

Appeal Decision

Site visit made on 30 September 2024

by V Simpson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th November 2024

Appeal Ref: APP/L3815/W/24/3342676

Ham Farm, Main Road, Bosham, West Sussex PO18 8EH

- 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 conditions of a planning permission.
 - The appeal is made by Landlink Estates Ltd against the decision of Chichester District Council.
 - The application Ref 23/01750/DOC sought approval of details pursuant to conditions Nos 4, 5 and 6 of a planning permission Ref BO/20/01288/FUL, granted on 01 October 2020.
 - The application was refused by notice dated 18 October 2023.
 - The development proposed is extensions to the existing packhouse facility to provide additional packing lines and new staff welfare facilities.
 - The details for which approval is sought are: surface water drainage scheme, construction environmental management plan, and sustainable drainage systems maintenance scheme.
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Decision

1. The appeal is allowed, and the details submitted pursuant to condition Nos. 4, 5 and 6 attached to planning permission Ref BO/20/01288/FUL granted on 1 October 2020 in accordance with the application 23/01750/DOC dated 27 July 2023 are approved.

Application for costs

2. An application for costs was made by Landlink Estates Ltd against Chichester District Council. This application is subject of a separate decision.

Preliminary Matters

3. This appeal follows the refusal by the Council to approve details required by conditions attached to planning permission Ref BO/20/01288/FUL (the planning permission). Conditions 4, 5 and 6 of the planning permission required details to be submitted to and approved by the Local Planning Authority prior to the commencement of the development.
4. Although the application subject of this appeal was submitted to the Council within the 3-year time limit for the implementation of the planning permission, it was determined after this time-limit. The Council argue that

conditions 4, 5 and 6 of the planning permission are therefore no longer capable of being discharged.

5. Nevertheless, further to the Whitley & Sons Court of Appeal ruling¹ there is nothing to prevent a decision being made on an application for agreement of details required by condition if the time limit for the implementation of the planning permission expires during the decision-making process. This is so long as the application has been validly made before the expiry date of the permission.
6. I have no reason to doubt that the application subject of this appeal was validly made before the expiry date of the permission. Consequently, it is within the scope of this appeal to determine whether the details submitted pursuant to conditions 4, 5, and 6 of the planning permission are acceptable and can be approved.
7. Matters relating to the implementation of the planning permission are outside of the scope of this appeal.

Background and Main Issue

8. The Council has indicated that the submitted details are satisfactory in relation to requirements of conditions 4, 5 and 6 of the planning permission, and I have no reason to reach an alternative view.
9. Nevertheless, the site to which the planning permission relates is within the zone of influence of several European designated sites (habitat sites) afforded protection under the Conservation of Habitats and Species Regulations 2017 - as amended (the Habitat Regulations). These sites include the Singleton and Cocking Tunnels Special Area of Conservation (SAC), the Pagham Harbour Special Protection Area (SPA), the Solent maritime SAC, the Chichester and Langstone Harbour SPA and Ramsar site, the Solent and Dorset coast SPA, and the Kingley Vale SAC.
10. Although not forming part of the Council's refusal reasons, it is incumbent upon me as competent authority, to consider whether the implementation of the proposed details would be likely to have a significant effect on the integrity of these habitat sites. It is therefore necessary to consider this matter as a main issue.
11. Consequently, the main issue is the effect of the implementation of the proposed details on habitat sites.

Reasons

12. The site subject of the planning permission contains an existing packhouse facility. The surface water drainage scheme, the construction environmental management plan (CEMP), and the sustainable drainage systems maintenance scheme that are subject of this appeal would take place on land within this site and close to existing hedgerows.
13. The qualifying features of the habitat sites that the appeal site is within the zone of influence of, are; various birds - including passaging and wintering species; waterbird assemblages; various habitats and plants; the

¹ F G Whitley & Sons v SSW & Clwyd CC [1992] JPL 856

Desmoulin's whorl snail; *Taxus baccatta* woods of the British Isles; the Barbastelle bat; and, the Bechstein's bat.

14. On the basis of the evidence before me, I am satisfied that both alone and in combination with other plans or projects, the implementation of the proposed details would not give rise to risk of likely significant effect on the internationally important features of the Pagham Harbour SPA, the Solent maritime SAC, the Chichester and Langstone Harbour SPA and Ramsar site, the Solent and Dorset coast SPA, or the Kingley Vale SAC.
15. However, I have been unable to reach the same conclusion in respect of the Singleton and Cocking Tunnels SAC (the Tunnels SAC). The qualifying features of this habitat site are the Barbastelle and Bechstein's bats that hibernate within it.
16. The conservation objectives for the Tunnels SAC include, ensuring that the integrity of the site is maintained or restored as appropriate, and, ensuring that the site contributes to achieving the favourable conservation status of its qualifying features.
17. The evidence indicates that the bats which are qualifying features of the Tunnels SAC disperse within the wider landscape to form maternity roosts in the summer. It also demonstrates that, for commuting and foraging purposes, such bats rely on habitats that are functionally linked to the SAC, and which include vegetation cover, dark flight lines, and feeding areas. Albeit in draft, the Sussex Bat Special Area of Conservation Planning and Landscape Scale Enhancement Protocol document produced by Natural England and the South Downs National Park Authority, suggests that the full extent of the range of foraging areas required by the qualifying species is 12km from the SAC. I have no reason to doubt this finding, and proceed on the basis that habitats which are functionally linked to the SAC may extend up to 12km from its edge.
18. The site subject of the planning permission is within this range, and hedgerows on and close to the site boundaries form part of a wider network of hedgerows within the area. Furthermore, Barbastelle bats have been recorded over linear features/hedgerows on the site. As such and given that the proposed details include excavation and construction works close to existing hedgerows, without suitable avoidance or mitigation measures, such works have the potential to interrupt bat flightlines and feeding areas that form part of habitats that are functionally linked to the SAC. Given that I must adopt a precautionary approach on matters related to habitat sites, a likely significant effect on the qualifying features of the Tunnels SAC, either alone or in combination with other plans and projects, cannot therefore be ruled out.
19. In these circumstances, the Habitat Regulations require that an appropriate assessment be carried out to establish the implications of the implementation of the proposed details on the integrity of the Tunnels SAC. I have sought further evidence on this matter, and Natural England has been consulted as part of the appeal.
20. The submitted construction environmental management plan (CEMP) states that during the construction phase, works would primarily be kept to daylight

hours. Bats are less likely to be active during such times. In the event of construction works during hours of darkness, the CEMP specifies that any lighting will be directed away from identified habitats or commuting routes, which include trees, hedges, watercourses and bat/bird flightlines. Furthermore, and from the evidence before me, I have no reason to doubt that all the proposed details would be implemented without the removal of sections of hedgerow.

21. For these reasons, the implementation of the details subject of this appeal would not result in severance of bat flight lines, or levels of lighting or disturbance that would be harmful to the bats which are the qualifying features of the Tunnels SAC. An adverse effect on the integrity of the Tunnels SAC would therefore be avoided. This finding aligns with Natural England's appeal consultation response.

Conclusion

22. For the reasons given above, the implementation of the proposed details would not cause harm to habitat sites. Having regard to the particulars of this case, I therefore conclude that this appeal should be allowed, and the details submitted pursuant to conditions 4, 5 and 6 be approved.

V Simpson

INSPECTOR