



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: 13 December 2023

Appeal Ref: APP/Z3825/W/22/3306610

Tepede Graphics Ltd, Unit 12, Laura House, Jengers Mead, Billingshurst, RH14 9NZ

- 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 an approval.
- The appeal is made by Mrs J Evans against the decision of Horsham District Council.
- The application Ref HRA/22/0001, dated 4 January 2022, sought approval of details pursuant to a condition of an approval Ref DC/21/1659, granted on 28 October 2021.
- The application was refused by notice dated 18 May 2022.
- The development proposed is an application under Regulation 77 of the Conservation of Habitats and Species Regulations 2017 in respect of Prior Approval consent DC/21/1659.
- The details for which approval is sought is water neutrality.

Decision

1. The appeal is allowed, and approval is given to the details pursuant to water neutrality.

Background and Main Issues

2. Prior approval was granted on 28 October 2021 to convert the appeal premises from offices to a flat. By virtue of Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) and Regulation 75 of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations), the approval was subject to a pre-commencement condition. This required a submission to the Council under Regulation 77 of the Habitats Regulations. This was necessary to allow the Council to undertake an Appropriate Assessment (AA) and, depending on the outcome, determine whether the scheme could proceed as permitted development under the GPDO.
3. An AA was considered necessary following the publication of Natural England's Position Statement (September 2021 – Interim Approach) for applications within the Sussex North Water Supply Zone, within which the appeal site is located. The Statement sets out an interim approach to ensure that proposed developments within the Supply Zone do not add to the impact of water abstraction on the integrity of the Arun Valley Special Protection Area (SPA), Special Area of Conservation (SAC) and Ramsar site. Within this context, one way for individual schemes to show that they would not be likely to have significant effects on these protected habitats is to demonstrate their water neutrality.
4. It is the appellant's case that the proposed one bedroom flat would use less water than the permitted office use and therefore inherently there will be a reduction in water usage and so no adverse effect on the protected sites. The

Council disputes this and considers the appellant's position to be unsubstantiated and that the proposal is likely to increase water usage and thus without mitigation would harm the integrity of the protected sites.

5. Therefore, the main issues are whether or not the proposed development would increase water usage at the property and if so, would it be likely to have a significant effect on the integrity of the Arun Valley SAC, SPA, and Ramsar site in relation to water neutrality.

Reasons

6. The appeal property did not have a metered water supply at the time of the application and therefore establishing the baseline usage for the unit's actual water consumption was not possible. Whilst a definite consumption rate is preferable, in such instances the Council accepts that the BREEAM Water Calculator (BWC) can be used to provide a representative baseline figure for the property.
7. The BWC indicates the property would have had a potential water usage of 109.24 litres per day when used as an office. In comparison the one bed flat would have a predicted usage of 108.24 litres per day.
8. The Council has contested the figures on two main grounds. Firstly, the assumed occupancy rate of the unit's commercial use is not evidenced and is different from that of the OffPAT Employment Densities Guide (2010). Secondly, it is said that the calculation for the residential unit should include the 5 litres per day allowance for outside use and which the appellant has specifically excluded from the calculations.
9. Although it was not apparent from the submission, the appellant has subsequently clarified that the BWC has an inbuilt figure for the occupancy of office buildings. This cannot be overridden by user input. Given that the Council specifically refers users to the BWC, it is difficult to see how this would not be acceptable to the Council. Aside from there being no way of using the OffPAT Employment Densities Guide in the calculator, there is no reference or indication from the Council that applicants must somehow use this other source. In such circumstances, I consider it reasonable to use the figures produced by the BWC.
10. As regards the Council's second area of concern, I noted from my site visit that the unit does not have access to outside space, such as a garden or parking space. It was also evident from the initial prior approval application that the change of use to a flat applied just to the internal floorspace and that there was no outside space or curtilage associated with the appeal property.
11. It therefore seems unlikely to me that an occupant would wish to carry buckets of water to the nearby public car park to wash a car. Furthermore, the type of windows serving the unit and the proximity of a mono-pitch roof immediately below them would suggest that window boxes would not be possible. It therefore seems reasonable that the 5 litre per day usage for outside activities should not apply in this instance.
12. I have consulted Natural England on the proposal. They accept that in light of the above the existing water use has been appropriately calculated and external water usage rates are not applicable to the property as proposed. As such, they are content that the proposal suitably demonstrates that water

neutrality is achieved and as such can rule out adverse effects on the integrity of the Arun Valley designated sites.

13. Therefore, having regard to the specific circumstances of this case and the substantive evidence before me, I am satisfied that water neutrality would be achieved through this change of use without the need for further mitigation measures.
14. For the above reasons, I conclude the development, either alone or in combination with other plans or projects, would not have a likely significant effect on the integrity of the SAC, the SPA and the Ramsar site. I therefore find that the proposal would accord with the National Planning Policy Framework and the Habitats Regulations, insofar as they seek to prevent the loss or deterioration of irreplaceable habitats.
15. In response to questions that I put to the Council during the course of this appeal, reference was made by them to Policy 31 of the Horsham District Planning Framework 2015. I was not provided with a copy of that policy but regardless of that, my considerations in this case are in relation to the Habitats Regulations and not specifically against development plan policies.

Conditions

16. There is no power to impose conditions on a Regulation 77 approval.

Conclusion

17. For the reasons given above, I conclude that the appeal should be allowed.

Stewart Glassar

INSPECTOR