



Appeal Decision

Site visit made on 12 November 2024

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 December 2024

Appeal Ref: APP/Z3825/W/23/3330305

Tisserand Farm, Stane Street, Billingshurst RH14 9AE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant approval required under Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and Regulation 75 of the Conservation of Habitats and Species Regulations 2017.
 - The appeal is made by Mrs S Cross, Manorwood against the decision of Horsham District Council.
 - The application Ref HRA/23/0010 sought approval under regulation 77 of the Conservation of Habitats and Species Regulations 2017 in respect of prior approval consent Ref DC/23/0263.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mrs S Cross, Manorwood against Horsham District Council. This application is the subject of a separate Decision.

Background and Preliminary Matters

3. Under application ref DC/23/0263, the Council gave prior approval pursuant to Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO') for 'Change of Use of Agricultural Buildings to residential (Use Class C3) to form 4no dwellinghouses' at the appeal site ('the Prior Approval').
4. Article 3(1) of the GPDO grants planning permission for the classes of development described as permitted in Schedule 2 subject to the provisions of the GPDO and Regulations 75 to 78 of the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations').
5. Regulation 75 of the Habitats Regulations provides that *'it is a condition of any planning permission granted by a general development order made on or after 30th November 2017, that development which – (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and (b) is not directly connected with or necessary for the management of the site, must not be begun until the developer has received written notification of the approval of the local planning authority under regulation 77'*.
6. The current appeal relates to the Council's refusal to give approval required under Regulation 75 on an application made under Regulation 77 of the Habitats Regulations in respect of the Prior Approval development.

7. In refusing the application, the Council referred to effects on the Arun Valley Special Protection Area ('SPA'), Special Area of Conservation ('SAC') and Ramsar site. Regulation 8(1) of the Habitats Regulations provides that the SPA and SAC are 'European sites'. The National Planning Policy Framework indicates that Ramsar sites should be given the same protection. However, this is a matter of policy and would not affect the operation of the Habitats Regulations. The Ramsar site would not be a 'European site' for the purposes of the Habitats Regulations and because Regulations 75-78 would not therefore apply to it, I have not considered effects on the Ramsar site further in my decision.

Main Issue

8. The main issue is whether or not approval under Regulations 75 and 77 of the Habitats Regulations should be given having regard to the effect of the Prior Approval development on the Arun Valley SPA and SAC.

Reasons

9. The information before me indicates that the Arun Valley SPA is designated for waterfowl assemblages, including Bewick's swan while the SAC is designated for the Little Whirlpool Ramshorn snail. The conservation objectives of the SPA and SAC seek broadly to ensure that the integrity of the sites is maintained or restored and that the sites contribute to achieving the favourable conservation status of qualifying features by maintaining or restoring the extent, distribution, structure and function of the habitats of qualifying features and the supporting processes on which the habitats rely; and the population and distribution of the qualifying features.
10. Natural England has issued a Position Statement identifying that existing groundwater abstraction within the Sussex North Water Supply Zone ('the SNWSZ'), which includes the appeal site, cannot be ruled out as contributing to adverse effects on the integrity of the Arun Valley sites. New development with an associated demand for water that could increase requirements for abstraction within the SNWSZ would be likely to contribute to adverse effects. However, one way to ensure that development would not have an adverse impact on the integrity of the Arun Valley sites is to demonstrate 'water neutrality'.
11. The Prior Approval concerns a proposal for 4 dwellings on the site which would have an associated demand for water and could therefore lead to increased water abstraction in the SNWSZ. On that basis, the Prior Approval development, either alone or in combination with other plans and projects, would have a likely significant effect on the integrity of the Arun Valley sites.
12. The appellant has provided a Water Neutrality Statement which is accompanied by a Design Stage Water Neutrality Report ('WNR'). These indicate that the proposed dwellings would have a combined water demand of 830.46 litres/day against a baseline water usage of 3,048.91 litres/day, suggesting that the Prior Approval development would reduce water consumption at the site.
13. In considering baseline water usage, the appellant advises that Tisserand Farm was established as a pig farm in 1960 and that for several decades, there were around 300 pigs on the site when the enterprise was operating at capacity. The WNR includes a theoretical water requirement for the pig farm of 2,480.5 litres/day based on suggested stocking numbers at the site and

average water usage figures according to a report for Defra. However, the baseline figure that is used in the WNR is instead derived from water meter readings taken at the site between 5 July 2022 and 5 January 2023.

14. The appellant indicates that the site was in use for pig farming during this period of water meter monitoring and while the Council's appropriate assessment disputes the legitimacy of photo evidence of activity during this time, it does not explain on what grounds. Even accepting that the site was used as the appellant asserts during the monitoring period though, this covers only 6 months. The appellant highlights that this would accord with the Council's online guidance on water neutrality and planning applications which advises that the best way to evidence existing mains water consumption is via copies of metered water bills from within the last three years. Nevertheless, the guidance also states that it is critical that a water neutrality statement clearly establishes what the baseline water consumption rate is for the existing or most recent use.
15. In this case, the site was not in active use at the time of my visit and while it is clear that it has historically been in use for pig farming, the appellant's evidence indicates that this use was suspended in or around 2011. Other than the relatively brief resumption of pig farming during the 2022 monitoring period, I have no details to show any other active use up until the present day. Accordingly, it appears that there has been a significant period of inactivity across a stretch of over 10 years, even if this was not continuous. Moreover, commentary in the appellant's statement clearly indicates that use as a pig farm was resumed in 2022 in order to demonstrate which of a residential scheme or full-scale resumption of the pig farm would conserve the most water. This suggests to me that the keeping of pigs at the site during the 2022 monitoring period was intended only to establish the position in respect of water consumption rather than being for any commercial or other useful purpose, and there is no firm evidence before me to show otherwise.
16. In that context, I disagree with the appellant that the inactivity of the site prior to the monitoring period is irrelevant. The last active use may have been pig farming, but while the Council's guidance does not require a continuous use to be demonstrated, I find having regard to the circumstances noted above that the site is effectively disused at the present time and that this is now the existing and most recent position. This also reflects comments by Natural England setting out their opinion that the most recent use would be what the site is used for currently (i.e. if the site is empty then it would be considered disused).
17. In my judgement, the 6 months of water readings reflect an artificial position which was initiated for the purposes of seeking to demonstrate theoretical water neutrality, rather than the actual usage position. Irrespective of the appellant's suggestion that the site was not farmed at full capacity during 2022 and that water use would be substantially higher at full capacity, I find that the readings do not appropriately represent the actual baseline water demand associated with the most recent use, or rather disuse, of the site so as to be sufficiently precautionary. The same would be true of the WNR's theoretical estimate of water usage according to suggested stock which is not present.
18. Notwithstanding the current disuse of the site, the Council has not disputed the appellant's position that its lawful use would remain pig farming and that this

use could resume without need for planning permission. On that basis, I consider pig farming to represent a potential fallback position.

19. However, while the appellant states that if residential development cannot take place, pig farming will resume on the site and intensively, I find little compelling evidence to indicate that this option would genuinely be pursued if the appeal failed. Indeed, as noted above, the information before me indicates that the site has already been inactive for the best part of at least 10 years with a brief resumption of pigs being kept at the site occurring only to establish potential water consumption. Whether or not the appellant's family had invested money in developing a thriving pig farming business, the extensive period during which the site appears to have since been left lacking any productive use casts significant doubt in my mind over the likelihood of pig farming resuming in future for a useful purpose.
20. The appellant comments that the site remaining vacant in perpetuity would not be viable and that they are committed to restoring the farm to its most profitable farming use if no alternative profitable use is possible. Nevertheless, there has been a significant passage of time since the site was last in sustained use for pig farming. Irrespective of historic investment, it was clear at my visit that parts of the site are now in somewhat poor condition, including some partly collapsed roof structures. Noting also the time elapsed since pig farming last occurred as a business operation and in the absence of details to show that it could be viably resumed in the current context, including in respect of market conditions or any (non-planning) regulations that might apply, it is far from clear that such a use would be able, let alone likely, to offer a return on past investment so as to be a realistic proposition.
21. Furthermore, dismissal of the appeal would not necessarily mean that the Prior Approval scheme could never be implemented, nor that the site could not be put to any alternative use. Rather that further details, mitigation and/or offsetting measures would be necessary to demonstrate water neutrality and I have no firm reason to find that this would be unachievable. On that basis, I am not persuaded that dismissal of the appeal would leave the appellant no choice but to revert to using the site as an operational pig farm. Neither having regard to all of the above do I consider that dismissal of the appeal would in reality force counter-productive and long-term wastage of water in a water-constrained area so as to be irrational.
22. I have had regard to representations made by Natural England which include a comment that 'if the site were to revert back to an operational pig farm, then we would accept the conclusion provided in the submitted Water Neutrality Report'. Irrespective of the lawful use of the site however, I find taking the above factors together that it has not been satisfactorily shown that resumption of pig farming at the site would be more than a theoretical prospect such that it can be relied on as a meaningful fallback in this case.
23. In exercising my duties under the Habitats Regulations to protect the SPA and SAC, I must adopt a precautionary approach. In this context and given my significant doubts that the claimed fallback would materialise as a realistic prospect, it attracts limited weight in my decision.
24. For all of these reasons, I share the Council's concerns that the 'existing site water usage' presented by the appellant does not accurately reflect a realistic level of baseline water demand for the existing site. I have no details of water

demand for the site when in disuse as at present, but it seems to me that this would be likely to be limited if not nil. I am therefore unable to determine that the Prior Approval scheme would not increase demands for water at the site and I find as a matter of fact and degree that it has not been adequately demonstrated that the proposal would achieve water neutrality.

25. There is no requirement for absolute certainty, but as the competent authority, I find in light of the above and taking a precautionary approach that adverse effects on the integrity of the Arun Valley SPA and SAC can not reasonably be ruled out at the current time. This is consistent with Natural England's comments on the application that it is not possible to ascertain that the proposal will not result in adverse effects on site integrity and I have no firm reason to find that there are no alternative sites that could accommodate the development 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. Since I am unable to ascertain that the Prior Approval development will not adversely affect the integrity of the SPA and SAC, I conclude that approval may not be given under the Habitats Regulations.

Conclusion

26. For the reasons given above, I conclude that the appeal should be dismissed.

J Bowyer

INSPECTOR