

SNPL 347629

21/05/2024



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Dear Andy,

**APP/Y9507/W/21/3289423 – The Queens Hotel, High Street, Selborne**

On behalf of Derek Warwick Developments (the Appellant) please accept this letter as a formal response to your email received Tuesday 30<sup>th</sup> April 2024.

**Comments on any Material Change in Circumstances**

Local Planning Policy

The Development Plan against which the original Appeal was determined (December 2022) comprised:

- The South Downs Local Plan 2014-2033 (adopted 2 July 2019)

The Local Plan (2014-2033) remains extant and continues to constitute the principal document of the South Downs Development Plan. The policies cited within the previous Appeal Decision, therefore, remain as previously considered, namely:

- SD4 – Landscape Character
- SD5 – Design
- SD15 – Conservation Areas
- SD23 – Sustainable Tourism
- SD43 – Community Facilities

National Policy

In the intervening time since the original Appeal was determined (December 2022) the National Planning Policy Framework (NPPF) has been updated (September 2023 and December 2023).

The only Paragraph of the NPPF cited in the previous decision is Paragraph 84. In the updated NPPF, Paragraph 84 has become Paragraph 88. A 'tracked change' version of Paragraph 88 showing the minor updates from the 2021 iteration is provided below:

**84 88.** *Planning policies and decisions should enable:*

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- a) *the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed, beautiful new buildings;*
- b) *the development and diversification of agricultural and other land-based rural businesses;*
- c) *sustainable rural tourism and leisure developments which respect the character of the countryside; and*
- d) *the retention and development of accessible local services and community facilities, such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship.*

The thrust the updated text remains as previously drafted in that it continues to promote the creation of prosperous rural communities, enable sustainable rural tourism and leisure developments and the development of accessible local services and community facilities.

The principal addition is the requirement for policies to enable 'beautiful' new buildings. In this respect, it remains the Appellant's case that the development proposals are well designed and entirely sympathetic to their locality and squarely fulfil the 'beauty' requirement. Indeed, as detailed in the original Statement of Case the scale, form and massing of the Appeal Proposals were iteratively worked up in close association with the Council's Design, Landscape and Heritage Officers.

No conflict with the Framework was found in the previous appeal decision. It is the Appellant's case that the same position should be maintained in the forthcoming re-determination.

### The Site

On 10<sup>th</sup> May 2022 an application for tree works was granted consent on the site under ref. SDNP/22/01574/TCA. The consent prescribed the following:

- T1 3x Mature Ash with Die back, inappropriate location over multiple entrances, Remove
- T2 1x Cherry poor condition low life expectancy, Remove, replace with ornamental Cherry
- T3 2x Mature Thuja, gently lift canopy from current height of 2.5 meters to a height of approximately 3.5 to 4 meters
- T4 3x Small dead and dying Hollies, Ivy clad, recent tare outs, Remove, replace with Fruit trees or hedging
- T5 Mature Apple, remove dead wood, Gentle lift canopy from 2.5 meters to a height of 3.5 to 4 meters
- T6 Mid-life Spruce, poor condition, unsuited to location, Remove, Replace with Fruit tree or hedging

The initial tree works (felling and canopy lifting) were undertaken in w/c 16<sup>th</sup> May 2022. The Only tree that has been removed, that wasn't proposed to be removed under the Appeal Scheme is T1/T8 (3no. conjoined Ash Trees) which were removed due to Ash Die Back.

The second phase of works (i.e. the planting) was undertaken in March-April 2024. A photographic schedule of the new planting is provided at Appendix 1, and itemised below (actions undertaken in **blue**):

- T1 3x Mature Ash with Die back, inappropriate location over multiple entrances, **Remove - Done**
- T2 1x Cherry poor condition low life expectancy, **Remove, replace with ornamental Cherry – Done (replaced with 4m Cherry)**
- T3 2x Mature Thuja, **gently lift canopy** from current height of 2.5 meters to a height of approximately 3.5 to 4 meters **Done – canopy lifted**
- T4 3x Small dead and dying Hollies, Ivy clad, recent tare outs, **Remove, replace with Fruit trees or hedging Done – beech hedging installed alongside + apple, pear and cherry tree (3no.)**

- T5 Mature Apple, remove dead wood, **Gentle lift canopy** from 2.5 meters to a height of 3.5 to 4 meters **Done – canopy lifted**
- T6 Mid-life Spruce, poor condition, unsuited to location, **Remove, Replace with Fruit tree or hedging Done - Beech hedging installed + 4m maple tree**

Additionalities (over and above that prescribed by SDNP/22/01574/TCA):

- **3no. 4m trees in the new boundary on the rear of the barn. 2no. elm and 1no. maple**

The material change in regards the above is that there is a new landscape 'baseline' against which the Inspector will need to assess the site and its impacts.

The following documents are being updated to reflect the above and will be submitted for the Inspector's consideration as swiftly as possible:

- Arboricultural Method Statement & Tree Survey
- Tree Protection Plan
- Landscape Proposals Plan

### **Comments on the Final Judgement**

It is important to note, at this juncture, that the High Court Claim was originally brought on two grounds:

1. The Inspector made a material error of fact in relation to trees.
2. The Inspector failed to properly understand and apply the 'shortfall' limb of SD43 2c).

On 21<sup>st</sup> June 2023 Upper Tribunal Judge Cooke, sitting as a Judge of the High Court, granted permission to proceed on Ground 1 and refused permission on Ground 2.

In regards ground 2 (Community Facilities), the Appeal inspector found that (Savills emphasis):

*'Based on the evidence before me, **the proposed community uses would be accessible, inclusive and available**, and I have no reason to believe that together they could not provide an equivalent or better quality of facility to that lost, albeit through providing different services to the former public house. **Neither would the proposal cause an unreasonable reduction or shortfall in the local service provision**. Consequently, **the appeal scheme would comply with Policy SD43 of the SDLP**. It would also comply with the Framework insofar as it relates to local services and facilities in rural communities.'*

[Appeal Decision – Paragraph 19]

On the basis of the decision of the Upper Tribunal it is the Appellant's case that the Inspectorate's re-determination should, therefore, focus solely on Ground 1 (Trees) and Ground 2 (Community Facility) should not be re-litigated.

### **Ground 1 – Trees**

In regards Ground 1, the Final Judgement turned solely on whether the Inspector was mistaken as to an existing fact in regards trees and secondly whether that mistake played a material (but not necessarily decisive) part in the Decision.

The Judge found that, in writing her decision letter, the Inspector was under a misapprehension as to the trees proposed to be retained. The Judge was satisfied that there was a mistake as to an existing fact. The key excerpt is copied below:

*‘Having concluded that there was a mistake as to a fact which was material to the exercise of the planning judgment of the Inspector, I am not in a position to make any determination as to whether or not the appeal proposal would have succeeded had the material mistake not been made. The mistake was material and went to the heart of the exercise of her planning judgment on key points in relation to the second issue. For these reasons I am not satisfied that it was highly likely that the decision would have been the same. The decision must be quashed on Ground 1.’*

[Final Judgement -Paragraph 50]

As set out in your email, the Appeal has been remitted back to the Inspectorate for re-determination. In regards trees and landscape, the previous Inspector found:

- *Paragraph 24: ‘The proposed new car park, which would be positioned centrally on the site, would be largely screened from surrounding public and private view points by the surrounding developments and proposed landscaping. However, even if some visibility were to occur, given the presence of other parking areas behind the main frontage in the surrounding area, this would not appear incongruous to this context.’*
- *Paragraph 28: ‘Despite this, due to its height and low eaves level, the new building would not obstruct longer views to the countryside to the north and views of mature trees would remain apparent from the High Street.’*
- *Paragraph 29: ‘The proposals would retain trees at the back of the site with the exception of one tree positioned at the car park access, which would be removed. Those trees at the back of the appeal site would continue to form the backdrop to the development and contribute to the appreciation of open space to the rear. The protection of the retained trees could be adequately secured by condition and the supporting plans indicate a no-dig method would be used in construction of the parking areas close to those trees.’*

It is the Appellant’s strong contention that, notwithstanding the tree works that have been undertaken on site, the conclusions of the previous Inspector remain unfettered and can readily be reached again by the Inspectorate under this re-determination.

As demonstrated in the photographic schedule appended and as will be apparent to the Inspector on their renewed site visit, the newly installed soft landscaping and retained mature trees within the rear of the site will provide an appropriate screen to longer distance views from the west and will preserve the character and appearance of conservation area (see Fig. 1 below).

Updated arboricultural information and a revised Landscape Proposals Plan are being prepared for the Inspector’s consideration and will allow up to date plans to be conditioned accordingly.

We would respectfully reserve the right to submit these additional documents in due course.

*Fig. 1: View into the site from Huckers Lane*



### **Appeal Methodology**

The Appellant suggests that the re-determination proceeds by way of Written Representations. With reference to the published criteria:

- The proposals can be readily understood from a the submitted documentation and a site visit; and
- The re-determination should centre solely on whether the revised landscape scheme is acceptable;

### **Appellant Summary**

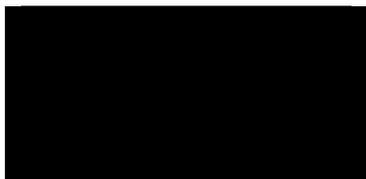
Notwithstanding the outcome of the High Court Challenge, The Appellant's case remains that:

- The proposals would not be a loss but rather a reconfiguration of tourism accommodation and community facilities. The Appeal proposals are inclusive, available, accessible and of equivalent or better quality to the former use in accordance with Policy SD43.

- The scale, form and massing of the Appeal Proposals have been iteratively worked up in close association with the Council's Design, Landscape and Heritage officers and its location and architectural detailing is a direct response to the Council's comments
- The Appeal Proposals will make a positive contribution to the character and setting of the village whilst supporting and enhancing the function of this positive amenity for the community.
- The development proposals are well designed and entirely sympathetic to their locality. The landscape interventions are an enhancement over the existing appearance of the site and, as such, there is no demonstrable harm.
- The Appeal Site will become a community hub offering multiple benefits to a much wider demographic within the local community. The range and flexibility of uses offered will far eclipse the previous use.
- There will be no net increase in parking provision. In actuality there will be a net decrease in car parking spaces associated with the Appeal Proposals (20 spaces compared to the 24 existing).
- The highways improvements on Huckers Lane have been pared back to only those strictly necessary to achieve the development (i.e. visibility splay into the site). There is no longer any widening of the highway in order to maintain the local road hierarchy and the rural nature of the Lane itself.

I trust the foregoing is clear and look forward to discussing further with you. Should you require any further information or have any further questions or queries, please do not hesitate to contact me.

Yours Sincerely



Jim Beavan  
Associate Director  
**Savills Planning**

Encs.

**Appendix 1 – Photographic Schedule**

Photo 1 of 5



Photo 2 of 5



Photo 3 of 5



Photo 4 of 5



Photo 5 of 5

