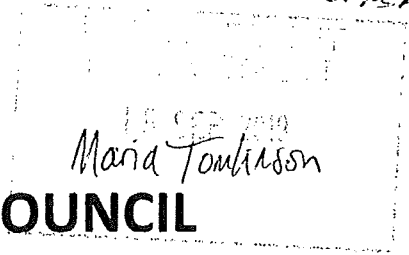


*Perkins*



## WEST WITTERING PARISH COUNCIL

The Pavilion, Rookwood Road, West Wittering PO20 8LT

18/09/2019

**Planning application WW/18/02708/DOM – Dolphins Rookwood Lane West Wittering**

Dear Mr Frost

Further to the meeting on 6<sup>th</sup> August 2019 attended by this Parish Council (PC) and representatives of Chichester Harbour Conservancy (CHC) together with you and Mr Whitty and District Council Members (as observers). At the meeting this application was discussed in detail and it was agreed that it was essential to establish the lawful use of the foreshore in front of Dolphins (the Dolphins Foreshore) before the application could be returned to the Committee. You also agreed that the Committee would make a site visit both from shore and sea.

The Owner had claimed that this area had a lawful use of garden. To date, despite two requests from CDC, the Owner has not submitted an application under Section 191 of the Town and Country Planning Act 1990. Therefore no sworn evidence has been provided by the Owner as would be the usual statutory procedure to establish a lawful use. Nevertheless, to date, the Council Officers have accepted the Owners representations that this very sensitive site is no longer a natural foreshore in the countryside, but is domestic garden.

The PC, CHC and local residents are alarmed at the damage that has been done to the Dolphins Foreshore, which is designated at international and national level to protect this fragile habitat. Further there is grave concern raised at the harmful effect of the openness of the AONB by the activities involved in the change of use from foreshore to garden.

The Council has also received various other objections from interested parties including those of the last chairman of the Parish Council Richard Shrubbs and all these should be taken into account along with the submitted statutory declarations.

### **Submission of Sworn Evidence to contradict claim of garden use**

All the unauthorised activities that have taken place on the Dolphins Foreshore are in breach of the Conservation of Habitats and Species Regulations 2017 and the Wildlife and Countryside Act 1981. These activities are also on the List of Harms for Chichester Harbour provided by Natural England and until granted the necessary consents by Natural England are unlawful.

At the meeting, it was agreed that despite there not being any S191 application, it would assist the Council in determining the correct lawful use as foreshore of the Dolphins Foreshore if some of the residents were to submit statutory declarations with evidence of the actual lawful use. Mr Whitty confirmed at the meeting that such statutory declarations would carry more weight than mere representations. Such is the concern of the interested parties that three statutory declarations have now been submitted to the Council for the attention of Mr Whitty.

Dolphins Foreshore since 2017. This significant change in the character of the foreshore since the importation of the soil is confirmed by Dr Austin. Mowing is another activity on the List of Harms for the SSSI.

### **The Law**

S191 sets out the statutory process that is to be followed when it is necessary to establish a lawful use of a site. Whilst no S191 application has been made, the general principles still apply. The Council should consider any sworn statements either in support or as contrary evidence and these should be given considerable weight. The burden of proof is "on the balance of probabilities". CDC should have followed the correct statutory procedures on such an important and sensitive site. The PC believes that in 2014 the Council made a serious omission by just accepting the representations of the owner without requiring the correct procedures under S171 C (serving of a Planning Contravention Notice) to establish the date on which the beach hut was erected on the foreshore was a very unfortunate omission. Further the PC believes that the statutory procedure should be followed under S191 before the Owner's representations are accepted.

### **The Evidence**

Now submitted to the Council are three unambiguous sworn accounts of how the Dolphins Foreshore has changed significantly in character from open natural countryside to domesticated manicured garden. All the evidence indicates that this significant change in the character of use has happened within the past ten years and therefore requires planning permission.

### **Adopted Planning Policies**

The PC and CHC take the view that the change of use to garden and the introduction of a tunnel onto foreshore are in breach of the CDC adopted relevant planning policies. You already have our submissions on this point. Whilst the relevant policies are drafted in a "permissive way" they are all subject to criteria which need to be met before planning permission should be granted. You were referred to the very recent case of **Gladman v Canterbury City Council [2019] EWCA Civ 669** (email dated 21<sup>st</sup> August 2019). It is the PCs opinion that none of the criteria are met and that a robust analysis of the Planning Policies need to be undertaken and planning permission for the tunnel application refused and immediate enforcement action taken.

### **NPPF**

You have also received separate representations concerning the great weight to be given to the damage to the AONB and the breaches of the NPPF policies contained in the Footnotes to paragraph 11. We provided you with a resume of a judgement issued on 24<sup>th</sup> July 2019 **Monkhill Limited v SoS HCLG and Waverley Borough Council** which would support the refusal of this application based on NPPF policies. However, the adopted plan policies criteria are not met and therefore under S38(6) a refusal would be supported by those policies in precedence to the NPPF.