



TO: Planning Committee North

BY: Head of Development

DATE: 3rd July 2018

DEVELOPMENT: Retrospective application for a 2.4m wide access track, laid with crushed hardcore

SITE: Firtree Plantation, Hyes Woodland, Waterlands Lane, Rowhook

WARD: Rudgwick and Slinfold

APPLICATION: DC/18/0205

APPLICANT: **Name:** Dr Adrian Worrall **Address:** 63 Brixton Water Lane, London, SW2 1PH

REASON FOR INCLUSION ON THE AGENDA: More than eight persons in different households have made a written representation, which disclose material considerations, are within the consultation period and are inconsistent with the officer's recommendation.

RECOMMENDATION: To approve planning permission, subject to appropriate conditions.

1. THE PURPOSE OF THIS REPORT

To consider the planning application.

DESCRIPTION OF THE APPLICATION

- 1.1 The proposal seeks retrospective planning permission for the retention of a 598m access track and an adjoining 120m access track recently laid into an area of woodland approximately 1.2km northwest of Clemsfold.
- 1.2 The access track is approximately 2.4m wide and runs east-west with a 120m spur which dissects the Oakesfield and Firtree Plantations. The access track provides vehicle access to the two plantations and enables forestry materials, equipment and new whips (young trees) to be brought in and coppice and cut wood to be brought out. The access track has been constructed of crushed hardcore measuring 0.2m in depth and laid over a geo-textile membrane.

DESCRIPTION OF THE SITE

- 1.3 The application site comprises a parcel of land, set in a forested area of Rowhook. The main access track which is approximately 598m in length plus the 120m spur runs south of Oakesfield Plantation and Firtree Plantation, arching northwards to finish at a timber-clad barn which serves Firtree Plantation. The smaller track spurs north eastwards between the two plantations. Along this section of the track and part of the track that runs along the bottom

of the plantation is Public Right of Way 1402. Approximately 245m of the PRow has been laid with crushed hardcore.

- 1.4 The site lies approximately 700m to the south east of the unclassified settlement of Rowhook, 3.6km to the west of the built-up area of Warnham, 2.2km to the north of the built-up area of Slinfold and 3.5km to the north west of the built-up area of Broadbridge Heath. The site therefore lies within a rural area in terms of planning policies. It should be noted that the access track lies wholly within the Parish of Rudgwick, however access to the track leads from the Parish of Slinfold and the wider area known as the Roman Woods lies in both parishes.
- 1.5 The grade II listed Burnt House is sited approximately 500m to the north east and the grade II listed Waterland Farm lies approximately 530m to the south east. To the south of Oakesfield Plantation and part of Firtree Plantation is an area of Ancient Woodland. The access track lies immediately adjacent to the south - but outside of - an area of ancient woodland. On the land itself there are no other designations in terms of heritage interest or protected trees.

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 24 - Strategic Policy: Environmental Protection
Policy 25 - Strategic Policy: The Natural Environment and Landscape Character
Policy 26 - Strategic Policy: Countryside Protection
Policy 31 - Green Infrastructure and Biodiversity
Policy 32 - Strategic Policy: The Quality of New Development
Policy 33 - Development Principles
Policy 40 - Sustainable Transport

RELEVANT NEIGHBOURHOOD PLAN

Rudgwick Parish has formed as a Neighbourhood Development Plan but the Plan is at an early stage.

PLANNING HISTORY AND RELEVANT APPLICATIONS

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|------------|--|--|
| DC/17/2760 | Prior notification for the creation of agricultural access tracks | Application withdrawn on 09.01.2018 |
| DC/08/1257 | Access track to Firtree Plantation (Agricultural Prior Notification) | Prior Approval Not Required issued on 23.06.2008 |

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|------------|---|-------------------------------------|
| DC/05/1707 | Erection of building for use in association with Forestry business (Prior Notification) | Application permitted on 12.12.2005 |
| RW/81/03 | Prior notification to erect a single-storey timber building | Application refused on 03.10.2003 |

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.
- 3.2 It should be noted that the summarised consultation responses below includes comments from the initial round of consultations and comments received in response to the re-consultation that took place upon receipt of new information.

INTERNAL CONSULTATIONS

3.3 HDC Arboricultural: No Objection

- The Forestry Commission's UK Forestry Standard sets out the government's approach to sustainable forestry. This includes the drive to improve UK woodlands, many of which have suffered in recent years from neglect and an absence of management. Such improvement of woodland cannot be achieved without access via internal rides and trackways linking the site to the local road network. A minimum impact approach is desirable, allowing access whilst minimising damage to woodland soils. In this regard, the upgrading of existing tracks is always preferable to the construction of new ones.
- This application refers to the already completed upgrading of what appears to have been an existing trackway, and is stated to be required to "*enable forestry materials, equipment and new whips (young trees) to be brought in, and coppice and cut wood to be brought out. In this way, the woodland will be managed more effectively*". The upgrading of the track for this reason appears justified.
- The sectional drawing ('*Section Through Track*') submitted in support of the application indicates its construction to a maximum depth of 200mm into the woodland floor, across a breadth of no more than 2.4m. In terms of likely damage to the root systems of adjacent trees, and overall damage to the woodland floor, this appears reasonable and acceptable within a woodland context.
- The Officer noted that the trackway had already been installed, this being a retrospective application. Enforcement action to remove the hardcore and base would be counter-productive, as whatever damage has been done – the Officer believes little – cannot now be undone; and moreover the removal of the surfacing would likely cause further damage. The Officer concluded that the track is better left in situ.
- Following re-consultation regarding the addition of a wearing course to the public right of way, the Officer registered no objection again, commenting that damage to the rooting structure of the number of trees that might have roots under the course of the trackway can be caused by the act of compaction, but as the trackway is already in place I am not of the view that any further damage is likely, or likely to cause serious harm to rooting structures.

3.4 **HDC Ecology:** Comment

- Following review of the available information, the Ecology Consultant advised that the woodlands through which the track passes are a UK Priority Habitat, protected under the NERC Act (2006). In addition, the area to the south of the site comprises 'Ancient and semi-natural woodland' and 'Ancient replanted woodland', which are an irreplaceable resource, protected within the National Planning Policy Framework.
- The Ecology Consultant supports the response from the Arboricultural Officer highlighting that the removal of the surface would likely cause further damage.
- However, the Consultant has advised that if further works are required then an Ecological Appraisal would be recommended. This Appraisal should be completed by a suitably qualified Ecologist.
- Following re-consultation after receipt of the Construction Detail and Preliminary Ecological Appraisal, the Ecology Consultant recommended conditions should further works be necessary and in the case that not further works are necessary a condition to undertake the works as suggested the Preliminary Ecological Appraisal submitted by The Ecology Co-op on 26th April 2018.

3.5 **HDC Landscape:** Comment

- The Landscape Architect agrees with the comments of the Arboricultural Officer and the Ecological Consultant in that removal of the track would be more harmful and the footpath should be left in situ
- The Landscape Architect acknowledged the comments of the Public Rights of Way Officer in that the surface does not meet the standard bridleway surfacing detail.
- It is recommended that a construction detail is submitted for approval prior to the determination of the application and should be based on a 'no-dig' method of construction. The Construction Details should also be informed by baseline ecology information, as recommended by the Ecologist.
- Following re-consultation after receipt of the Construction Detail and Preliminary Ecological Appraisal the Landscape Architect noted that the ecology report suggested further works are not desirable. In the absence of the response (at the time) of comments from WSCC Public Rights of Way team, it was queried whether WSCC would, in this instance, allow a departure from their usual standards. In any case, it is advised that the Arboriculturalist advises whether the works will damage the tree roots.

OUTSIDE AGENCIES

3.6 **WSCC Highways:** Comment

- The principle of this application does not seek vehicular intensification of use and works have not been undertaken on land considered to be publicly maintained highway (not including any Public Right of Way).
- No highways safety or capacity concerns are raised in response to this application

3.7 **WSCC Rights of Way:** Comment Initial comments 5 March 2018

- Public Rights of Way Bridleway 1392 and Footpath 1402 run across the land indicated by the Applicant.
- It was first brought to the attention of the Public Rights of Way Team on 20/07/2017 that hardcore had been deposited on the surface of Footpath 1402. This was inspected on the 26/10/17 during the routine maintenance inspection of the parish. This has been recorded as Issue 17028 as indicated by the map submitted by the PRow team.
- The PRow Officer highlighted that the material extends beyond the Right of Way, but was only concerned with the PRow. During the inspection the Officer had been advised by local dog walkers that when the material had been freshly laid, injuries had occurred to dogs' paws. At the time of the inspection, no sharp objects, ceramics or glass were noted within the material
- It is a criminal offence to deposit material on the highway without the lawful consent of the Highway Authority. No such consent has been sought or given by the Public Rights of Way Team.
- The Officer has advised that the surface of the footpath is unacceptable in its current condition and therefore raises an objection to the application.
- The Officer advised that the applicant should remove the material that has been unlawfully deposited on the highway in its entirety.
- The Officer concluded that he would consider withdrawing the objection if the applicant submits an acceptable proposal to top the hardcore material with a suitable wearing course and advised it would be necessary for the applicant to submit a proposed specification to the PRow team for approval. The Officer further advised that typically, a suitable wearing course would be a minimum depth of 100mm of 'clean' (must contain no plastic, glass, ceramics, metal or other sharp objects) Type 1 material with plenty of fines to be laid in two courses (each having a minimum depth of 50mm) , with each layer being compacted well between courses. The exact detail would need to be agreed with the PRow Team.

Subsequent comments 11 June 2018

- Following re-consultation after receipt of the Construction Detail and Preliminary Ecological Appraisal the PRow Officer noted that the proposed material is not suitable for surfacing public rights of way and the methodology is required to create a wearing course that is compacted well, in two layers with each layer having a depth of 50mm. If the Local Planning Authority is minded to approve the application, the materials and Method Statement can be required by condition and in this instance, the Officer is able to drop his objection.

PUBLIC CONSULTATIONS

3.8 **Rudgwick Parish Council:** No Objection

- No objection to track resurfacing for forestry purposes. However, the Parish Council also highlighted that attention had been drawn to the potential planning breaches in the area which may be exacerbated by this application.

3.9 **Slinfold Parish Council:** No Objection

- Responded on 23rd February 2018 stating that the Parish Council feels it has to object to this application. The Parish Council considers the application to be

ambiguous and is inappropriate in this location. It has also been noted that there are 10 structures on site and would like the Compliance team to investigate.

- Slinfold Parish Council also responded on 14 March following re-consultation regarding the change in description and registered No Objection, although highlighted that there is concern that there is possible unlawful development in the woodland. The Parish Council are also concerned that the hardcore surfacing could lead to a tarmacked road which in turn may facilitate the buildings in the woodland being inhabited. Again the Parish Council highlighted the Compliance Team should investigate current and possible future use of the woodland.

3.10 To date, 16 letters of representation have been received from 13 households, objecting to the proposal on the following grounds.

- Hardcore access track has been laid with no regard to the planning process or the local area and ecology
- Approval of the application could set a precedent for future applications
- Alleged unauthorised dwellings (10 structures) and activities
- Access track has been laid for financial gain as the woodland and associated structure are currently being offered for sale
- Damage to the ancient woodland
- Concern regarding the level of activity in the woodland
- Concern that the hardcore has been laid over part of the public right of way without the correct permissions
- The track is unfriendly to walkers, runners, children and animals as it has been laid with hardcore that includes glass, metal and plastic
- Trees have been felled along this path without the authorisation of the Council's Arboriculturalist
- The public footpath should be re-instated and the areas outside of the footpath should be re-instated as woodland

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

6.1 The main considerations in the determination of this application is whether the access track is acceptable in principal and serves a forestry purpose, its impact on the rural character of the area together with the impact of its construction and removal on the ecology and biodiversity.

Background:

6.2 The application site forms a small plantation and is part of the Roman Woods. The woods cover an area of approximately 95 hectares and originally formed part of the Hyes Estate. According to investigation undertaken by the Planning Compliance team, Woodlands for Sale have since split the land originally associated with the Hyes Estate and has advertised them

for sale as smaller plots. The land has been sold and registered with Land Registry as approximately 35 smaller plots with individual landowners.

- 6.3 The timber clad building on Firtree Plantation was granted consent in 2005 under application reference DC/05/1707 for use in connection with a forestry business under the prior notification procedure. This provided confirmation that the building applied for meets the necessary criteria to qualify as permitted development, not requiring an application for planning permission, after the Council was satisfied that it was reasonably necessary for the purposes of forestry within the site.
- 6.4 Similarly, prior notification was sought for an access track to Firtree Plantation under application reference DC/08/1257. Prior approval was not required and it was determined that the access track met the necessary criteria to qualify as permitted development. Again, the Council was satisfied that the track was reasonably necessary for the purposes of forestry within the site.
- 6.5 The access track met the requirements of permitted development as set out in Class A, Part 7 of the Town and Country Planning General Permitted Development Order 1995, as amended (which was the legislation at the time). However, to meet the criteria the development must have been carried out within a period of five years.
- 6.6 The development should have been carried out by 23rd June 2013 but this did not happen and has since been carried out in 2017, outside of the maximum time limit of 5 years.
- 6.7 The Council's Planning Compliance team received a complaint in July 2017 concerning the laying of hardcore. The landowner was advised that a breach of planning control had been identified but as the work to lay the hardcore had been done, the prior notification procedure could not be used and therefore planning permission was now required for the works.
- 6.8 It is acknowledged that a number of the representations have raised concern about the level of activity and the number of structures that are in the Roman Woods. The Planning Compliance team are aware of this and this situation has been the subject of a separate investigation. It should be noted however, that the assessment of this application can only consider the planning merits of the access track and it cannot take into consideration the other activity that is alleged to have taken place in the Roman Woods.

Principle of Development

- 6.9 Through the provision of the Town and Country Planning (General Permitted Development) (England) Order 2015 the government has specified certain types of development that, in principle, are considered to be acceptable. Under the current legislation, Class E of Part 6, Schedule 2 of the legislation states that operations on forestry land to obtain the materials required for the purposes of forestry, including afforestation, can include the formation, alteration or maintenance of ways (tracks/roads).
- 6.10 Moreover, the Council's Arboriculturalist, in his consultation response of 23rd February 2018, states that *"The Forestry Commission's UK Forestry Standard sets out the government's approach to sustainable forestry. This includes the drive to improve UK woodlands, many of which have suffered in recent years from neglect and absence of management. Such improvement of woodland cannot be achieved with access via internal rides and trackways lining the site to the local road network."*
- 6.11 Further to this, Policy 26 of the Horsham District Planning Framework is a strategic policy for the protection of the countryside. The Policy states that outside built-up area boundaries, the rural character and undeveloped nature of the countryside will be protected against

inappropriate development. Any proposal must be essential to its countryside location, and in addition meet one of the following criteria:

1. Support the needs of agriculture or forestry;
2. Enable the extraction of minerals or the disposal of waste;
3. Provide for quiet informal recreational use; or
4. Enable the sustainable development of rural areas

- 6.12 The application site has a history of development in relation to forestry activity including prior notification applications for an access track in 2008 and prior notification applications for a timber building in 2003 and 2005.
- 6.13 It is acknowledged that the application site is currently being marketed for sale with an estate agent as a parcel of amenity woodland with a timber-framed forestry barn, for sale as a whole or as two lots. The timber building itself appears to have been locked up and unused for some time. However, there is no evidence to suggest that the land and associated building has been used for purposes other than forestry.
- 6.14 It is therefore concluded that the principle of development for the laying of an access track in this location and in relation to forestry activities is acceptable.

Appearance and Ecological Considerations:

- 6.15 The application is retrospective as the works were completed in 2017. The access track has been constructed of crushed hardcore measuring 0.2m in depth and laid over a geo-textile membrane. From the consultation responses submitted there is concern regarding the quality of the material that has been laid. The length of the access track is long at 718m in total and the appearance of the track does differ along its length.
- 6.16 The case officer walked the length of this track and observed that some areas had blended well with the forest scene, with natural forestry material overlaying the track effectively and other parts not so well, with poor quality hardcore material in evidence. Representees have highlighted that due to the poor quality of the hardcore material that has been laid, there is concern that this poses harm to walkers, cyclists, children and animals.
- 6.17 The WSCC Public Rights of Way Officer highlighted in his initial response that it is a criminal offence to deposit material on the highway without the lawful consent of the Highway Authority. The Officer objected to the application and requested that the applicant removes the material that had been unlawfully deposited on the public right of way.
- 6.18 As the access track has been laid already and this is a retrospective application, significant concern was raised by the Ecologist and the Arboriculturalist if enforcement action is taken to remove the hardcore and base with additional concern that this would likely cause further damage to the woodlands which is a UK Priority Habitat.
- 6.19 With the conflicting positions from an Ecology and Arboricultural perspective who wish to avoid further damage to the woodland and ecology through the removal of the material and the position of the PRow Officer who wished the unlawful and substandard material to be removed from the public right of way, it was decided that a solution should be sought.
- 6.20 With an understanding of the ecological considerations and the aesthetic condition of the track, the Council's Landscape Architect was consulted and has advised that a Construction Detail be submitted along with the baseline ecology survey that the Ecologist recommended in the event that further works are required. The Landscape Architect advised that the Construction Details should include a 'no-dig' method of construction to avoid further root severance or compaction and a further geo-textile membrane be laid over the existing sub-base to stop fines getting into the sub-base.

- 6.21 A Preliminary Ecological Appraisal and further construction details have been submitted as requested and re-consultation issued. The PRoW Officer has noted that the materials proposed for the wearing course are not suitable for public rights of way, however, the Officer is satisfied that if the local planning authority is happy to require the suitable materials and a method statement by condition is required he can remove his objection.
- 6.22 The Ecologist has not raised an objection to the proposed remedy and has recommended suitable conditions to control this work. The Council's Arboriculturalist has similarly raised no objection, commenting that damage to the rooting structure of the number of trees that might have roots under the course of the trackway can be caused by the act of compaction, but as the trackway is already in place he is not of the view that any further damage is likely or likely to cause serious harm to rooting structures.

Conclusions and Planning Balance:

- 6.23 It is acknowledged that the planning application for the track is retrospective as the track has already been laid. Whilst the access track could originally have been laid under the powers granted by government through the permitted development route, the works have been undertaken outside of the requisite 5 years of the prior notification application. In any case, as the track crosses a public right of way, a formal application should have been made to West Sussex County Council to undertake works to the public right of way.
- 6.24 Despite this, the purpose of planning enforcement is not punitive but to enforce and resolve breaches in planning control which cause harm to public amenity and the environment, the powers are discretionary and it does not follow that a breach of control would result in formal action being pursued.
- 6.25 In this instance, Planning Compliance has investigated the laying of the track following a complaint and in recognising that the track did meet permitted development but should have been completed inside 5 years from the date of the issue of the prior notification, have recommended a full planning application be made to the local planning authority.
- 6.26 It is concluded that the principle of development is acceptable in this location and in relation to this application site. The proposal accords with the countryside policies of the Horsham District Planning Framework, in particular Policy 26 which recognises that development should be essential to its countryside location and support the needs of forestry.
- 6.27 It is accepted that the material that has been laid is not the best quality and this is regrettable. However, an agreeable solution that protects the visual amenity of the route along the public right of way and the safety and comfort of walkers, cyclists and animals using the route, whilst also preserving the ecology and woodland surrounding the site and limiting any further harm, has been reached and approval is recommended.

7. RECOMMENDATIONS

- 7.1 The application is recommended for approval, subject to the following conditions;

Conditions:

- 1 List of approved plans.
- 2 **Regulatory Condition:** Within four months of the date of this permission, a Method Statement detailing a suitable wearing course for the length of track that forms part of the Public Right of Way shall have been submitted and approved in writing by the Local Planning Authority. The wearing course shall have a minimum depth of 100mm of Type 1 material with plenty of fines and shall be laid in two courses, each having a minimum depth

of 50mm. Each layer shall be compacted well between the courses and a geo-textile membrane added to prevent fines getting in to the sub-base.

Within four months of the date of the written approval by the Local Planning Authority of the Method Statement, the wearing course shall have been laid strictly in accordance with the approved Method Statement and be retained as such thereafter.

Reason: To enable the Local Planning Authority to control the development in detail in the interests of visual amenity and safety in accordance with Policy 33 of the Horsham District Planning Framework (2015).

- 3 **Regulatory Condition:** Within four months of the date of this permission, an Ecological Construction Methodology Plan (ECMP) shall have been submitted to and approved in writing by the Local Planning Authority. The ECMP shall incorporate all measures proposed within the *Preliminary Ecological Appraisal* and shall include details of habitat protection for adjacent habitats, avoidance measures with regards to protected and notable species and enhancement measures for biodiversity. The measures outlined in Section 4.11 of the *Preliminary Ecological Appraisal* by The Ecology Co-op dated 26th April 2018 should be adhered to, to prevent impacts to protected species and damage to adjacent habitats. The approved provisions shall be implemented before the works to lay the wearing course commences and shall thereafter be retained and maintained in accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.

Reason: To provide ecological protection and enhancement in accordance with Policy 31 of the Horsham District Planning Framework (2015).

Background Papers: DC/18/0205

DC/08/1257 – Prior notification for an access track to Firtree Plantation