



Appeal Decisions

Site visit made on 8 November 2022

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 December 2022

Appeal A Ref: APP/Z3825/X/21/3274597

Stables on land south of Mill Lane, Littleworth, Partridge Green RH13 8JU

Grid Ref Easting: 518836, Grid Ref Northing: 120321

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the Act) against a refusal in part to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Wayne Bayley, Delcraven Ltd against the decision of Horsham District Council.
 - The application ref DC/20/2583, dated 23 December 2020, was refused in part by the Council by notice dated 21 April 2021.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is described on the application form as: This application seeks to establish the principle that, if and when the stables are lawfully converted into 2 holiday-let units under the terms of DC/18/1827 approved 24 October 2018 and used as such, they will then benefit from the full suite of domestic permitted development rights attributable to 2 x C3 dwellings which arise from Classes A to H of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
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Appeal B Ref: APP/Z3825/W/22/3294395

Land south of Mill Lane, Littleworth, Partridge Green RH13 8JU

Grid Ref Easting: 519099, Grid Ref Northing: 120155

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Wayne Bayley, Delcraven Ltd against the decision of Horsham District Council.
 - The application Ref DC/21/1240, dated 25 May 2021, was refused by notice dated 22 September 2021.
 - The development proposed is described on the application form as: Alterations and extensions to stables, approved for 2 dwellinghouses, to form a single dwelling and erection of two detached dwellings on the site of a former sandschool and garage used for non-domestic storage.
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Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Applications for costs

3. Applications for costs were made in respect of both appeals by the appellant against the Council. These applications are the subject of separate Decisions.

Appeal A

Preliminary Matters

4. The description of the proposed development provided by the appellant in the application form does not describe any specific form of development in detail. Instead, it explains that confirmation is sought that development set out at Classes A to H, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) could be carried out without the need for express planning permission from the Council, following the eventual conversion of the appeal building into 2 holiday-let units. The application therefore seeks to ascertain whether operations proposed to be carried out would be lawful, under the provisions of section 192(1)(b) of the Act.
5. The Council refused the application in part, concluding that 'the use/operation/matter is lawful for the part that relates to: the holiday-lets benefiting from permitted development rights under Classes B, C, G and H...'. The Council's decision notice also states that 'the use/operation/matter is not lawful for the part that relates to: the holiday-lets benefiting from permitted development rights under Classes A, D, E or F...'.
6. Although the Council issued a split decision, refusing the application in part, I am obliged to consider the lawfulness of all of the development proposed, as set out in the application form.

Main Issue

7. The main issue is whether the Council's decision to refuse to grant an LDC for the proposed development described in the application form was well-founded.

Reasons

8. Section 192(2) of the Act clarifies that where an application for an LDC for proposed operations has been made, if information is provided to satisfy the local planning authority that the operations described in the application would be lawful if instituted or begun at the time of the application, an LDC to that effect should be issued. The relevant date on which the proposed operations would need to have been lawful for an LDC to be granted would therefore be 23 December 2020.
9. Based on the appellant's submissions, the appeal building was in use, or last used, as 'former stables' on the date the application was made. I am aware that an extant planning permission¹ was in place for the material change of use of the former stables to 2 holiday-let units at the time the application was made. Concurrent with the application for an LDC, the appellant submitted an application to discharge outstanding conditions attached to that planning permission which required the approval of details prior to the first use of any part of the building as holiday-let units. No evidence has been provided which demonstrates that any authorised material change of use of the former stables to dwellinghouses had taken place at the time of the application.
10. Classes A to H, Part 1 of Schedule 2 of the GPDO relate to development within the curtilage of a dwellinghouse. The appeal building did not constitute a

¹ The Council's ref: DC/18/1827

dwellinghouse at the time of the application, and as such express planning permission would have been required to carry out any of the operations set out in those Classes.

11. I note that the appellant refers to the LDC application as seeking to confirm whether such development could be carried out at a later date without the need for express planning permission, if other development were to be carried out first. However, as the building was a former stables and not in a lawful use as dwellinghouses at the time the LDC application was submitted, the provisions of section 192 of the Act do not provide for an LDC to be issued for the proposed development. The evidence indicates that the appeal building was not even capable of being lawfully used as dwellinghouses without the approval of further details on the date the LDC application was made.
12. It has not therefore been demonstrated, on the balance of probabilities, that the proposed development would have been lawful on the date the application was made.

Conclusion

13. For the reasons given above I conclude that the Council's decision to issue an LDC for part of the proposed development set out in the application form was not well-founded and that its refusal to grant a certificate of lawful use or development in respect of all operations set out in Classes A to H, Part 1 of Schedule 2 of the GPDO, as applied for, was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Appeal B

Preliminary Matters

14. Following the Council's decision notice, Natural England (NE) issued a position statement² in respect of all development proposals within the Sussex North Water Supply Zone (SNWSZ), as groundwater abstraction is impacting upon the Arun Valley Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar site. This has since been expanded upon by NE with an advice note³. The appeal site is located within the SNWSZ and the appellant referred to both of these documents and set out proposed mitigation measures in their appeal submissions. The Council's appeal submissions also referred to the NE advice but failed to comment on the appellant's proposed mitigation measures. I have therefore addressed this as a main issue.
15. I have been referred to historic appeal decisions made by different Inspectors relating to the appeal site and its close neighbouring sites, by what appear to be the Council's reference numbers for those schemes. I have not been provided with copies of those appeal decisions or the full details of each case. I have therefore relied on the descriptions of those Inspectors' findings provided by the appellant and the Council.

² Natural England's Position Statement for Applications within the Sussex North Water Supply Zone: September 2021 – Interim Approach

³ Natural England's Advice Note regarding Water Neutrality within the Sussex North Water Supply Zone: February 2022 V2

Main Issues

16. The main issues are the impact of the proposal on: the character and appearance of the area; protected species; and the Arun Valley SAC, SPA and Ramsar site.

Reasons

17. It is proposed to erect 3 large, detached dwellings with detached garages. Plot 1 would be located within the north-western part of the appeal site and would include the extension and conversion of the former stable building. Plots 2 and 3 would be located in the southern part of the appeal site and include proposed greenhouses. A former domestic garage building in the southern part of the appeal site would be demolished.

Character and Appearance

18. The appeal site, on account of its sprawling layout amongst other dwellings, has the appearance of a collection of parcels of land forming a backland site. It is positioned to the rear of detached dwellings arranged primarily in linear form along Littleworth Road and Mill Lane, in a countryside location. The prevailing character of the area is of a sparsely developed, semi-rural residential setting comprised of a mix of medium to large sized detached houses, in wider, open countryside surroundings.
19. The access drive shared by dwellings at The Chase, Pemberley and Honeycroft runs through the centre of the appeal site. There are other houses built on neighbouring backland plots of varying sizes to the east and south. Pemberley, High Downs and Far-Lea, located immediately to the south of the appeal site, are notable detached dwellings on account of their substantial sizes and extensive gardens. The appeal site is therefore surrounded on all sides by detached dwellings and their gardens, bordered by a mix of heavy planting and tall close-board fencing.
20. The former stable building has the appearance of a modest single storey residential building on account of the quality of its finish and fenestration. The former garage building in the south-eastern extremity of the appeal site previously formed part of the curtilage of a neighbouring dwelling and has the appearance of a domestic shed, but it is now apparently used for general storage. I have also been referred to a former sand school within the centre of the appeal site, but there no longer appears to be any remaining discernible features of that development.
21. As a largely undeveloped, irregularly shaped area of land surrounded by tall planting and fencing, the appeal site has the character of an enclosed, informal area of countryside. However, its position amongst other large houses, intersected by domestic access drives, provides more of a semi-rural residential backdrop which is appreciable across the whole site, rather than a wide, open countryside setting. Long distance views of open countryside are available to the south, beyond boundary fencing and between the large dwellings and outbuildings at High Downs and Far-Lea.
22. The proposed dwelling at plot 1 would be tucked into a narrow enclave of thick boundary planting between neighbouring residential gardens. Views of it from outside the appeal site would therefore be limited and views from within the appeal site would be in the context of other detached dwellings of similar sizes.

The proposed dwellings at plots 2 and 3 would be more visible due to the lower, more sparsely planted southern and eastern boundaries of the appeal site. That would include views from the public footpath to the south of High Downs and Far-Lea, which would remain dominated by those neighbouring houses.

23. The proposal would consolidate development on the edge of what is a semi-rural settlement and formalise the countryside setting. This would provide a harder, suburban backdrop to views of High Downs and Far-Lea from the south, which are currently seen as substantial houses in spacious, rural surroundings.
24. The quantum, mass and bulk of development proposed would therefore harm the spacious, rural character and distinctiveness of the locality on account of the consolidation of development in what is essentially a sparsely developed countryside settlement, albeit with semi-rural residential characteristics. This inconsistency with the prevailing pattern of development would be appreciable from neighbouring properties and the public footpath to the south, deviating from the rural qualities of the character and appearance of the area.
25. The level of harm which would be caused to the character and appearance of the area would be low because the scale and form of the proposed dwellings would be consistent with neighbouring buildings and would reflect the built characteristics and proportions of the locality to some extent. Alongside various other large, detached houses in backland positions they would not dominate their setting, but they would significantly infill space which currently makes a positive contribution to the semi-rural residential character of the area.
26. The proposal would therefore conflict with Policies 25, 26, 32 and 33 of the Horsham District Planning Framework (2015) (HDPF). These require, amongst other things, development to respect landscapes and development patterns and complement locally distinctive character, with layouts which relate sympathetically with the built surroundings and landscape.

Protected Species

27. The Council's officer report refers to an Ecology Consultant objecting to the proposal following a desk survey which identified 2 European Protected Species licences for bats and a single great crested newt licence being granted within approximately 2 kilometres of the appeal site. Great crested newts and all species of bats are designated as European Protected Species under the Habitats Regulations⁴. I am obliged by the Habitats Regulations to assess the effect of the proposal on European Protected Species.
28. A Preliminary Ecological Appraisal (PEA)⁵ relating to the southern part of the appeal site and a Bat Scoping Report and PEA⁶ relating to the north-western part of the appeal site have been submitted by the appellant as part of the appeal. These explain that the former stable building has a low suitability for bat roosting or hibernation and that the overall potential for the former garage building to support bats is negligible. The hedgerows and tree features of the appeal site are likely to be used by foraging and commuting bats as part of a wider resource across the landscape, and due to the size and scale of the

⁴ The Conservation of Habitats and Species Regulations 2017 (as amended)

⁵ By The Ecology Co-operation Ltd., Project No: 5041, dated 7 November 2021

⁶ By The Ecology Co-operation Ltd., Project No: 5014, dated 18 November 2021

proposal and the likely habitats to be affected, one of the PEAs recommends that bat activity surveys are carried out and the potential for disturbance from artificial light is considered.

29. The PEAs also identify 2 ponds within a 250 metre radius of the site boundary that are not separated by major barriers, and log piles within the site. To assess the suitability of these ponds to support great crested newts, the PEA relating to the southern part of the appeal site recommends that a Habitat Suitability Index assessment is carried out. The PEA relating to the north-western part of the appeal site refers to NE's great crested newt mitigation statement tool when recommending that no further surveys are carried out in respect of that part of the appeal site.
30. I have been referred to an unspecified public inquiry 'several years ago' where it is claimed it was found that the appeal site did not offer any migratory route between great crested newt habitat locations because it is not between those habitats, which are some distance away. I have no details of those findings and circumstances may have changed since they were made, several years ago. Indeed, the PEAs indicate the appeal site is between potential great crested newt habitat locations. The PEA relating to the southern part of the appeal site states that the 2 ponds are within close terrestrial range of the appeal site for dispersing newts following breeding, without being separated by major barriers.
31. The PEAs do not confirm the appeal site does not offer habitat to great crested newts; on the contrary, the PEA relating to the southern part of the appeal site states: 'the grassland, woodland, scrub and hedgerows across the site, represent suitable terrestrial habitat for great crested newts'. Although I am satisfied that the proposed works to the former stable building would not result in any harm to bats, the PEAs do not confirm that harm to bats or great crested newts would be avoided by the whole proposal, in the absence of additional assessments.
32. Circular 06/2005 states it is essential that the presence or otherwise of protected species and the extent that they may be affected by a proposal is established before any planning permission is granted, and that the need to ensure ecological surveys are carried out should not be required by condition other than in exceptional circumstances. The information before me suggests there is a reasonable likelihood that great crested newts could be present within the appeal site and could be affected by the proposal through its construction works and associated activity. The information provided does not convince me bats would not be affected by the proposal in the absence of the bat activity surveys and consideration of the potential for disturbance from artificial light recommended by the PEA relating to the southern part of the appeal site.
33. I have been referred to a water feature and other biodiversity enhancement opportunities which would be created as part of the proposal. These are not shown on the proposed plans or set out in detail, but further details in those regards could be required by condition. There is no evidence that these would be sufficient to mitigate or compensate for any harm which may be caused to great crested newts or bats, or that it would be possible to appropriately mitigate or compensate any such harm. There are no exceptional circumstances which lead me to conclude a condition requiring further

ecological surveys, and any mitigation measures which may be necessary, would be appropriate to ensure those protected species would not be adversely affected by the proposal.

34. I cannot conclude that the proposal would not be likely to adversely affect European Protected Species. It has not been demonstrated that the proposed development would accord with Policy 31 of the HDPF and Policy 4 of the West Grinstead Neighbourhood Plan 2019 – 2031 (2021). These seek to protect biodiversity and require, amongst other things, development to maintain or enhance the existing network of green infrastructure and conserve and enhance wildlife habitats.

The Arun Valley SAC, SPA and Ramsar site

35. The Arun Valley SAC, SPA and Ramsar site have been designated as European Sites, as defined in the Habitats Regulations, for their nature value. I have not been provided with any information which clarifies the species of flora and/or fauna those sites support. Natural England has advised that it cannot conclude, with certainty, that existing water abstraction within the SNWSZ is not having an adverse impact on the integrity of those European Sites, through reduced water levels and potential water quality impacts.
36. The appeal site is currently occupied by a former stable building and a former garage building. I am aware that there is a fallback position comprising the conversion of the former stable building into 2 holiday lets, which would not be subject to any water usage controls, and mitigation measures have been suggested. Based on the current state of the appeal site, where the former stable building is not in use as 2 holiday lets, the 3 proposed dwellings would likely result in an increase in water abstraction within the SNWSZ. Following NE's advice, the proposal would therefore have an adverse impact on the integrity of the Arun Valley SAC, SPA and Ramsar site.
37. In accordance with the Habitats Regulations, it is therefore necessary for me as the competent authority to carry out an Appropriate Assessment to consider the effect of the proposal, including any proposed mitigation measures, on the integrity of the Arun Valley SAC, SPA and Ramsar site, if I am minded to grant planning permission.
38. The NE advice note explains that if it can be demonstrated that a proposal would result in no net increase in extraction from the public water supply in the SNWSZ, an adverse effect on the integrity of the European Sites could be avoided. The appellant has submitted a water neutrality statement (WNS), which has been supplemented by further details in their final comments⁷. I have concerns with the baseline calculations relied upon by the WNS⁸, but it suggests water use associated with the proposed development (approximately 444,000 litres per year) would exceed water use associated with the holiday lets fallback position (430,000 litres per year), without mitigation.
39. All water used by the holiday lets fallback position would be extracted from the public water supply. The WNS sets out how a water harvesting scheme could supplement the public water supply to the proposed dwellings and, combined with water saving measures, could reduce the proposal's likely extraction from

⁷ Letter by Brett Incorporated Limited dated 28 September 2022, including Drawing No. WHS dated August 2022

⁸ The data and methodologies used to estimate likely occupancy rates and water usage rates for the holiday lets have not been provided

the public water supply to approximately 114,000 litres per year. I have no comments from the Council or NE on the WNS and proposed mitigation measures, despite these being included within the appellant's initial appeal submissions.

40. As I have found the proposal would be contrary to the development plan in respect of the first and second main issues, there is no need for me to carry out an Appropriate Assessment, unless other considerations indicate planning permission should be granted.

Planning Balance

41. The Council is unable to demonstrate a five year housing land supply. Where this is the case, paragraph 11 of the Framework advises that the development plan policies which are most important for determining the application should be considered out-of-date and planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
42. I have identified a low level of harm which would be caused to the character and appearance of the area. That harm would be long lasting and it therefore attracts moderate weight against the proposal. It has not been demonstrated that the proposal would not harm great crested newts and bats. The information before me suggests there is a reasonable likelihood that bats could be affected by the proposal and great crested newts could be present within the appeal site and could be affected by the proposal. I attach significant weight to the potential harm which could be caused to those protected species.
43. The proposal would provide a net increase of 3 dwellings which would not be subject to occupancy restrictions, although this would represent a net increase of only 1 dwelling compared to the holiday lets fallback position. In either case this would be a modest contribution towards housing supply in the district, even in the absence of a five-year housing land supply and delayed HDPF review. The appellant has described the appeal site as being located in a sustainable location and I note its proximity to bus stops and various facilities and services in Partridge Green which support this view, despite a lack of footpath along Mill Lane. There would also be low-level short-term economic benefits during the construction of the proposal and low-level long-term economic benefits to the local economy arising from the increase in households likely to use local services. All of these benefits attract moderate weight in favour of the proposal.
44. It has been claimed that the proposal would result in less water being taken from the public water supply than the holiday lets fallback position if the water saving measures and water harvesting system set out in the WNS were to be installed. The WNS demonstrates that this would be theoretically possible. Even though I doubt the precision of the baseline calculations, the WNS shows that there would be opportunities to ensure the proposal could rely on less water extracted from the public water supply than the holiday lets fallback position, subject to controls over water use and requiring the provision of water saving measures and a water harvesting system.
45. The advice of NE is that increased water abstraction within the SNWSZ is likely to have an adverse impact on the integrity of the SAC, SPA and Ramsar site.

However, that advice does not confirm that the potential levels of reduced water extraction from the public water supply set out in the WNS would likely bring about any benefits to those European Sites which should be afforded significant weight in favour of the proposal. I consider it likely that there would be some benefit in offsetting increased extraction from the public water supply elsewhere in the SNWSZ if the predicted calculations of the WNS are realised, but as the extent of that benefit is unknown and undemonstrated, I only assign it moderate weight in favour of the proposal, even in the context of an under-delivery of water neutral dwellings in the district.

46. I have been referred to fallback positions comprising holiday let and commercial uses of the former stable building and a storage and distribution use of the former garage building. The information before me suggests there is no extant planning permission for a commercial use of the former stable building, but it is in the process of being converted into 2 holiday lets authorised by the Council. There is no evidence before me which demonstrates the former garage building has a lawful storage and distribution use or could lawfully be converted into a dwelling under the provisions of the GPDO. Based on the information available, including the siting, size and construction of that building, any such uses would be extremely small-scale.
47. Even if the former stable building were to be extended substantially under the provisions of the GPDO once the holiday let use commences, I do not consider the activities associated with holiday lets and any likely undemonstrated storage and distribution use of the former garage building would be likely to cause higher levels of disruption to occupants of neighbouring properties than the proposal. Any such works would also be unlikely to cause a similar level of harm to the character and appearance of the area as the appeal scheme, and it has not been demonstrated that any such works would harm the living conditions of neighbouring residents. The proposal would not bring about benefits in terms of impacts on the character and appearance of the area or the living conditions of neighbouring residents compared to the fallback positions suggested.
48. It has been claimed that the appeal site comprises previously developed land, as defined by the HDPF, on account of the presence of the former stable building, former garage building and a former sand school at the appeal site. The definition of previously developed land provided by the HDPF is broadly consistent with, but not as detailed as, the definition provided in the Framework. The definition provided in the Framework clarifies that it should not be assumed that the whole of the curtilage of a permanent structure should be developed and that where the remains of a structure have blended into the landscape it should not be assessed as a permanent structure.
49. The remains of the former sand school are not visible in the landscape. Furthermore, the mere presence of existing small buildings in different parts of the appeal site does not indicate to me that the whole curtilage of the appeal site has the characteristics of previously developed land. Parts of the appeal site do, however, comprise previously developed land and the HDPF and the Framework refer to the development of such land being preferable to the development of undeveloped land.
50. The Framework refers to the Government's aim of significantly boosting the supply of homes and explains that small and medium sites can make an

important contribution to meeting the housing requirement of an area. It advises that to support sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. It also sets out that the use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist. Support is given by the Framework to the effective use of land in meeting the need for homes, while safeguarding and improving the environment. Development which is sympathetic to local character is also encouraged. Chapter 15 of the Framework advises that planning decisions should contribute to and enhance the natural and local environment, which can be achieved by, amongst other things, minimising impacts on and providing net gains for biodiversity.

51. Bringing things together, there is significant weight against the proposal on account of the combined weight I have attributed to the harm the proposal would cause to the character and appearance of the area and the potential harm which could be caused to protected species. There is moderate weight in favour of the proposal amounting from its combined benefits. Those include the provision of 3 dwellings on previously developed land close to existing local facilities and services, with small-scale economic benefits, which could extract less water from the public water supply than the fallback position within the SNWSZ.
52. Taking all of the above into account, it is sufficiently clear that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The proposal would not therefore constitute sustainable development for which the presumption in favour applies.

Other Matters

53. I note a number of comments which have been submitted by local residents, including a letter in support of the proposal from the Littleworth Residents' Association which is claimed to represent 40 local households. That letter, along with some of the other representations, refers to the proposal being preferable to the use of the appeal site as a gypsy/traveller site. I have not been provided with any details which suggest such a use of the appeal site benefits from planning permission or is otherwise more than theoretically likely. Although there is local support for the proposal, it is also evident that a number of local residents have objected to the proposal, as have West Grinstead Parish Council. I also note that the planning application was refused by elected members of the Council's Planning Committee South. All of the comments from local residents in support of the proposal have been addressed in my reasoning above and do not convince me that any less weight should be assigned to the adverse impacts of the proposal, or any greater weight should be assigned to its benefits.
54. I have been provided with copies of appeal decisions relating to different sites⁹ where different Inspectors granted planning permission for housing developments in other rural parts of the district. It is clear there are substantial differences between those developments of between up to 100 and 473 dwellings, including significant affordable housing contributions, and this appeal proposal. In those appeal decisions the Inspectors found the adverse impacts

⁹ Appeal refs: APP/Z3825/W/20/3257700, APP/Z3825/W/21/3266503

of the proposals, which did not include any potential harm to protected species, would not significantly and demonstrably outweigh the benefits of that amount of housing. Having read those other appeal decisions, they do not lead me to assign any greater weight to the benefits of the proposal or to reach any different conclusions.

55. As set out in the preliminary matters section of this appeal, I have been referred to historic appeal decisions relating to the appeal site and its close neighbouring sites. Very little information concerning those schemes and decisions has been provided. The reported findings of those other Inspectors suggest there were significant differences between those schemes and the appeal proposal in this case. As I have not been provided with the full findings of those Inspectors, I assign very little weight to the reported findings presented by the main parties. Those reported findings do not change my reasoning in this appeal.

Conclusion

56. For the reasons outlined above, I conclude that the appeal should be dismissed.

L Douglas

INSPECTOR