



**TO:** Planning Committee North

**BY:** Head of Development and Building Control

**DATE:** 2<sup>nd</sup> November 2021

**DEVELOPMENT:** Retrospective application for the change of use of 67m<sup>2</sup> land from public open space to mixed use (Use Classes E(f) & F1(a)) and 559m<sup>2</sup> of land from Use Class E (formerly D1/D2) to public open space.

**SITE:** Land at Easteds Barn Easteds Lane Southwater Horsham West Sussex RH13 9DP

**WARD:** Southwater North

**APPLICATION:** DC/21/1539

**APPLICANT:** **Name:** Southwater Parish Council **Address:** C/O Squires Planning The Long Barn, Poplars Place Turners Hill Road Crawley Down RH10 4HH

**REASON FOR INCLUSION ON THE AGENDA:** More than eight persons in different households have made written representations within the consultation period raising material planning considerations that are inconsistent with the recommendation of the Head of Development and Building Control.

**RECOMMENDATION:** To approve planning permission subject to appropriate conditions

## **1. THE PURPOSE OF THIS REPORT**

1.1 To consider the planning application.

### **DESCRIPTION OF THE APPLICATION**

- 1.2 This application seeks retrospective planning permission for the change of use of 67m<sup>2</sup> land from public open space to mixed use (Use Classes E(f) Day Nursery & F1(a) Education) and 559m<sup>2</sup> of land from Use Class E (formerly D1/D2) to public open space.
- 1.3 The 67m<sup>2</sup> of land to be changed from public open space to Class E(f) and F1(a) is situated to the south of the Easteds Barn building and is being used as part of the landscaped gardens by the children who attend the nursery. The site is bordered by a 1.8m high close boarded fence to the entire southern boundary.
- 1.4 The 559m<sup>2</sup> of land to the east and north east of Easteds Barn with planning permission for D1/D2 use (through DC/11/2502) currently appears on the ground as part of the open greenspace and is used as such, but has permission to be used as part of the D1/D2 use at Easteds Barn. This proposal would change the use of this part of the open space so that it cannot be removed from the area of open space in the future and enclosed as use by

Easteds Barn. This will effectively result in an addition of 492m<sup>2</sup> of public open space at Nutham Lane Open Space although as the application is retrospective it will not appear any different to the current situation.

- 1.5 A stretch of mature hedgerow was removed from the 67m<sup>2</sup> site and enclosed by the close boarded fence when the nursery moved onto the site. This application proposes low level compensatory planting at Nutham Lane Open Space in the area in front of the fence and path.

## DESCRIPTION OF THE SITE

- 1.6 The application site lies within the Built-Up-Area of Southwater adjacent to Nutham Lane Open Space, a large open grassed area containing a children's play area and public greenspace. The open space is surrounded by a range of residential dwellings with many having views across the space. Easteds Barn is identified in the Southwater Neighbourhood Plan Policy SNP19 as a Parish Heritage Asset, a non-designated heritage asset as defined by the NPPF.
- 1.7 Easteds Barn has a permitted D1/D2 use (DC/11/2502) and is currently being used as a Children's Day Nursery called 'Little Barn Owls' who lease the site from Southwater Parish Council. This use now falls within use class E (f) Day Nursery.
- 1.8 The red line boundary of the site of this application consists of a strip of land bordering the southern and eastern boundaries of the Easteds Barn site that extends up to Easteds Lane in the west and as far as Nutham Lane to the east. It consists of public open space which is made up of grass, some planting and some existing trees and land in Use Class E mostly laid to grass.

## 2. INTRODUCTION

### STATUTORY BACKGROUND

- 2.1 The Town and Country Planning Act 1990.

### RELEVANT PLANNING POLICIES

The following Policies are considered to be relevant to the assessment of this application:

#### **National Planning Policy Framework**

#### **Horsham District Planning Framework (HDPF 2015)**

- Policy 1 - Strategic Policy: Sustainable Development
- Policy 2 - Strategic Policy: Strategic Development
- Policy 3 - Strategic Policy: Development Hierarchy
- Policy 7 - Strategic Policy: Economic Growth
- Policy 31 - Green Infrastructure and Biodiversity
- Policy 32 - Strategic Policy: The Quality of New Development
- Policy 33 - Development Principles
- Policy 41 - Community Facilities, Leisure and Recreation

### RELEVANT NEIGHBOURHOOD PLAN

#### **Southwater Neighbourhood Plan**

- SNP5 Local Green Space (i) Nutham Lane Open Space
- SNP19 Parish Heritage Assets

## PLANNING HISTORY AND RELEVANT APPLICATIONS

SQ/61/95	Erection of community building and 23 space car park Site: Easteds Meadow Cedar Drive Southwater	Application Permitted on 30.08.1995
DC/11/2502	Single storey extension to existing building and variation of Condition 10 of SQ/61/95 (Use of building for meeting room purposes only), to facilitate use of overall premises for general D1 (Non residential Institutions) and D2 (Assembly and Leisure) purposes at Easteds Barn	Application Permitted on 22.10.2013
DC/18/2212	Erection of an entrance porch and changes to existing fenestration. Internal sub-division by the installation of a first floor and staircase; internal partitioning; relocation of kitchen and WC facilities.	Application Permitted on 12.12.2018
DC/19/1058	Variation of condition 1 on previously approved application DC/18/2212 (Erection of an entrance porch and changes to existing fenestration. Internal sub-division by the installation of a first floor and staircase; internal partitioning; relocation of kitchen and WC facilities) to allow for the addition of a rooflight in the west facing roof slope.	Application Permitted on 11.07.2019
DC/21/0297	Retrospective application for the change of use of land from public open space to mixed use (Use Classes E(F) & F1(A)).	Under consideration
DC/21/0510	Retention of external store	Under consideration
DC/21/0511	Retention of covered play area.	Under consideration

### 3. OUTCOME OF CONSULTATIONS

- 3.1 Where consultation responses have been summarised, it should be noted that Officers have had consideration of the full comments received, which are available to view on the public file at [www.horsham.gov.uk](http://www.horsham.gov.uk)

#### INTERNAL CONSULTATIONS

##### **HDC Landscape Architect:** No Objection

I have no concerns with the proposals from a landscape point of view. I would only point out to bear in mind to clearly identify maintenance responsibilities for this additional area of open space if you are minded to recommend the application for approval.

##### **HDC Tree Officer:** No Objection

I can advise that I have no concerns with the species section for the new proposed planting, and I do not consider that this proposal will have a negative impact on the existing trees at the site.

##### **HDC Conservation Officer:** No Objection

It is noted that Easteds Barn is identified as a Parish Heritage Asset within the Southwater Neighbourhood Plan. Easteds Barn is considered to be a non-designated heritage asset as defined in the NPPF. Paragraph 189 of the NPPF notes that heritage assets “are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.”

The effect of a proposal on the significance of a non-designated heritage asset should be taken into account in determining applications. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required

having regard to the scale of any harm or loss and the significance of the heritage asset. Application DC/21/0297 relates to the change of use of land from open space to mixed use. The area of land proposed to become part of the nursery is to the south of the Barn, and has been enclosed by timber fencing. Whilst no objection would be raised to the change of use a more sympathetic boundary treatment could have been proposed to soften the transition between the open space and the heritage asset. It is understood that planting would be undertaken to soften the appearance of the fence which would be supported.

## OUTSIDE AGENCIES

### **WSCC Highways: No Objection**

There are no proposed altered access arrangements or parking proposed. There is not expected to be any highway safety or capacity concerns related to the change of use. The Local Highway Authority does not consider that the proposal would have an unacceptable impact on highway safety or result in 'severe' cumulative impacts on the operation of the highway network, therefore is not contrary to the National Planning Policy Framework (paragraph 109), and that there are no transport grounds to resist the proposal.

### **Ecology Consultant: No Objection**

#### ***Initial Consultation Response 14.09.2021: No Objection***

We note that the hedgerow that has been removed was planted in 1995 as part of a planning application and was comprised of native and non-native species. The original planting was species rich and originally included Common Hawthorn, Blackthorn, Spindle, Guelder Rose, Wild Privet, Dogwood, Pussy Willow, Holly, Alder, Buddleia Empire Blue, Choisya Ternata Sundance, Red-barked Dogwood and Mahonia Japonica Wintersun.

As this application is retrospective, impacts on breeding birds, reptiles, and Priority species such as hedgehog and invertebrates, as a direct result of the removal cannot be assessed.

The Planting Plan (Decimus Designs, June 2021) demonstrates that the hedgerow will be replaced with native species, to compensate for the loss of the previous hedgerow. The Planting Plan (Decimus Designs, June 2021) also demonstrates that the Hazel's to be planted will be larger specimens and the native species planting will be whips. This will enable the LPA to demonstrate its compliance with its statutory duties including its biodiversity duty under s40 NERC Act 2006.

However, we also recommend that, to secure measurable net gains for biodiversity, as outlined under Paragraph 170d of the National Planning Policy Framework 2021, reasonable biodiversity enhancement measures will need to be provided. A Biodiversity Enhancement Strategy for protected and Priority Species should be secured as a condition of any consent. Given the scope of this application, we recommend this includes the provision of a bird box and a bat box. We recommend bird box and bat box could be erected on suitable trees. These boxes should be fixed at heights above 2m and not in a south facing aspect.

Impacts will be minimised such that the proposal is acceptable subject to the conditions below based on BS42020:2013. In terms of biodiversity net gain, the enhancements proposed will contribute to this aim. Submission for approval and implementation of a Biodiversity Enhancement Strategy within 3 months.

#### ***Ecology Re-consultation 30.09.21: No Objection***

In addition to our comments on 14 September, we have reviewed the amended Planting Plan Rev A (Decimus Designs, September 2021) recently submitted which includes a height requirement for the native shrub mix, though this will not be required for the four multi stem Hazels.

We are still satisfied that there is sufficient ecological information available for determination.

The Planting Plan Rev A (Decimus Designs, September 2021) demonstrates that the hedgerow will be replaced with native species, to compensate for the loss of the previous hedgerow. The Planting Plan Rev A (Decimus Designs, September 2021) also demonstrates that the Hazels to be planted will be rootballed specimens and the native species shrub planting will be whips. This will be sufficient to re-establish the hedgerow habitat as soon as possible and maintenance of the native shrubs to a height of 1.1m is not considered likely to be a constraint to achieving its ecological function. This will enable the LPA to demonstrate its compliance with its statutory duties including its biodiversity duty under s40 NERC Act 2006.

#### **Natural England: Objection**

It cannot be concluded that existing abstraction within the Sussex North Water Supply Zone is not having an adverse effect on the integrity of the Arun Valley SAC/SPA/Ramsar sites. Developments within Sussex North must therefore must not add to this impact and one way of achieving this is to demonstrate water neutrality. The definition of water neutrality is the use of water in the supply area before the development is the same or lower after the development is in place.

To achieve this Natural England is working in partnership with all the relevant authorities to secure water neutrality collectively through a water neutrality strategy. Whilst the strategy is evolving, Natural England advises that decisions on planning applications should await its completion. However, if there are applications which a planning authority deems critical to proceed in the absence of the strategy, then Natural England advises that any application needs to demonstrate water neutrality.

#### **PUBLIC CONSULTATIONS**

A total of 12 objections have been received from nine different households in Southwater. These objections are summarised below:

- Removal of thick and mature hedgerow
- Object to compensatory planting placement due to visibility and safety concerns and antisocial behaviour at screened points
- Would require motion sensor lighting for safety
- Play park should not be additionally shielded for safeguarding reasons- needs natural surveillance
- Presence of hazel dormice
- Area is already part of the open space as shown in the Neighbourhood Plan
- Current application for PROW along this route
- The hedgerow should be replanted in the same location and the fence moved back towards the building
- Unrealistic the hedge will remain at 1.1m high, making path and park dangerous

In response to the addition of the 1.1 metre height restriction on the proposed shrub planting and the 'No Objection' response from the Council's Ecologists, the planning officer received emails from two objectors raising further concerns around the potential impact on the biodiversity mitigation of limiting the height.

#### **4. HOW THE PROPOSED COURSE OF ACTION WILL PROMOTE HUMAN RIGHTS**

- 4.1 Article 8 (Right to respect of a Private and Family Life) and Article 1 of the First Protocol (Protection of Property) of the Human Rights Act 1998 are relevant to this application, Consideration of Human rights forms part of the planning assessment below.

## **5. HOW THE PROPOSAL WILL HELP TO REDUCE CRIME AND DISORDER**

- 5.1 It is not considered that the development would be likely to have any significant impact on crime and disorder.

## **6. PLANNING ASSESSMENTS**

### **Principle of Development**

- 6.1 Policy 43 of the HDPF relates to 'Community Facilities, Leisure and Recreation'. It states that 'The provision of new or improved community facilities or services will be supported, particularly where they meet the identified needs of local communities'.
- 6.2 Policy SNP5 of the Southwater Neighbourhood Plan relates to Local Green Space. The area to the south of Easteds Barn is a designated Local Green Space named 'Nutham Lane Open Space' and is designated as Local Green Space (i). The policy states that there will be a presumption against all development on Local Green Space except in very special circumstances.
- 6.3 The part of the site to become associated with Easteds Barn (67m<sup>2</sup> to the south of the building) falls outside of the Local Green Space designation as defined in the Neighbourhood Plan and there is therefore no loss of Local Green Space through the change of use of this part of the site. Some of the land proposed to formally become public open space through this application is within the Local Green Space designated area. This application is therefore considered to be compliant with the Southwater Neighbourhood Plan 2021.
- 6.4 Whilst part of the site is open to the public, and part of it used by the nursery, the whole site is a community facility and this proposal is considered to lead to improvements to both parts. The enclosed part of the site becoming use classes e(f) & f1(a) offers secure and safe outdoor space for children to play and learn, essential for children's health and well-being, whilst the remainder provides the community with assurance that the land previously allowed change of use to D1/D2 will remain public open space and cannot be amalgamated into Easteds Barn as it could be currently. This is particularly the case for the area to the east of the enclosed site between Easteds Barn and the rear of 1 Nutham Lane where currently the land has planning permission for D1/D2 use alongside Easteds Barn.
- 6.5 The application will result in an actual net increase of land in public open space use class. It should be noted though that this application does not designate the additional land as part of the Nutham Green Space (this can only be done through a review of the Neighbourhood Plan) but it does limit its use to public open space rather than as part of Easteds Barn community facility and therefore give some assurance to residents that this will remain as such.
- 6.6 With the above considerations in mind it is considered that the principle of the change of use of the land identified in the submitted plans is acceptable, subject to all other material considerations

## **Design and Appearance**

- 6.7 Policies 25, 32 and 33 of the HDPF promote development that is of a high quality design, which is sympathetic to the character and distinctiveness of the site and surroundings. The landscape character of the area should be protected, conserved and enhanced, with proposals contributing to a sense of place through appropriate scale, massing and appearance.
- 6.8 The application relates to the material change of use of the land with no external alterations proposed apart from compensatory planting. The nature of the proposed uses would be appropriate in this location and there would be no adverse harm to the character and appearance of the site and surroundings.
- 6.9 Concern has been raised in relation to the visual impact of the fence that has been erected around the site. The erection of this fence was considered under an enforcement investigation EN/19/0206 where it was claimed that the fence had been erected on common land outside of the curtilage of Easteds Barn. It was concluded that as the Parish Council own the entire site and the fence, that is less than 2 metres tall is erected on what appeared to be a natural border for Easteds Barn that no breach of planning had occurred. As a result, the fence, and its impact is not a matter for consideration as part of this application.
- 6.10 Despite that, the applicant is keen to negate the concerns raised by the community in relation to the visual appearance of the fence. The applicants have therefore proposed a planting scheme that will help to partly screen the fence and soften its appearance from the Nutham Lane Open Space. This will also provide compensatory planting for the hedgerow that has been lost between 2019 and now.
- 6.11 The concept of planting next to a footpath is explored through the 'Secured By Design Homes 2019', a document based on sound research findings that are proven to deliver significant crime reductions and prepared in partnership with the police service. The planting proposed will be subject to a maximum height of 1.1 metres and considering the width of the pavement and the existing planting on the site, it is considered that natural surveillance will be maintained to the play area and footpath whilst also creating a greener and softer appearance to the fence line. As long as the vegetation is well maintained, kept to below the maximum height (as indicated on planting plan drawing number 07 RevA) and stipulated in the recommended condition, and the trees are sporadic within the lower native planting it is considered an acceptable and safe solution.

## **Impact on Heritage Assets**

- 6.12 Southwater Neighbourhood Plan Policy SNP19 identifies Easteds Barn as a Parish Heritage Asset. Parish Heritage Assets are buildings which, although not officially designated, are considered to be locally significant and important features which contribute to the character and appearance of the Parish. As a non-designated heritage asset SNP19 states that any proposals at Easteds Barn must demonstrate that the significance of the building as an asset, and its setting will not be adversely impact.
- 6.13 This proposal seeks to retrospectively change of the use of a strip of land that has been enclosed at Easteds Barn and no objection is raised to the change of use of the land in heritage terms. Although it is considered that a more sympathetic boundary treatment could have been proposed to soften the transition between the open space and the heritage asset, the Conservation Officer supports the additional planting proposed be undertaken to soften the appearance of the fence.

## **Impact on Neighbour Amenity**

- 6.14 Policy 33 of the HDPF states that development should consider the scale, massing and orientation between buildings, respecting the amenities and sensitivities of neighbouring properties.
- 6.15 It is considered that the change of use of these parcels of land will not result in additional operations on the site or an intensification of use and no additional impact on nearby neighbours will be felt by this change of use application.

## **Landscaping and Trees**

- 6.16 As previously discussed the applicants have proposed an area of compensatory planting for the site that will help to compensate for the lost hedgerow planting in the location where the Change of Use from open space to E and F class is proposed. The planting on the site was originally required via SQ/61/95 which stipulated that this had to be in place for 5 years from the date of approval. In planning terms, there was no requirement for the layout to be maintained as approved beyond those five years and there is no breach of planning by the removal of this planting. This has been investigated by the Council's enforcement officers who determined that no breach had occurred.
- 6.17 Residents have raised many concerns around the loss of this stretch of hedgerow planting that can be viewed on the Council's photographic records as establishing and spreading out across the site over time. As a Planning Department we are keen to ensure that trees and green infrastructure are not lost through development and it is considered that the planting scheme put forward by the applicants, although not mature in nature in the way the lost vegetation was, is in the circumstances an acceptable compromise for the lost vegetation on this site. The Council's Tree Officer is satisfied that the species selection for the native planting is appropriate and will have no negative impact on existing trees on the site.

## **Ecology**

- 6.18 Policy 31 of the HDPF states that development will be supported where it demonstrates that it maintains or enhances the existing network of green infrastructure. Development proposals will be required to contribute to the enhancement of existing biodiversity, and should create and manage new habitats where appropriate.
- 6.19 Residents of the nearby area have expressed their concern in relation to the loss of the hedgerow and the impacts on ecology and biodiversity for the site and the local area. Unfortunately as this application is retrospective impacts on breeding birds, reptiles, and Priority species such as hedgehog and invertebrates, as a direct result of the removal of the hedgerow cannot be assessed with any certainty.
- 6.20 The applicants have submitted a planting plan that demonstrates that the hedgerow will be replaced with native species to compensate for the loss of the previous hedgerow. The Planting Plan (Decimus Designs, June 2021) also demonstrates that the Hazel's to be planted will be larger specimens and the native species planting will be whips. This will enable the LPA to demonstrate its compliance with its statutory duties including its biodiversity duty under s40 NERC Act 2006.
- 6.21 The Council's ecologists also recommend that, to secure measurable net gains for biodiversity, as outlined under Paragraph 170d of the National Planning Policy Framework 2021, reasonable biodiversity enhancement measures will need to be provided. A Biodiversity Enhancement Strategy for protected and Priority Species should be secured as a condition of any consent. Given the scope of this application, this should include the provision of a bird box and a bat box. They recommend that a bird box and bat box could be

erected on suitable trees. These boxes should be fixed at heights above 2m and not in a south facing aspect.

- 6.22 It should also be noted that although a substantial amount of low lying hedgerow has regrettably been removed in the recent past, within the site the higher trees are still in place providing substantial tree cover in the summer months to the southern side of Easteds Barn.

#### Water Neutrality

- 6.23 The application site falls within the Sussex North Water Supply Zone as defined by Natural England which draws its water supply from groundwater abstraction at Hardham. Natural England has issued a Position Statement for applications within the Sussex North Water Supply Zone which states that it cannot be concluded with the required degree of certainty that new development in this zone would not have an adverse effect on the integrity of the Arun Valley SAC, SPA and Ramsar sites.
- 6.24 Natural England advises that plans and projects affecting sites where an existing adverse effect is known will be required to demonstrate, with sufficient certainty, that they will not contribute further to an existing adverse effect. The received advice note advises that the matter of water neutrality should be addressed in assessments to agree and ensure that water use is offset for all new developments within the Sussex North Water Supply Zone.
- 6.25 There is no clear or compelling evidence to suggest the nature and scale of the proposed development would result in a more intensive use of the site necessitating an increased consumption of water that would result in a significant impact on the Arun Valley SAC, SPA and Ramsar sites, either alone or in combination with other plans and projects. The grant of planning permission would not therefore adversely affect the integrity of these sites or otherwise conflict with policy 31 of the HDPF, NPPF paragraph 180 and the Council's obligations under the Conservation of Habitats and Species Regulations 2017.

#### **Conclusions**

- 6.26 This retrospective application seeks to regularise the change of use of an area of open space that has been included within the boundary of Easteds Barn as a community use (Use Class E). In response to this the applicants propose the change of use of an area of land to the east of Easteds Barn that has historic planning permission to be used as part of Easteds Barn (Use Class E) to Public Open Space.
- 6.27 This proposal will not result in the loss of any public open space and is considered to be compliant with HDPF policy 43 in that it contributes towards the improvements of a community facility.
- 6.28 The concerns of residents in relation to the loss of the mature hedgerow and the erection of the fence are recognised and the compensatory planting is considered to be an acceptable approach in this instance. This application is therefore recommended for approval subject to the below conditions.

## **7. RECOMMENDATIONS**

- 7.1 To approve the application subject to the following conditions:

- 1 Approved Plans
- 2 **Regulatory Condition:** Within three months of this decision a Biodiversity Enhancement Strategy for Protected and Priority species shall be submitted to the

local planning authority for its approval in writing. The content of the Biodiversity Enhancement Strategy shall include the following:

- a) Purpose and conservation objectives for the proposed enhancement measures;
- b) detailed designs to achieve stated objectives;
- c) locations of proposed enhancement measures by appropriate maps and plans;
- d) persons responsible for implementing the enhancement measures;
- e) details of initial aftercare and long-term maintenance (where relevant).

The works shall be implemented in accordance with the approved details and shall be retained in that manner thereafter.

Reason: To enhance Protected and Priority Species/habitats and allow the LPA to discharge its duties under the s40 of the NERC Act 2006 (Priority habitats & species).

- 3 **Regulatory Condition:** All planting works shall be carried out in accordance with the details contained in the Planting Plan 07 Rev A (Decimus Designs, received 16 September 2021) within the first planting season following the approval of planning permission. Any planting, which within a period of 5 years, dies, is removed, or becomes seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the Local Planning Authority gives written consent to any variation.

Reason: To ensure a satisfactory development that is sympathetic to the landscape and townscape character and built form of the surroundings, and in the interests of visual amenity in accordance with Policy 33 of the Horsham District Planning Framework (2015).