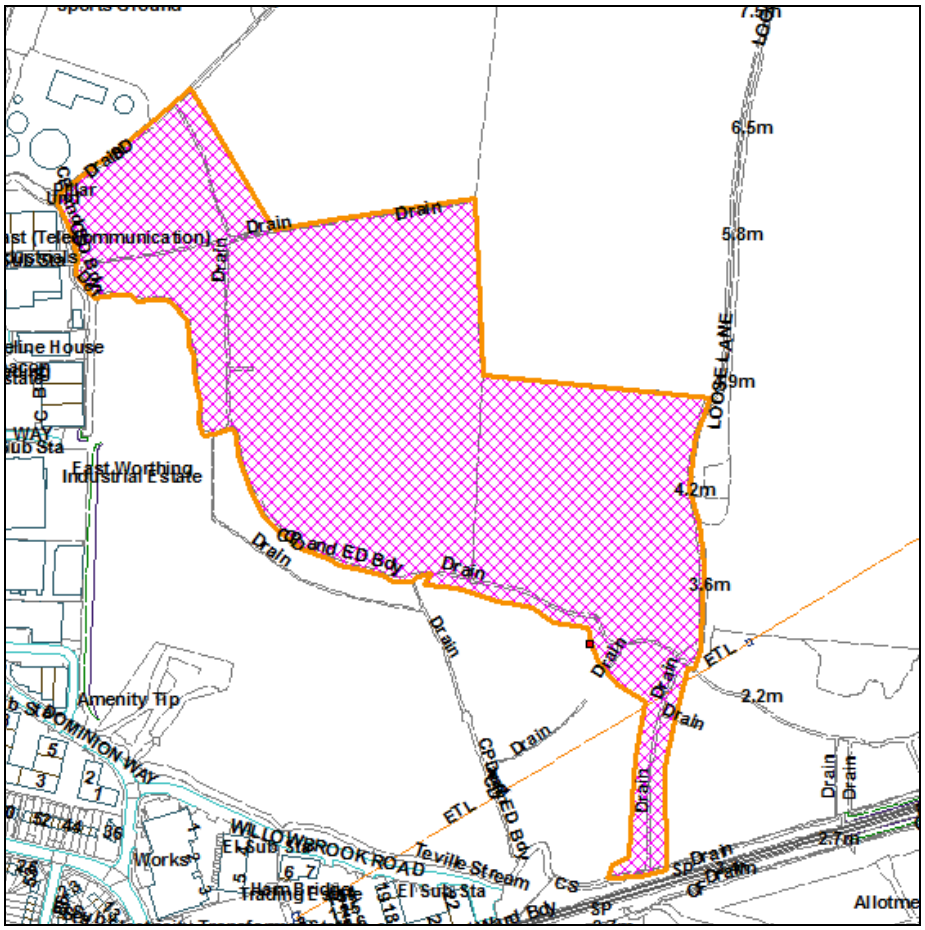
Application Number: AWDM/0444/19 **Recommendation – APPROVE**

Site: **Land South of Loose Lane, Sompting**

Proposal: **Removal of Conditions 4 (Surface Water and Pollution Prevention) and 5 (Archaeology) Approved AWDM/1375/17 (Restoration of upper section of the Broadwater Brook tributary of the Teville Stream involving the excavation of a new channel, construction of three silt traps, part infill of existing channel and restoration of surrounding land).**

Applicant: Ouse and Adur Rivers Trust Ward: Peverel

Case Officer: Peter Barnett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Proposal, Site and Surroundings

This Major application (more than 1ha site area) relates to an area of relatively flat, open arable farmland between Worthing and Sompting, to the north and east of the industrial estate on the east side of Worthing. The application affects primarily land within Adur, but with a small section within Worthing Borough and two separate applications have been submitted (AWDM/0430/19 and AWDM/0444/19).

Planning permission was granted in 2017 for the restoration of the Teville Stream which runs through the site, draining the catchment area of Worthing, via a culvert which lies adjacent to an historic landfill area at Decoy Farm. The approved plans propose to divert the stream from its current culverted position to a more natural form with the aim of improving the ecology and water quality of the stream. It will involve excavating 580m of new channel within Adur District running north-south to include the construction of a series of three silt traps at the upstream extent. A further 420m of existing channel, currently drainage ditches, will be modified to become the downstream extent of the new watercourse.

The permission was subject to several conditions but it has subsequently been found that two of the conditions cannot be complied with or are unnecessary. They are:

- Condition 4 (Surface water and pollution prevention)
- Condition 5 (Archaeology)

This application therefore seeks to remove these conditions.

Relevant Planning History

AWDM/1111/12 Restoration of the Teville Stream involving excavation of a new channel, creation of reed beds, infill of existing culvert and restoration of surrounding land – approved.

AWDM/1113/12 Restoration of Teville Stream involving construction of a works compound and access via Dominion Way, construction of a new channel and construction of an earth mound to block the existing Teville Stream culvert adjacent to Deacon Way - approved.

AWDM/1265/17 - Restoration of upper section of the Broadwater Brook tributary of the Teville Stream involving the excavation of a new channel, construction of three silt traps, part infill of existing channel and restoration of surrounding land – approved.

AWDM/1375/17 - Restoration of upper section of the Broadwater Brook tributary of the Teville Stream involving the excavation of a new channel, construction of three silt traps, part infill of existing channel and restoration of surrounding land – approved.

Consultations

West Sussex County Council: The County **Archaeologist** advises that the archaeological mitigation required by Condition 5 is no longer achievable. Consequently no objection is raised on archaeological grounds to the removal of this Condition.

Adur & Worthing Councils: The Engineer has made the following comments:

Looking at condition 4 on the approval document for AWDM/1375/17, I note that it has two sections.

Part 1 is concerning disposal of surface water – I have no issue with that being revoked.

Part 2 requires the applicant to provide pollution prevention mitigation measures to improve water quality. I accept that "the design" gives much of this information, but what is required is a statement on pollution control, both that from current known sources –

i.e."rubbish and pollutants from road run off will be collected in the stilling basins which will be monitored and dug out as required the waste material will be dumped where ever, and how this is to be made safe …."

Then there needs to be some broad statement about how pollutants which might be released in the dig are kept away from the existing water course

This should be on the lines of:

"Pollutant xyz if found will be contained and dealt with in situ before the new ditch is cross connected to the existing ditch."

They are statements which I need to see.

(*NB a response has submitted by the applicant and is reported below*)

Sompting Parish Council: Although the Council has no objection to this application in principle, they still have some concerns re the drainage.

Representations

None received

Relevant Planning Policies and Guidance

Adur Local Plan: Policies 6, 13, 14, 30, 31, 32, 34, 35, 36
National Planning Policy Framework (CLG 2019)

Relevant Legislation

The Committee should consider the planning application in accordance with:
Section 70 of the Town and Country Planning Act 1990 (as amended) that provides the application may be granted either unconditionally or subject to relevant conditions, or refused. Regard shall be given to relevant development plan policies, any relevant local finance considerations, and other material considerations; and
Section 38(6) Planning and Compulsory Purchase Act 2004 that requires the decision to be made in accordance with the development plan unless material considerations indicate otherwise.

Planning Assessment

Condition 4 - Surface water and pollution prevention

This condition requires the submission of a scheme to dispose of surface water and to provide pollution prevention mitigation measures to improve water quality. However, it was inadvertently carried over from an Environment Agency response on the original application AWDM/1111/12 which was not requested for the 2017 permission and, as such, the applicant does not consider it to be necessary.

Furthermore, the applicant has stated that:

"*The whole objective of the submitted scheme is to manage and dispose of surface water in a new river channel and to reduce the amount of pollutants leaving the site (i.e. the silt traps at the northern end). The same amount of water will be entering and leaving the site in the same places with less contamination. I can't solve the road run off issues or make less pollutants enter the site without putting mitigation measures into every road drain in Worthing, what I can do is have cleaner water leaving the site (facilitated by the use of sediment traps) and into downstream receptors - we will be running campaigns over the next two years about the importance of not putting things down these drains but this is not relevant to the planning applications*."

The Council's Engineer has requested further information about pollution prevention and the applicant has responded as follows:

"*Pollutants and detritus which currently travel, unchecked, through the course of the stream will be collected within the series of silt traps at the northern end of the capital works designs. These will have depth gauges installed and be monitored, initially on a weekly basis (for four weeks) followed by fortnightly (for 8 weeks) and then monthly after. This will provide us with information on the regularity of which traps will need to be emptied. Depending on the rate at which silt accumulates, but a minimum of once every six months, we will send samples to a UKAS accredited laboratory for testing. This will identify the levels and types of pollutants which are being collected and inform on their future disposal. Our data collected from silt analysis within the current channel shows many of those existing contaminants at high levels (constituting hazardous waste) are*

associated with historical activities within the industrial estate. We fully expect that future arisings will be disposed of onsite under an environmental permit.

The channel has been designed and placed so as to avoid known contaminants highlighted during previous investigations. We are aware of only one area where arsenic is present within the vicinity of the bed of the new channel. This area will be excavated in the early stages of construction and the soil will be WAC tested prior to being disposed of at an appropriate receptor facility if required.

Within the planning consent documents, Condition 3 states that;

"If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until a remediation strategy detailing how this contamination will be dealt with has been submitted to and approved in writing by the Local Planning Authority. The remediation strategy shall be implemented as approved".

From the information we have and the depth of the channel bed, we would not envisage further contamination or pollutants being found or brought to the surface, however, if this is the case then we would follow Condition 3 of the consents. Therefore, we are confident that the 50m section which contains naturally occurring arsenic from vegetation decomposition is the only area to which this will apply. Excavated material from this section will be contained and dealt with as appropriate and this section of the channel will be lined with buried LDPE (or similar) to ensure that no upward movement of contaminants from below could enter the watercourse. This arsenic is static and it is not expected that any movement will occur but in the interest of eliminating even the tiniest of risk we will be mitigating this. The new stream channel will not be connected at either end until the entire excavation is complete and any additional pollutants mitigated."

It is apparent from this comprehensive response that the applicant is fully aware of their responsibilities to prevent pollution of the water system and, as contamination is covered under Condition 3, there appears to be no valid reason for Condition 4 to be required and its removal is justified.

Condition 5 - Archaeology

The applicant has been in discussion with the West Sussex County Archaeologist on how best to approved details pursuant to Condition 5. However, no part of Condition 5 is achievable.

The County Archaeologist has explained that the intended archaeological test pits and boreholes to obtain deep-down soil samples will not now be feasible because they would penetrate deeper than the layer the Environment Agency have said must be avoided. He has advised:

"*The soil samples were to be used for analysis of pollen, plant remains and microfossils in the river silts (to reconstruct and date the changing ancient environment of the stream over time).*

In view of the generally much shallower excavation that the scheme will now involve, soil samples taken at a shallower depth, e.g. during observation of channel excavations, would produce much less archaeological information, reducing the value of the mitigation. More critically, ASE have explained that the limited information on the depth and extent of the contaminated layer or layers makes it impossible to be reasonably sure that even soils sampled at much shallower depth would not also be contaminated.

Any new archaeological fieldwork carried out on this scheme might bring staff on site or in the laboratory into contact with contaminated soil cannot be justified for the Health and Safety of the staff, and so practically, useful archaeological mitigation is no longer an option.

In consequence, Condition 5 (archaeological mitigation) cannot be implemented."

West Sussex County Council has no objection on archaeological grounds to the removal of the condition.

On this basis, there appears to be no valid reason for Condition 5 to be required and its removal is justified.

Recommendation

APPROVE

Subject to Conditions:-

1. Approved Plans
2. Standard 3 year time limit
3. Contamination
4. Restoration of land on completion

13th May 2019