



Appeal Decision

Site visit made on 9 October 2023

by S Harley BSc(Hons) M.Phil MRTPI ARICS

an Inspector appointed by the Secretary of State

Decision date: 11th December 2023

Appeal Ref: APP/Z3825/W/22/3310485

Leverance Farm, Marles Lane, Billingshurst, West Sussex RH14 9BT

- 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 D Sherlock against the decision of Horsham District Council.
 - The application Ref DC/22/0309, dated 9 February 2022, was refused by notice dated 6 May 2022.
 - The development proposed is the (part retrospective) provision of a dwelling house.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal relates to a former barn at Leverance Farm. Although many of the documents describe the appeal building as Leverance Farm it is clear that it is a former barn now known as Leverance Barn. I have considered the appeal on this basis.
3. The appeal site is within the Sussex North Water Supply Zone (the SNWSZ). In September 2021 Natural England (NE) in response to the requirements in relation to water neutrality and the Habitat Regulations¹ produced a Position Statement². This requires that developments must not add to the impact of water abstraction on the Arun Valley Special Area of Conservation, Special Protection Area and Ramsar sites (the Arun Valley Sites).
4. The Parties have had the opportunity to provide information to enable an Appropriate Assessment in relation to the effects on the Arun Valley sites from water abstraction. I have taken the responses into account in my Decision.

Background and Main Issues

5. Conditional prior approval under Article 3(1) and Schedule 2 Part 3 Class Q of the Town and Country Planning (General Permitted Development)(England) Order 2015 as amended was given for the change of use of the appeal building from an agricultural building to a four-bedroom dwelling in November 2016.
6. In July 2018, the Council stated that the prior approval conversion works appear to be all but complete, with the external cladding, new roofing and windows all in place, along with some signs of habitation within. Planning permission was granted in 2018 for a garage/store and more extensive residential curtilage to serve the dwelling.

¹ Conservation of Species and Habitats Regulations 2017 (as amended)(the Regulations)

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

7. Notwithstanding the subsequent permission, where prior approval is deemed to be or expressly granted, the development is only lawful if it is begun subsequently, it is carried out in accordance with the submitted plans and it is in fact permitted development. The works carried out do not accord with the prior approval plans and the pre-commencement Condition relating to contamination risks has not been discharged. Accordingly, the current dwelling house is without the benefit of planning permission. The appeal proposal seeks to regularise the position. However, the prior approval and the completion and occupation of the dwelling remains a significant material consideration.
8. The main issues for this appeal are therefore: whether the site is an appropriate location for a dwelling taking account of local and national spatial strategy; the effect of the proposal on the character and appearance of the area; and the effect on the integrity of the Arun Valley sites.

Reasons

Spatial Strategy

9. The appeal site is not allocated for development, is outside any settlement and is in the countryside for planning policy purposes. Access is via Marles Lane. This also serves some other dwellings and is a public right of way. Marles Lane is a long narrow track and there are very few services or facilities nearby. Occupants would therefore rely on a private vehicle for such day-to-day needs. Although there are some scattered dwellings along Marles Lane these are some distance away and the appeal site is relatively isolated.
10. On this basis a dwelling on the appeal site would conflict with the spatial strategy as set out in Policy BILL 1 of Billingshurst Parish Neighbourhood Plan 2021 (the Neighbourhood Plan) and Policies 1, 3, 4, 26 and parts of Policy 2 of the Horsham District Planning Framework (the HDPF). These seek to direct development to the most accessible locations, to reduce reliance on the private vehicle and to resist new housing in the countryside unless there is justification for a countryside location, which has not been demonstrated in this case.
11. A dwelling on the site gains some support from part 8 of HDPF Policy 2 and HDPF Policy 33 which encourage the efficient use of previously developed land and buildings. Moreover, Paragraph 80 of the National Planning Policy Framework, whilst seeking to avoid the development of isolated homes in the countryside, has a specific exemption at c) where development would re-use buildings which is the case here.
12. The appeal site is not an appropriate location for a dwelling because of the conflict with the spatial strategy Policies identified above. However, the harm arising from this conflict is relatively slight taking into account to the previous prior approval.

Character and appearance

13. The appeal site is surrounded by fields interspersed with trees and hedges. It is fairly level and enclosed with a post and rail fence. The building is of simple form with a low-pitched roof and the scale and form of the original barn has not significantly altered. The first-floor accommodation is contained within the same building envelope and other than resulting in changes to the window arrangements has little effect on the character and appearance of the building.

14. The enclosed porch on the south elevation and the open porch on the east elevation are small scale and are of simple acceptable design.
15. The glazing on the west elevation is extensive, but this is not prominent in public viewpoints. The other elevations are prominent in views from the public right of way along Marles Lane. The glazed openings on these elevations are moderate in extent and not unduly intrusive.
16. The external wall cladding is mainly horizontal timber painted light green with a small section of cement cladding on the enclosed porch painted the same colour. Whilst such a painted finish is not often found on agricultural buildings light coloured walls are not uncommon. Other than the garage within the site there are no buildings that can be seen together with it. I do not find the colour or materials to be particularly incongruous or intrusive in this rural setting.
17. Taken together the extent of fenestration, the porches and the painted finish to the walls are to some extent more domestic in appearance than those which were granted prior approval. The evidence indicates the original agricultural building was of no particular design merit and the prior approval scheme also introduced a more domestic rather than agricultural character.
18. Overall, I do not find the character and appearance of the building to have such an adverse effect in this location as to justify withholding permission. I find no conflict with Policies 25, 32 and 33 of the HDPF or Policy BILL 2 of the Neighbourhood Plan which seek high quality design of an appropriate scale and nature that protects, preserves and enhances the landscape of the District.

The Arun Valley Sites

19. The Arun Valley Sites are home to low-lying wetland areas that offer a variety of ecological conditions, providing internationally important habitats with rich flora, fauna and invertebrates and supporting important numbers of wintering birds. NE has identified that one way to mitigate the impact would be for development to achieve water neutrality.
20. The evidence indicates the dwelling was occupied before the interim approach in the Position Statement 2021 relating to water abstraction was adopted. Nevertheless, as the appeal proposal amounts to seeking a new planning permission, under the Habitat Regulations, I must consider whether the scheme, alone or in combination with other plans and projects, contributes to adverse effects on the integrity of the Arun Valley Sites by way of water abstraction.
21. The appellant has provided a letter dated 3 November 2023 (the November letter) with information in respect of water usage. This concluded that water neutrality could be achieved compared to the previous agricultural use by a mix of water reduction measures such as retro fitting more efficient fixtures and fittings, water re-use, and/or rainwater collection at the appeal site and Leverance Farm. The appellant has suggested this could be done at the earliest opportunity and that a reasonable period for implementation would be three to six months subject to any other permissions which may be required. It is proposed the measures be secured by way of condition.
22. The November letter suggests that historically a mains water supply served the appeal building as a barn and water troughs for summer grazing for 120 dairy Friesian cows but that now the surrounding land is grazed by one or two ponies

instead. However, the evidence relating to the cattle, the extent of land grazed over what period is relatively sparse and there is no mechanism that would prevent more intensive grazing in the future. Accordingly, I have reservations about the applicability of the baseline figures. In the alternative I also have doubts that the water useage of the residential occupation of a building that does not have the benefit of planning permission would be an appropriate baseline.

23. The November letter explains that the water supply for the appeal site is shared with that of Leverance Farm, which is also owned by the appellant, and Keepers Cottage, which is not. There is a single meter at the end of Marles Lane. Accordingly, it is not possible to distinguish the amount of water used by each property. It is therefore very difficult to establish the water useage at the appeal site either now or what it might be if the proposed water saving measures were to be introduced.
24. It seems to me that it would also be very difficult to ensure that future occupiers would maintain the proposed fixtures, fittings or white goods in optimum order; that any replacements would not have a greater water useage; and additional ones were never installed. I have seen little detail of how the implementation of the proposed measures could be secured, monitored and enforced in the future. I am not the enforcing agency and it maybe that the Council has means to ensure appropriate implementation, monitoring and enforcement in a case such as this one but these are not apparent in the evidence before me.
25. As the competent authority, I cannot be sure that a condition would be sufficiently robust to ensure that the mitigation measures can be fully implemented and are enforceable in perpetuity and therefore provide a sufficient degree of certainty to pass the Habitats Regulations. On the basis of the available evidence, I cannot confidently conclude that the proposal would not, alone or in combination with other plans and projects, contribute to adverse effects on the integrity of the Arun Valley Sites by way of water abstraction. As such Regulation 63 prevents me, as the competent authority for this appeal, from granting permission.
26. Regulation 63 prevents me from granting permission unless it has been demonstrated that there would be no likely significant effect on the integrity of the Arun Valley Sites. For the reasons set out above I cannot conclude this. There is therefore conflict with Policy 31 of the HDPF, the environmental objectives of the Framework and the 2017 Regulations.

Other Matters

27. There is a Grade II Listed Building, Keepers Cottage, further along the access track. Due to the intervening distance the appeal scheme has no effect on the Listed Building or the setting in which it is appreciated.
28. It is for the appellant to provide the information necessary to complete an Appropriate Assessment and to demonstrate water neutrality. I acknowledge the appellant's view that the Council should have requested this information at an earlier stage. However, as the Council decided to refuse the application for other reasons there was no requirement for an Appropriate assessment to be completed.

Planning Balance and Conclusion

29. The effect on the character and appearance of the area is acceptable but this is to be expected from all developments and has neutral weight in this appeal.
30. The Council cannot demonstrate a five-year supply of deliverable housing land. The prior approval and the completion and occupation of the dwelling remains a significant material consideration. The appeal proposal would retain a much-needed dwelling and makes efficient use of an existing building. These matters carry much weight.
31. However, I have found conflict with the spatial strategy set out in the development plan. This conflict is relatively slight taking into account the previous prior approval. More importantly I cannot confidently conclude the integrity of the Arun Valley Sites would not be adversely affected and this is an overriding material consideration which carries very significant weight. Due to the impact on these protected habitats the so called 'tilted balance' in the Framework does not apply. These harms together attract very great weight and outweigh the benefits identified.
32. In failing to comply with Policies 1, 2, 3, 4, 26 and 31 of the HDPF and Policy BILL 1 of the Neighbourhood Plan the proposal cannot be said to comply with the development plan taken as a whole. I have found insufficient material considerations, including the Framework, to justify a decision other than in accordance with the development plan. The appeal should be dismissed.

S Harley

INSPECTOR