



Appeal Decision

Site visit made on 17 April 2023

by **B Phillips BSc MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14 July 2023

Appeal Ref: APP/Z3825/W/22/3291224

Land north of Wilberforce Way, Southwater RH13 9RS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Carbide Properties against the decision of Horsham District Council.
- The application Ref DC/21/1607, dated 9 July 2021, was refused by notice dated 8 November 2021.
- The application sought planning permission for the erection of two employment buildings for use classes B1(c) and B8 with associated access, car parking and landscaping without complying with conditions 1 and 25 attached to planning permission Ref : DC/19/0123, dated 11 February 2020.
- The conditions in dispute are Nos 1 & 25 which states that:
- Condition 1: *The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule below:*
Site plan Existing P401 REV A 18.01.2019; Site plan Proposed (B1C) P405 18.01.2019; Site plan Proposed (B8) P400 REV C 18.01.2019; Plans Proposed Boundary Treatments P403 REV B 18.01.2019; Site plan Proposed P400 REV C 18.01.2019; Site plan Proposed Treatment P402 REV B 18.01.2019; Site plan Proposed Unit 1 (B1C) P406 18.01.2019; Site plan Proposed Unit 1 (BB) Unit 2 (B1C) P407 18.01.2019; Elevation plan Proposed Unit 1 P200 18.01.2019; Floor plan Proposed first Unit 1 P101 18.01.2019; Floor plan Proposed ground Unit 1 P100 18.01.2019; Roof plan Proposed Unit 1 P102 18.01.2019; Section plan Proposed Unit 1 P300 18.01.2019; Elevation plan Proposed Unit 2 P220 18.01.2019; Floor plan Proposed first Unit 2 P121 18.01.2019; Floor plan Proposed ground Unit 2 P120 18.01.2019; Roof plan Proposed Unit 2 P122 18.01.2019; Section plan Proposed Unit 2 P320 18.01.2019; Supporting Docs Arboricultural Impact Assessment 17/01/2019 NONE 2 18.01.2019; Supporting Docs Heritage Assessment - 22 Oct 2018 NONE 18.01.2019; Supporting Docs Noise Assessment Rev 1 - 28 Sept 2018 NONE REV 1 18.01.2019; Supporting Docs Planning Statement NONE FINAL 18.01.2019; Supporting Docs Air Quality Report - Hoare Lea Rev 1 - 20 Dec 2018 NONE B 18.01.2019; Supporting Statement Sustainability Statement - Engineering Services Consultancy Ltd 12 Dec 2018 NONE REV A 18.01.2019; Supporting Docs Transport Assessment V2 - Carbide Properties Ltd - 21 Dec 2018 NONE 18.01.2019; Supporting Docs Flood Risk Assessment and Drainage Strategy - PRP UK Ltd 06 Dec 2018 NONE REV A 18.01.2019; Design & Access Statement NONE 18.01.2019; Supporting Statement Preliminary Construction Management Plan -Goodrich Consulting LLP 1833C September 2019 NONE 04.10.2019; Details plan ADC1930-DR-001 P2 13.02.2019; Details plan ADC1930-DR-051 P2 13.02.2019; Details plan ADC1930-DR-053 P2 13.02.2019; Details plan ADC1930-DR-054 P1 13.02.2019; Details plan ADC1930-DR-055 P1 13.02.2019.
Condition 25: *'The premises hereby permitted shall not be open for trade or business (including the receipt and/or dispatch of deliveries, and/or the operation of vehicles, plant/machinery) except between the hours of 07:00 to 18:00 Mondays to Fridays; 07:00 to 13:00 on Saturdays; nor at any time on Sundays, Bank or Public Holidays.'*

- The reasons given for the conditions are:
Condition 1: *For the avoidance of doubt and in the interest of proper planning.*
Condition 25: *To safeguard the amenities of neighbouring properties in accordance with Policy 33 of the Horsham District Planning Framework (2015).*
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Carbide Properties against Horsham District Council. This application is the subject of a separate Decision.

Preliminary Matters and Background

3. I observed on site that the two units are currently under construction, and as such the original planning permission, DC/21/1607. Therefore it appears that the planning permission is implemented.
4. The application sought to vary condition 1 by replacing the approved boundary treatments plan (2265 P403 Rev B) with amended plans 2265 P403 Rev J and JC P18-1716 (January 2022), which includes the provision of an acoustic fence along the western boundary of the internal access road.
5. The application also sought to vary condition 25 by extending the permitted hours of use for both units. The reason for condition 25 is to safeguard the amenities of the occupiers of neighbouring properties.
6. In its statement of case the Council introduced an additional concern regarding the issue of water neutrality. This is due to the Position Statement from Natural England which outlined that it cannot be concluded that existing water abstraction within the Sussex North Water Supply Zone is not having an impact on the Arun Valley Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar sites. It advises that development within this zone must not add to this impact.
7. The Council considers that the proposed increase in hours of operation scheme would create an uplift in water requirements and as such a Water Neutrality statement should be submitted for consideration. In the absence of this further information, the Council consider that insufficient information has been provided to demonstrate with a sufficient degree of certainty that the proposed development would not exacerbate an existing adverse effect upon the integrity of the internationally designated Arun Valley SAC, SPA and Ramsar sites by way of increased water abstraction.
8. The appellant had the opportunity to respond to the matter, including Natural England comments, and has done so. As such there is no breach of natural justice.

Main Issues

9. The main issues in this case are:
 - the effect of the amended hours of use upon the living conditions of the occupiers of neighbouring properties, with regard to noise and disturbance; and

- the effect of the proposed development on the integrity of the Arun Valley SPA, SAC and Ramsar site.

Reasons

Noise

10. The site is located in Oakhurst Business Park in Southwater. The nearest residential properties are Nos 12-16 Martindale.
11. The previous permission allowed for the two units to be open for trade or business between the hours of 07:00 to 18:00 Mondays to Fridays; 07:00 to 13:00 on Saturdays; nor at any time on Sundays, Bank or Public Holidays. The proposed amendment to the condition (25) would allow for a further two hours opening Monday - Friday, (07:00 – 20:00) and 5 hours on Saturday (07:00 – 18:00).
12. A revised Noise Impact Assessment¹ was submitted which assessed the scheme in relation to British Standards BS 4142² and BS 8233:2014³. It concluded that with regards to BS 4142, all activities at the proposed new development would give rise to conditions that would achieve a condition of 'low impact' when compared to the measured background sound levels, at the nearest dwellings at all times during the periods of proposed operation. This includes noise breakout - short sharp burst of noise from the warehouse buildings, noise from vehicle movement and vehicle reversing alarms.
13. With regards to BS 8233:2014, the assessment sets out that the internal criteria would readily be achieved at the nearest dwellings when windows are open during the proposed hours of operation, as well as from gardens during the daytime.
14. The report concludes that the predicted noise levels at the dwellings from the proposed development, once the 2.4m timber acoustic fence is erected, would be significantly below the existing ambient and background noise climate and, consequently, are unlikely to be noticeable.
15. I am satisfied that the measurements were taken from an appropriate position next to the nearest receptors, Nos 12-16 Martindale and over an appropriate time frame. There is no substantive information before me and I observed nothing on site to contradict the findings of this report and it is noteworthy that the Council's Environmental Health officer accepted these conclusions and did not object to the proposal.
16. I am also conscious of the remaining additional conditions imposed on the original planning application, and suggested for this appeal, relating to noise management. These seek to manage building services plant noise in accordance with measures set out in the noise assessment (condition 11), a separate noise management plan (which would include details such as measures to control noise from all activities, including equipment plant, or building services, and details minimising noise from vehicles deliveries and servicing) (condition 12), scheme of sound insulation works (condition 13), and post installation noise assessment details (conditions 14 and 16).

¹ PROPOSED COMMERCIAL DEVELOPMENT NOISE IMPACT ASSESSMENT REVISION 2 – 06 JULY 2021 by Hoare Lea

² 'Methods for rating and assessing industrial and commercial sound'

³ 'Guidance on sound insulation and noise reduction for buildings'

17. These conditions will ensure that the plant associated with the development would be appropriate and that noise levels are recorded. Therefore, the relationship between the occupiers of the neighbouring properties and the businesses occupying the two units would be managed appropriately in the future.
18. As such, I am satisfied that the noise impact of the additional hours of operation would not be sufficient to result in an unacceptable impact upon the living conditions of occupiers of the nearest neighbouring properties.
19. The Council has concerns regarding the economic argument set out and marketing for the existing hours of operation, however, given my findings this has little relevance to the main issue. Given the site-specific details of the noise assessment, I do not consider that extending the hours of operation as proposed would set a precedent for any other businesses.
20. I therefore find no conflict with Policy 33 of the Horsham District Planning Framework (2015) (PF), which seeks to ensure that development is designed to avoid unacceptable harm to the amenity of occupiers/users of nearby property and land, for example through overlooking or noise, whilst having regard to the sensitivities of surrounding development.

Integrity of the Arun Valley habitats sites

21. The Position Statement from Natural England advises that the effects of groundwater abstraction within the Sussex North Water Supply Zone cannot be objectively demonstrated to be compatible with the conservation objectives of protected sites and habitats within the Arun Valley. These include the SPA, SAC and Ramsar site. The Arun Valley is legally protected for its wintering birds, its wetland habitats, a rare snail species, invertebrates and several rare and uncommon aquatic and wetland plants. To avoid a detrimental impact, Natural England also advises that new development should achieve water neutrality. This is defined as the use of water in the supply area being the same or lower after the development has taken place.
22. The appellant disputes that additional hours of operation would necessarily lead to an increased water consumption. However, no information has been provided regarding the level of water use in connection with the approved hours of use or relating to the extended hours, and so there is no certainty that there would not be an increase as a result of the proposal. The frequently asked questions document by Natural England⁴ makes it clear that the Position Statement applies to all new development that could increase water consumption. This document also makes it clear that a Water Neutrality Statement will be required to support applications.
23. The date of this additional Natural England statement is after the original application went to committee. As such, the further detail of what developments the Position Statement applied to and the explicit requirement for a Water Neutrality Statement was not before the Council at the time of the original determination of the application. Nevertheless, the appeal must be assessed against current advice, and, as part of the consideration of the development proposal Natural England confirmed that it has objections to the

⁴ Arun Valley and Water Neutrality - Frequently asked questions (FAQs) – Developers (December 2021)

lack of evidence of the developments occupancy and water use with and without the variation of condition.

24. In the absence of this information, there is no certainty that there would not be an increase in water use as a result of the proposal. It does seem reasonable that increased hours of operation could lead to increased water use. As such, the appellant's fallback argument carries limited weight.
25. No measures are included within the proposal to mitigate any impact or to secure water neutrality. Therefore, because of its location and based on the available evidence and the requirement for water neutrality, it is not possible to state that there would not be a likely significant effect on the protected habitats sites, either alone or in combination with other plans and projects.
26. As a result, following an appropriate assessment, the proposal would adversely affect the integrity of the Arun Valley SPA/SAC. In these circumstances, Regulation 63(5) precludes the proposal from proceeding. The proposal would also conflict with Policy 31 of the Horsham District Planning Framework (2015) (PF), which establishes that permission will be refused where development is anticipated to have an adverse impact on biodiversity sites such as SPAs and SACs, unless appropriate mitigation measures are provided. This policy is in accordance with the National planning Policy Framework.

Conclusion

27. As the proposal would not achieve water neutrality, it would adversely affect the integrity of the Arun Valley SPA, SAC and RAMSAR site. Because of the provisions of the Regulations, and notwithstanding that the proposed development would not harm the living conditions of the occupiers of neighbouring properties, this is an overriding consideration. Overall, it would be contrary to the development plan and there are no other material considerations to outweigh that finding. Therefore, for the reasons given, the appeal should not succeed.

B Phillips

INSPECTOR