



Appeal Decision

Site visit made on 1 November 2023

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th November 2023

Appeal Ref: APP/Z3825/W/22/3305689

Garage Block, Blackstone Rise, Blackstone, West Sussex BN5 9SZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval to details required by a condition of a planning permission.
- The appeal is made by J&A Property Services against the decision of Horsham District Council.
- The application Ref DC/22/0319, dated 10 February 2022, sought approval of details of reserved matters pursuant to condition 2 of outline planning permission Ref DC/20/0025, granted on 30 September 2020.
- The application was refused by notice dated 12 August 2022.
- The development proposed is the demolition of 8no garages and erection of 3no dwellings.
- The details for which approval is sought are appearance, landscaping, layout and scale.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether an Appropriate Assessment pursuant to the Conservation of Habitats and Species Regulations 2017 is necessary for the reserved matters application.

Reasons

3. Outline planning permission was granted in September 2020 for three dwellings on the appeal site. In February 2022 a reserved matters application pursuant to this outline planning permission was submitted. It sought to address the matters of appearance, landscaping, layout and scale. It is this application to which the appeal relates.
4. The site is within the Sussex North Water Supply Zone (SNWSZ), where some supplies are sourced from groundwater abstraction. Before the reserved matters application was submitted but after the outline permission was granted, Natural England (NE) issued its Position Statement (September 2021 – Interim Approach). This noted that NE was unable to conclude that existing abstraction in the SNWSZ was not having a negative effect on the integrity of the Arun Valley Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar site.
5. One way of ensuring plans or projects do not contribute further to this existing adverse effect is to demonstrate water neutrality. The Officer Report indicates that the applicants were requested to submit a Water Statement (WS) identifying efficiencies and offsetting measures to compensate for the water consumption from the new houses. This would help to demonstrate that the

- development would accord with NE's Position Statement. However, a WS was not provided.
6. In the absence of such information the Council, as the 'competent authority' under the Conservation of Habitats and Species Regulations 2017 (the Regulations), concluded that, it could not be certain that the development would not adversely affect the integrity of the protected habitats. The application was refused by the Council on that basis.
 7. At this appeal no issues are raised by the main parties as to NE's Position Statement and the potential effect development within the catchment area can have upon protected habitats. Furthermore, there is no suggestion that the advice within the Position Statement is not of relevance to the type of development proposed at the appeal site. The focus of the dispute between the Appellant and the Council is whether it is legitimate to apply the Regulations at reserved matters stage and thus whether it is necessary to undertake an Appropriate Assessment (AA) to determine whether or not the proposal would adversely affect the integrity of the protected habitats.
 8. It is the Appellant's general contention that the principle of the development is established by the outline permission; that consideration of the issue of water abstraction and habitats protection can only be undertaken at the outline planning stage; that such issues fall outside of the scope of the reserved matters being applied for; and that the Regulations do not apply to a reserved matters application.
 9. I understand the Appellant's position in terms of the principle of the development having been established by the outline permission. However, this does not seem to me to be the correct start point, or indeed end point, when this case is considered in the context of the Regulations. This is because in such situations, the Appellant's approach would prevent habitats that warrant protection from receiving it.
 10. In this regard Regulation 63 is clear that the absence of an AA, prevents a competent authority from giving consent, permission, or other authorisation for a project which is likely to have significant effects. The inclusion of specific provisions relating to the grant of planning permission, including outline, at Regulation 70 does not diminish the applicability of Regulation 63 in planning matters. There is nothing in Regulation 70 itself to say that it is intended to give effect or implement the requirements of Regulation 63.
 11. Thus, to my mind, not undertaking an AA in a situation where one would be required but where one had not previously been undertaken, would fail to give the correct protection to a sensitive site and so could lead to effects on that site not being assessed that rightly should be. This would ultimately undermine and frustrate the purpose of the Regulations and Paragraph 181 of the National Planning Policy Framework (the Framework).
 12. I am supported in my approach by the Written Ministerial Statement (20 July 2022) on *improving water quality and tackling nutrient pollution* which confirms that the provisions in the Regulations may apply to circumstances that include post permission approvals; reserved matters or discharges of conditions.
 13. Furthermore, I also note that in *C G Fry & Son Ltd v SSHCLG & Somerset Council* [2023] EWHC 1622 (Admin), the Judge held that "the Habitats

Directive and Habitats Regulations 2017 mandate that an appropriate assessment be undertaken before a project is consented. That is irrespective of whatever stage the process has reached according to UK planning law. The basal fact in this case is that neither at the permission, reserved matters, or conditions discharge stage has there been an Appropriate Assessment. Application of the Habitats Directive and a purposive approach to the interpretation of the Habitats Regulations 2017 require the application of the assessment provisions to the discharge of conditions. The strict precautionary approach required would be undermined if they were limited to the initial - the permission - stage of a multi-stage process”.

14. Thus, while AAs are usually carried out for outline and full planning permission, it is clear that they may also be required for approvals of reserved matters or the discharge of other conditions if not previously undertaken at the permission stage.
15. In this case, the situation had fundamentally changed since the outline permission was granted due to NE’s Position Statement; and thus, there was no previous assessment of the effect of the development on water neutrality. Therefore, given all of the above, the Council was evidently correct, and it was necessary for an AA to be undertaken for this reserved matters application.
16. As the ‘competent authority’ under the Regulations, it subsequently falls to me to undertake an AA. In view of NE’s Position Statement, the proposal, either on its own or in combination with other projects, is likely to have significant effects on the conservation objectives of the protected habitats. I must consider any avoidance or mitigation measures that might be necessary in order for the development to achieve water neutrality. However, as the Appellant has not submitted any details or information in relation to such matters, it cannot be demonstrated that the proposal would achieve water neutrality.
17. I must therefore conclude that the proposal would have a likely significant effect on the integrity of the Arun Valley SAC, SPA, and Ramsar site in relation to water neutrality, in conflict with Policy 31 of the Horsham District Planning Framework (2015) which, amongst other things, requires development to avoid adverse impact on sites or features for biodiversity, demonstrating any appropriate mitigation and compensation measures.
18. The proposal is also contrary to the Framework and the Regulations, insofar as they seek to protect and enhance biodiversity, including protected sites.

Other Matters

19. There is no dispute between the main parties as to the matters of appearance, landscaping, layout and scale. However, as I cannot be sure that the development would not have an adverse effect on water neutrality, there is no need for me to consider them further.

Conclusion

20. For the reasons set out above and taking account of the development plan as a whole, as well as all other points made, the appeal is dismissed.

Stewart Glassar

INSPECTOR