of a Flood Emergency and Evacuation Plan prior to the commencement of development; to ensure that the development is safe and the emergency measures are in place for the lifetime of the development in compliance with Policy DP41 of the MSDP.
- 15.4. Following the grant of planning permission, extensive work was undertaken by appointed consultants, Aegaea, in respect of the preparation of details pursuant to the planning condition.
- 15.5. As detailed earlier in this statement, following the preparation of breach modeling scenarios, and the identification of all landowners affected by such an event, feedback was sought from MSDC on the proposed scope and format of engagement with stakeholders required by the planning condition, as part of the preparation of the Flood Emergency and Evacuation Plan.

- 15.6. These details were submitted to MSDC in excess of 12 months ago. No meaningful feedback has been received since that date.
- 15.7. The applicants now seek to commence development via the implementation of the approved alterations to the junction of the construction access on to Turners Hill Road, and the associated haul route from this point to the site of the approved fishing lakes.
- 15.8. Details of the revised access have been the subject of discussion and agreement with West Sussex County Council as the Highway Authority. This has culminated in the drafting of a Section 278 Agreement.
- 15.9. In light of this, and in the absence of feedback from MSDC on the proposed works to undertake stakeholder engagement as part of the requirements of Condition 2 of the planning permission, an informal enquiry was submitted to the LPA, as to whether they would be willing to support a Section 73 application for variation of Condition 2, to enable the development to be commenced and the fishing lakes to be formed but not filled prior to the discharge of the condition.
- 15.10. In response to this, the LPA advised that there were concerns as to the mechanisms that could be employed to ensure the fishing lakes remained empty of water pending approval of the details required by the condition.
- 15.11. In light of this, this Section 73 application only seeks to enable implementation of the changes to the construction access and associated haul route ahead of discharge of Condition 2.
- 15.12. The proposed variation to the condition would mean that no works would take place in the physical construction of the fishing lakes, unless and until the Flood Emergency and Evacuation Plan had been submitted to and approved by the local planning authority.
- 15.13. The works to amend the construction access and form the associated haul route do not impact on flood risk, and do not increase the prospect of flood risk off-site.
- 15.14. It is respectfully submitted that Condition 2 of the planning permission was intended to relate to the formation of the fishing lakes, not the works to construct the access and haul route.
- 15.15. On this basis, it is submitted that the proposed variation of the condition will have no material impact on the reason and purpose for the condition nor its control and effect. The condition will continue to ensure that no development comprising the physical construction of the fishing lakes will take place unless and until the Flood Emergency and Evacuation Plan has been approved.
- 15.16. Notwithstanding the, in excess of 12 months of, time it has taken MSDC to consider the proposed scope of works to discharge this condition, it is hoped that feedback on these details can be provided shortly. The applicant remains committed to pursuing the approval of these details and the submission of a discharge of condition application at the earliest opportunity.
- 15.17. The delay in the submission of the application of discharge of Condition 2, for the last 12 months, is a direct result of the absence of feedback from MSDC to the proposed scope and

format of stakeholder engagement (submitted to MSDC in February 2024). It is respectfully submitted that this proposed variation of condition has been forced upon the applicant in light of the delays caused by this.

- 15.18. It is submitted that the proposed variation in the wording of the condition will ensure continued and effective control of the development in compliance with Policy DP41 of the MSDP.

16. HIGHWAY SAFETY

- 16.1. In consideration of the highway safety aspects of the planning permission scheme, the CODR set out that Policy DP21 of the District Plan seeks to ensure that development proposals protect the safety of road users and pedestrians.
- 16.2. The CODR noted that the proposed fishing lakes, when in operation, would be served by an existing access onto Turners Hill Road, which substantively comprises an existing hardcore track that follows the route of PROW 71W (which continues north and joins PROW 73W), with improvements in the visibility of that access at its junction with the public highway.
- 16.3. The CODR also noted that the application works necessitated the construction of a temporary access route for construction vehicles and materials to be delivered to the site. This would lead from Turners Hill Road, to the northern edge of the fishing lake site. It was noted that the access route would be removed upon completion of the scheme.
- 16.4. It was noted that the route would comprise a modification of an existing access junction that serves the leisure uses that operate on the wider Tulleys Farm. The existing access junction would be closed, and a new access junction created immediately to the west.
- 16.5. The CODR noted that West Sussex County Council as the Highway Authority had been consulted on the application and considered the scheme was acceptable.
- 16.6. It was noted that a planing condition attached to the grant of consent would require the submission and approval of a Construction Management Plan prior to the commencement of development.
- 16.7. In light of the above, the CODR considered that the proposal was acceptable on highway safety and transport grounds, and complied with policy DP21 of the MSDP, and the NPPF.
- 16.8. Following the grant of planning permission, a Construction Management Plan was prepared and submitted to the LPA. These details were approved in a decision notice dated 11th April 2023 (LPA reference DM/23/0635).
- 16.9. More recently, discussions have taken place with West Sussex County Council as the Highway Authority, and detailed design proposals of the revised construction access junction (and closure of the existing access) have been submitted as part of the preparation of an associated Section 278 Agreement.
- 16.10. These access works are due to take place shortly.

- 16.11. This variation of condition application specifically seeks to enable the implementation of this amended access and formation of the associated haul route. This cannot currently take place due to the wording of Condition 2 of the original planning permission.
- 16.12. The variation of condition does not affect the approved details of the construction access or associated haul route. The design of this and the Construction Management Plan have been approved by both the LPA and Highway Authority.
- 16.13. On this basis, the application will have no material effect on highway safety and the scheme remains acceptable under this application, in the same way as it did under the planning permission scheme.

17. SUMMARY

- 17.1. This Section 73 application seeks a minor amendment to the wording of Condition 2 of planning permission DM/21/2136 that relates to the construction of fishing lakes for leisure use on land at Tulleys Farm.
- 17.2. The condition as currently worded requires the submission to, and approval of, the LPA of a Flood Emergency and Evacuation Plan prior to the commencement of development.
- 17.3. Details pursuant to this condition have been under preparation for over two years. Some 12 months ago, details of the proposed scope and format of stakeholder engagement, required by the planning condition to take place prior to the preparation of the Plan, was submitted to MSDC for comment. No meaningful feedback has been received since that date.
- 17.4. In the interim, details have been agreed with the Highway Authority for the implementation of the approved construction access. Works in the formation of this and the associated haul route are due to be implemented shortly.
- 17.5. The current wording of Condition 2 of the planning permission prohibits this work taking place. The application therefore seeks a variation of condition to enable the formation of the construction access and haul route to take place prior to the discharge of Condition 2.
- 17.6. The variation of condition would continue to prohibit any works in the construction of the fishing lakes unless and until the Flood Emergency and Evacuation Plan has been approved by the LPA.
- 17.7. The proposed variation of condition does not seek to modify or amend the design of the approved scheme or the proposed operational use of the fishing lakes.
- 17.8. On this basis, the application is considered to be acceptable in principle in the same way as the original planning permission scheme. Similarly, this application is considered to have no material effect of the impact of the works on the character of the area, local residential amenity, ecology, arboriculture or highway safety.
- 17.9. The purpose of Condition 2 as imposed by the LPA, is to ensure that the fishing lakes remain safe in hydrological terms for the lifetime of the development.

- 17.10. The proposed amendments to the condition under this application will not materially affect the purpose, control and enforceability of the condition. It would solely enable the implementation of the approved construction access and haul route ahead of the approval of the Flood Emergency and Evacuation Plan.
- 17.11. On this basis, it is submitted that the amendments to Condition 2, as sought under this Section 73 application, are acceptable and should be approved.