



Appeal Decision

Site visit made on 28 October 2024

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

an Inspector appointed by the Secretary of State

Decision date: 31 December 2024

Appeal Ref: APP/Y9507/W/24/3339405

Colworth Farm, The Grinch, West Dean, West Sussex, PO18 0RQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr J Fleming against the decision of South Downs National Park Authority.
- The application Ref is SDNP/23/04384/CND.
- The application sought planning permission for a replacement barn to provide farm office and facilities for an existing shoot including 2 no. rooms for overnight tourist accommodation. (Variation of condition 2 of permission SDNP/20/01937/FUL - altered siting of barn) without complying with a condition attached to planning permission Ref SDNP/22/05830/CND, dated 7 February 2023.
- The condition in dispute is No 2 which states that: the application is approved in accordance with the plans submitted with the application below and the plans approved under SDNP/20/01937/FUL:
Submitted with S73 application: 1363/SK100 REV 02; 1363/SK102 REV 03; 1363/SK300 REV 01; 1363/SK12 REV 01.
Originally approved plans (not amended by S73): SK101 Rev 01; DTS2708184Y4 Elev; DTS2708184Y4MB; DTS2708184Y4RF; 1314/LOC01 01.
- The reason given for the condition is for the avoidance of doubt and in the interests of proper planning.

Decision

1. The appeal is allowed and planning permission is granted for replacement barn to provide farm office and facilities for existing shoot including 2 no. rooms for overnight tourist accommodation at Colworth Farm, The Grinch, West Dean, West Sussex PO18 0RQ in accordance with the terms of the application, Ref SDNP/23/04384/CND, and the plans submitted with it subject to the conditions in the attached schedule.

Preliminary Matters

2. The site is in the South Downs National Park (the SDNP). A new duty under section 245 of the Levelling-up and Regeneration Act 2023 requires all relevant authorities to "seek to further" the purposes of National Parks. For this appeal, the most relevant of these is the first purpose which is to conserve and enhance its natural beauty, wildlife and cultural heritage. There is also a duty to foster the social and economic wellbeing of the local communities within the SDNP in pursuit of the purposes.

Background and Main Issues

3. Planning permission was granted in December 2020 for a replacement barn to provide farm office and facilities for an existing shoot including 2 no. rooms for

overnight tourist accommodation, application Ref SDNP/20/01937/FUL, subject to 15 conditions and an informative. In February 2023, the Authority granted permission for a revised siting of the barn Ref SDNP/22/05830/CND (the 2023 permission) subject to the same 15 conditions other than in terms of the plans referred to. Although the Council described the 2023 permission as a variation of the 2020 permission, in effect the 2023 permission created a new, separate and stand-alone permission. The skeleton oak framework for the barn has been substantially constructed. The completion of the barn in accordance with the permission would amount to a so called "fallback" position.

4. The appellant sought, under application Ref SDNP/23/04384/CND, to vary the plans approved under the 2023 permission by way of adding two external staircases, amending the positions and sizes of doors and windows and minor amendments to the first floor layout. The Authority refused permission for SDNP/23/04384/CND (the appeal proposal) and it is this refusal which is the subject of this appeal. The proposal also includes relocating a gate and reconfiguring parking spaces to which the Authority has raised no objections. I see no reason to disagree in respect of the gate and parking spaces. Should the appeal succeed, this would result in another new, separate and stand-alone permission.
5. Waste water from the site would discharge into Chichester and Langston Harbours Special Protection Area (the Harbour Habitats). Natural England advise that a substantial part of the Harbour Habitats is classified as being in an "unfavourable - declining" condition and that new development needs to be nutrient neutral to avoid detrimental harm to their ecology.
6. Caselaw has held that the Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations) apply at all stages of the planning process¹. One of the reasons for refusal of the appeal proposal given by the Authority is that insufficient information has been submitted to demonstrate that the proposal would not have an adverse effect on the integrity of the Harbour Habitats.
7. Taking account of the above the main issues are: the effect of the addition of external staircases on the character and appearance of the SDNP; and the effect of the proposal on the integrity of the Harbour Habitats with particular regard to nutrients.

Reasons

Character and appearance

8. The National Park designation affords the area the highest status of protection in landscape terms. Paragraph 182 of the National Planning Policy Framework (the Framework) requires great weight to be given to conserving landscape and scenic beauty in such areas.
9. The appeal site is part of the farmstead complex of Colworth Farm which is reached by a long narrow rural lane. Planning permission has already been granted for a large, rectangular, timber framed, Sussex style barn the skeleton framework for which has been substantially completed.

¹ C G FRY & SON Ltd v SSLUHC [2023] EWHC (Admin)

10. The proposed staircases would be on the shorter west and east elevations. The highest parts of the stairs would be the top of the first floor railings which would be about two thirds the height of the permitted barn. In total the two staircases together would add about 2.8m to the overall length of the building. The vaulted barn framework and porch supports are constructed of substantial timbers. The proposed stairs would be constructed in substantial oak timbers which would match some of the materials of the barn. The appellant explains that the external stairs are needed for fire escape purposes as relying on fire crew to effect rescue from first floor windows would be unsafe due to the remote location and as enclosing the internal staircase would have a harmful effect on the designed vaulted interior of the barn.
11. The farmstead is on a rounded ridgeline with woodland blocks to the south and east. The permitted barn stands to the side of a complex of large modern agricultural buildings and the large farm house such that two sides of the barn and parts of the staircases would be screened from view by other buildings. There are also lower stables to the west and a tall clipped evergreen hedge around land to the south of the barn. These further obscure the base of the barn and would obscure much of the proposed staircases.
12. There will be partial, distant, glimpsed views of the western and south western elevations of the barn from a break in the hedgerow on high ground along the minor access lane between Double Barn and Colworth Down; from public rights of way; and from the access lane to Colworth Farm. However, those parts of the staircases which could be seen would be predominantly read against the elevations of the barn and, due to the distances involved and intervening vegetation, would not be obtrusive or detract from the longer landscape views.
13. Traditionally some types of agricultural buildings had external staircases albeit likely to be of less substantial construction. In this case however, the proposed design would be appropriate to the design of the permitted barn which has a brick base, a variety of cladding and an external porch. It would not be usual for a domestic building to have such staircases and in my judgement the staircases combined with omitting one window, replacing two windows with doors, and utilising smaller conservation style rooflights would not create a more overly domesticated appearance to the barn.
14. The proposed first floor doors leading to the external staircases would have glazed windows. These would replace previously permitted windows of a similar size and height albeit shown on the elevations with wooden louvres. The proposed rooflights would be marginally smaller than the permitted ones and one window would be omitted which would be beneficial in terms of light spill. Accordingly, the effect of light spill from the proposed windows on Dark Skies would not be materially different to that already permitted.
15. Upper level safety lighting on the external staircases would be likely to be more intrusive than lighting to serve the ground floor as previously approved. However, a condition could limit the extent of light spill to an acceptable level.
16. I conclude the addition of external staircases to the permitted barn would have a neutral effect on the character and appearance of the SDNP which amounts to conserving it. The progression to completion and efficient use of a partially completed building would enhance the character and appearance of the SDNP. I find no material conflict with Policies SD1, SD4, SD5 and SD8 of the South

Downs Local Plan (the LP), the adopted South Downs Design Guide SPD, the relevant principles of the Framework, or the purposes and duties of the SDNP.

The Harbour Habitats

17. Should the appeal be successful a new planning permission would, in effect, be created and it is necessary to consider whether the proposal alone, or in combination with other plans and projects, would have an adverse effect on the integrity of the Harbour Habitats. The estuarine basins of the Harbour Habitats support a wide variety of breeding and over-wintering birds and are particularly important for migratory birds. No before and after nutrient budgets for the development have been provided and no mitigation measures have been proposed.
18. The principle of overnight accommodation has already been established and the consequence of varying the condition to allow the construction of two external staircases and a different internal layout would not increase the floorspace available for overnight accommodation. In the event that the appeal were to be allowed, imposing a condition equivalent to condition 3 of the previous permission, which restricts the way in which the building could be used, would essentially maintain the status quo in terms of overnight accommodation.
19. In this case the extent of erection of the timber framework that has already taken place indicates a considerable investment and therefore, if this appeal were to fail, it is reasonable to assume that the construction of the accommodation would continue. Whilst there are fire safety issues it would be possible to overcome these by enclosing the internal staircase which would enable the development to be completed and occupied even though there be some visual implications for the internal vaulted space.
20. Accordingly the proposed variation of condition 2 would not be likely to impact on the wastewater contributions of the development. In this case the Habitats Regulations Assessment should focus on changes relevant to the specific condition being varied, that is to two external stairs and some layout reconfigurations which would, in my judgement, have no materially different impacts on the integrity of the Harbour Habitats than the permitted, and likely to be constructed, alternative. I am also mindful of the comments of Natural England in relation to the appeal.
21. Accordingly as the competent authority for the purposes of the Regulations my Appropriate Assessment is that, in this case, the variation of condition proposal is not likely to have a significant effect on the integrity of the Harbour Habitats and no further information or mitigation in respect of nutrient neutrality is required at this stage. I therefore find no material conflict with the aims and objectives of Policies SD1, SD9 and SD17 of the LP, or those principles of the Framework and the Regulations in terms of the effect on the integrity of the Harbour Habitats.

Other Matters

22. There may well be other ways in which safety in the event of fire could be secured. However, I have concluded that the proposal before me is acceptable so I have no need to consider the matter further.

23. The completion of the development would enable social and economic benefits from the diversification of uses on the estate and consequent employment as well as enabling visitors to appreciate the SDNP. Such benefits would foster the social and economic wellbeing of the local communities within the SDNP in pursuit of its purposes.

Conditions

24. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. Accordingly I have reimposed the conditions that applied to application Ref SDNP/20/01937/FUL for the same reasons with the following exceptions.
25. It is not necessary to impose the condition relating to commencement of development as the building is partially constructed. The original condition 2 is replaced with a condition specifying the plans submitted with application Ref SDNP/23/04384/CND. The hard and soft landscaping details required have been simplified given the relatively small scale of the development. No records form appears to have been supplied and this is reflected in the revised wording of condition 3.
26. I acknowledge that at least some of the conditions relating to the original decision have been discharged. In the interests of certainty and to secure the necessary safeguards the requirement to submit details in relation to the appeal scheme is necessary. It is a matter for the Parties to establish between them the extent of evidence needed to discharge the appropriate conditions.

Conclusion

27. I have found no material conflict with the development plan taken as a whole. For the reasons given above, and having had regard to all other matters raised, the appeal should be allowed without the disputed condition No. 2 but substituting it with a new plans condition and subject to the conditions set out in the attached schedule.

S Harley

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with drawing nos: 1363/SK100 REV 03; 1363/SK101 REV 02; 1363/SK102 REV 04 ; 1363/SK300 REV 03; 1363/FIGURE 3 REV 03; 1363/FIGURE 1 REV 05.s
- 2) The building hereby permitted shall not be used other than as specified in the planning application and shown in the approved drawing SK100 Rev 03 which shall be:
 - i) as a farm office in association with the operation of Colworth Farm;
 - ii) as hospitality facilities to be used in conjunction with the shoot business run from Colworth Farm;
 - iii) as holiday/visitor accommodation for persons attending shooting activities at Colworth Farm; and,
 - iv) as short term holiday accommodation,and shall not be used for any other purpose (including any other purpose within Class C3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or any Order revoking and re-enacting that order with or without modification.)
- 3) Upon commencement of the use hereby approved the owner/site operator shall keep a record of all persons who have occupied the building for holiday purposes including details of the duration of their stay on a form to be provided by the Local Planning Authority or other such format as may previously be agreed in writing by the Local Planning Authority. Such records shall be kept and made available for inspection by the Local Planning Authority within 14 days and upon prior written request.
- 4) Prior to the commencement of any further construction works a detailed scheme of hard and soft landscaping shall be submitted in writing for the approval of the Local Planning Authority. The scheme shall include details of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development; a detailed scheme of tree and hedge planting; layout of surfaces including materials, permeability, kerbs, edges, steps, ramps; drainage proposals; and ancillary external structures including lighting and boundary treatments and gates.
- 5) All soft landscaping shall be fully implemented in the first planting season following the occupation of any part of the development and shall be completed strictly in accordance with the approved details. All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any plants or species which within a period of 5 years from the time of planting die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless otherwise agreed in writing by the Local Planning Authority.
- 6) All hard landscaping shall be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme previously agreed in writing with the Local Planning Authority.

- 7) No further building works shall take place until a schedule of external materials finishes and samples to be used on the development hereby approved has been submitted in writing for the approval of the Local Planning Authority. Thereafter the development shall be carried out in full accordance with the approved schedule and samples.
- 8) Prior to first occupation of the development hereby permitted, details of external lighting shall be submitted in writing for the approval of the Local Planning Authority. The external lighting shall be installed in accordance with the approved details and thereby retained as such unless a variation is subsequently submitted in writing for the approval in writing by the Local Planning Authority.
- 9) The works shall be undertaken in accordance with the submitted Sustainability Statement produced by Smith and Simmons Partners and retained thereafter unless otherwise agreed in writing by the Local Planning Authority.
- 10) Any roof lights shall be fitted with electronically timed blackout blinds in accordance with sections 6.3 and 9 of the SDNPA's Dark Skies Technical Advice Note (April 2018). Once fitted the blackout blinds shall be maintained in working condition and shall remain in place in perpetuity.
- 11) A bat brick shall be integrated into the building facing south/south westerly positioned 3-5m above ground.
- 12) A bird box shall be installed on the building and/or a tree within the garden of the property.
- 13) No part of the development hereby permitted shall be first occupied until the vehicle parking and turning spaces have been constructed in accordance with the approved plan. These spaces shall thereafter be retained for their designated use.
- 14) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. The development shall not be first occupied until:
 - i) An investigation and risk assessment has been undertaken in accordance with a scheme that shall first have been submitted in writing for the approval of the Local Planning Authority, and
 - ii) where remediation is necessary a remediation scheme must be submitted in writing for the approval in writing by the Local Planning Authority. Any remediation shall be fully implemented in accordance with the approved scheme before the development is brought into use, and
 - iii) a verification report for the remediation shall be submitted in writing to the Local Planning Authority before the development is first brought into use.

End of Schedule