



Appeal Decisions

Site visit made on 17 September 2024

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 September 2024

Appeal A Ref: APP/Z3825/W/24/3336453

Sir Roberts Farm, Goose Green Lane, Pulborough, West Sussex RH20 2LW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Michael Isherwood against the decision of Horsham District Council.
 - The application Ref DISC/23/0014 sought approval of details pursuant to condition Nos 3, 4, 5 and 6 of planning permission Ref DC/20/2606, granted on 5 March 2021.
 - The application was refused by notice dated 4 January 2024.
 - The development proposed is 'change of use and associated minor alterations to an existing building (Class E) to a three bedroom residential dwellinghouse (Class C3)'.
 - The details for which approval is sought are set out in the appended Schedule 1.
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Appeal B Ref: APP/Z3825/W/24/3336455

Sir Roberts Farm, Goose Green Lane, Pulborough, West Sussex RH20 2LW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Michael Isherwood against the decision of Horsham District Council.
 - The application Ref DISC/23/0015 sought approval of details pursuant to condition Nos 3, 4, 5 and 6 of planning permission Ref DC/20/2608, granted on 5 March 2021.
 - The application was refused by notice dated 4 January 2024.
 - The development proposed is 'change of use and associated minor alterations to an existing building (Class E) to a one bedroom residential dwellinghouse (Class C3)'.
 - The details for which approval is sought are set out in the appended Schedule 2.
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Appeal C Ref: APP/Z3825/W/24/3336457

Sir Roberts Farm, Goose Green Lane, Pulborough, West Sussex RH20 2LW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Michael Isherwood against the decision of Horsham District Council.
 - The application Ref DISC/23/0013 sought approval of details pursuant to condition Nos 3, 4, 5 and 6 of planning permission Ref DC/20/0847, granted on 30 October 2020.
 - The application was refused by notice dated 4 January 2024.
 - The development proposed is 'conversion of existing barn to three bedroom residential property'.
 - The details for which approval is sought are set out in the appended Schedule 3.
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Decisions

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

Preliminary Matters

4. As set out above, there are three appeals before me, each relating to applications seeking approval of details reserved by conditions on planning permissions which were granted for different buildings on the same wider site ('the Permissions'). I have considered the appeals on their own merits but to avoid duplication, I have dealt with them together except where otherwise indicated.
5. The application form for the application subject of Appeal C indicated that approval was sought for details pursuant to conditions 2, 3, 4, 5 and 6 of the relevant Permission. However, condition 2 pertains to the submission of 'reserved matters' rather than approval of details and the appellant has confirmed that it was included in the application in error. I have therefore determined Appeal C on the basis that approval is sought for details pursuant to conditions 3, 4, 5 and 6.
6. The applications subject of the appeals were each made before the expiry date of the relevant Permission. I acknowledge that the Permissions have now expired, but that fact does not preclude determination of the appeals.
7. The Council's reasons for refusal of the applications included reference to the decision of the High Court in the case of *C G Fry & Son Ltd v SSHCLG & Somerset Council* [2023] EWHC 1622 (Admin). Since the appeals were made, that decision has been upheld by the Court of Appeal¹. The main parties were invited to comment on any implications for their cases of the Court of Appeal judgement and I have taken the representations made into account.

Main Issue

8. With the exception of ecological information provided in respect of condition 6 under Appeal B and condition 5 under Appeal C, the Council has not objected to the merits of the details submitted. It is however concerned that giving approval to the details would enable schemes that would have an adverse effect on the integrity of designated nature conservation sites.
9. The main issue in each appeal is therefore the effect of the proposal on designated nature conservation sites.

Reasons

10. Since the Permissions were granted, Natural England issued an advice note identifying that water abstraction within the Sussex North Water Supply Zone ('the SNWSZ') cannot be ruled out as contributing to adverse effects on the integrity of the Arun Valley Special Area of Conservation ('SAC'), Special Protection Area ('SPA') and Ramsar site. Natural England advise that achieving

¹ *C G Fry & Son Ltd v SSHCLG & Somerset Council* [2024] EWCA Civ 730

'water neutrality' is a suitable method to rule out potential adverse effects on the integrity of these sites.

11. The SAC and SPA are European Sites as designated by the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations') while the Ramsar site is afforded equivalent protection under the National Planning Policy Framework ('the Framework'). Where a plan or project is likely to have a significant effect on a European site (either alone or in combination with other plans or projects, Regulation 63 of the Habitats Regulations sets out that a competent authority must, before giving any consent, permission or other authorisation, make an appropriate assessment ('AA') of the implications of the plan or project for that site in view of that site's conservation objectives.
12. The appeals relate to Permissions proposing dwellings on sites within the SNWSZ. Insofar as there would be water demand associated with the dwellings, the developments would have the potential to contribute to adverse effects on protected sites. However, the Permissions were granted prior to the issue of the Natural England advice note. They were not accompanied by evidence to demonstrate water neutrality and were not subject to AA.
13. While the principle of the dwellings was established by the Permissions, the Court of Appeal in *C G Fry & Son Ltd* held that regulations 63 and 70 of the Habitats Regulations could require an AA to be undertaken at the stage when the discharge of conditions was being considered, setting out that this conclusion not only reflects the proper construction of the Habitats Regulations but also accords with the case law, both European and domestic. In making the appeals, the appellant had referred to the effect of the Retained EU Law (Revocation and Reform) Act 2023 ('the REUL'). However, the Court of Appeal judgment commented that it was unnecessary to refer to the principles of EU law in resolving the matters of interpretation of the Habitats Regulation that were at issue. Accordingly, the REUL coming into force would not alter the principles established.
14. The *C G Fry & Son Ltd* Court of Appeal judgement further held that where the provisions for AA are engaged, the Regulations have the effect of requiring such an assessment before development is authorised to proceed by the 'implementing decision'. That is the situation that would apply here. Discharging pre commencement conditions, as the appeals before me seek, would be necessary for lawful implementation of the developments. They would be 'implementing decisions', giving authorisation for the projects to proceed, and thus resulting in the realisation of potential effects on protected sites. Since there has been no previous AA of the developments, I find that such an assessment would be required before approval may be given.
15. In reaching this view, I have noted the appellant's argument with reference to the cases of *Medina Borough Council v Proberun Ltd*. [1991] 61 P&CR 77, 85 and *R (Noble Organisation Ltd.) v Thanet District Council* [2005] EWCA Civ 78 that a decision-taker must not misuse their functions to achieve indirectly what would amount to a revocation or modification of a permission already given. However, my finding that AA is required does not invalidate the Permissions themselves and would not in my view amount to revocation of the Permissions.
16. Having determined that AA is required, I note that the appellant has provided a Water Neutrality Statement which considers the proposals together and suggests that water neutrality could be achieved. However, that is predicated

on the implementation of measures to reduce water demand within the dwellings and to re-use water through rainwater harvesting; as well as offsetting through reduction of water demand at other buildings within the wider site of the appellant's ownership. There is no mechanism before me that could secure the implementation of these measures as part of the approval of details required by a condition of planning permission. As a consequence, I cannot be sure that measures would be implemented in practice and there is insufficient certainty that water neutrality would be achieved.

17. I therefore find that adverse effects on the integrity of the Arun Valley SAC, SPA and Ramsar Site can not be excluded. I have no firm reason to find that there are no alternative sites that could accommodate the developments with lesser effects on the integrity of the designated sites, nor that there are imperative reasons of overriding public interest that would outweigh the adverse effects. In these circumstances, the operation of the Habitats Regulations would preclude the proposals. There would also be conflict with the Framework and with Policy 31 of the Horsham District Planning Framework 2021 which seeks to avoid adverse effects on sites or features for biodiversity.
18. I therefore conclude that approval should not be given for the discharge of conditions sought in these cases.
19. Accordingly, it is not necessary for me to go on to also consider the adequacy of ecological information provided in respect of condition 6 under Appeal B and condition 5 under Appeal C because I have found that these conditions should not in any event be discharged.

Other Matters

20. The appellant comments that the issue of water neutrality could have been avoided had the Council determined the applications subject of the appeals within the statutory time frames as they would have been decided before the High Court judgement in *C G Fry & Son Ltd*. However, the Council's administration of the applications is not a matter for me to address as part of these appeals which I must consider having regard to their planning merits.

Conclusion

21. For the reasons set out above, I conclude that Appeal A, Appeal B and Appeal C should each be dismissed.

J Bowyer

INSPECTOR

Schedule 1: Details for which approval is sought – Appeal A

Condition 3

No development shall take place, including any works of demolition, until the following construction site set-up details have been submitted to, and approved in writing by, the Local Planning Authority:-

- i. the location for the loading and unloading of plant and materials, site offices, and storage of plant and materials (including any stripped topsoil)
- ii. location for parking of builders/contractor vehicles
- iii. the provision of wheel washing facilities (if necessary) and dust suppression facilities

The approved details shall be adhered to throughout the construction period.

Condition 4

No development shall commence until a drainage strategy detailing the proposed means of foul and surface water disposal has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved scheme.

Condition 5

No development shall commence until the following components of a scheme to deal with the risks associated with contamination, (including asbestos contamination), of the site be submitted to and approved, in writing, by the local planning authority:

- (a) A preliminary risk assessment which has identified:
 - all previous uses
 - potential contaminants associated with those uses
 - a conceptual model of the site indicating sources, pathways and receptors
 - Potentially unacceptable risks arising from contamination at the site.

The following aspects (b) - (d) shall be dependent on the outcome of the above preliminary risk assessment (a) and may not necessarily be required.

- (b) An intrusive site investigation scheme, based on (a) to provide information for a detailed risk assessment to the degree and nature of the risk posed by any contamination to all receptors that may be affected, including those off site.
- (c) Full details of the remediation measures required and how they are to be undertaken based on the results of the intrusive site investigation (b) and an options appraisal.
- (d) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (c) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action where required.

The scheme shall be implemented as approved. Any changes to these components require the consent of the local planning authority.

Condition 6

No development shall commence until a Preliminary Ecology Survey has been submitted to and approved in writing by the Local Planning Authority. The survey shall include details of any necessary mitigation and enhancement measures and a timetable for their implementation. The development shall take place in accordance with the agreed details and timetable, and shall thereafter be retained and maintained in accordance with the approved details.

Schedule 2: Details for which approval is sought – Appeal B

Condition 3

No development shall take place, including any works of demolition, until the following construction site set-up details have been submitted to, and approved in writing by, the Local Planning Authority:-

- i. the location for the loading and unloading of plant and materials, site offices, and storage of plant and materials (including any stripped topsoil)
- ii. location for parking of builders/contractor vehicles
- iii. the provision of wheel washing facilities (if necessary) and dust suppression facilities

The approved details shall be adhered to throughout the construction period.

Condition 4

No development shall commence until a drainage strategy detailing the proposed means of foul and surface water disposal has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved scheme.

Condition 5

No development shall commence until the following components of a scheme to deal with the risks associated with contamination, (including asbestos contamination), of the site be submitted to and approved, in writing, by the local planning authority:

- (a) A preliminary risk assessment which has identified:
 - all previous uses
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 - a conceptual model of the site indicating sources, pathways and receptors
 - Potentially unacceptable risks arising from contamination at the site.

The following aspects (b) - (d) shall be dependent on the outcome of the above preliminary risk assessment (a) and may not necessarily be required.

- (b) An intrusive site investigation scheme, based on (a) to provide information for a detailed risk assessment to the degree and nature of the risk posed by any contamination to all receptors that may be affected, including those off site.
- (c) Full details of the remediation measures required and how they are to be undertaken based on the results of the intrusive site investigation (b) and an options appraisal.
- (d) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (c) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action where required.

The scheme shall be implemented as approved. Any changes to these components require the consent of the local planning authority.

Condition 6

No development shall commence until a Preliminary Ecology Survey has been submitted to and approved in writing by the Local Planning Authority. The survey shall include details of any necessary mitigation and enhancement measures and a timetable for their implementation. The development shall take place in accordance with the agreed details and timetable, and shall thereafter be retained and maintained in accordance with the approved details.

Schedule 3: Details for which approval is sought – Appeal C

Condition 3

No development shall commence until a drainage strategy detailing the proposed means of foul and surface water disposal has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved scheme.

Condition 4

No development shall commence until the following components of a scheme to deal with the risks associated with contamination, (including asbestos contamination), of the site be submitted to and approved, in writing, by the local planning authority:

- (a) A preliminary risk assessment which has identified:
 - all previous uses
 - potential contaminants associated with those uses
 - a conceptual model of the site indicating sources, pathways and receptors
 - Potentially unacceptable risks arising from contamination at the site.

The following aspects (b) - (d) shall be dependent on the outcome of the above preliminary risk assessment (a) and may not necessarily be required.

- (b) An intrusive site investigation scheme, based on (a) to provide information for a detailed risk assessment to the degree and nature of the risk posed by any contamination to all receptors that may be affected, including those off site.
- (c) Full details of the remediation measures required and how they are to be undertaken based on the results of the intrusive site investigation (b) and an options appraisal.
- (d) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (c) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action where required.

The scheme shall be implemented as approved. Any changes to these components require the consent of the local planning authority.

Condition 5

No development shall commence until a Preliminary Ecology Survey has been submitted to and approved in writing by the Local Planning Authority. The survey shall include details of any necessary mitigation and enhancement measures and a timetable for their implementation. The development shall take place in accordance with the agreed details and timetable, and shall thereafter be retained and maintained in accordance with the approved details.

Condition 6

No development above ground floor slab level of any part of the development hereby permitted shall take place until a schedule of materials and finishes and colours to be used for external walls, windows and roofs of the approved building(s) has been submitted to and approved by the Local Planning Authority in writing and all materials used in the construction of the development hereby permitted shall conform to those approved.