Planning Inspectorate

Appeal Decision

Site visit made on 9 September 2025

by C Walker BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd October 2025

Appeal Ref: APP/Z3825/W/25/3368192
Sailtops, Cox Green, Rudgwick, West Sussex RH12 3DE

- 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 Mrs Jean Gorton against the decision of Horsham District Council.
- The application Ref is DC/24/1967.
- The application sought planning permission for 'demolition of existing garage and annexe and construction of 1no. 3 bedroom detached house with residential amenity areas, car parking and turning, together with hard and soft landscaping and new access' without complying with a condition attached to planning permission Ref DC/24/0462, dated 8 August 2024.
- The condition in dispute is No.1 which states that:
  'The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule below.
  Schedule of Plans/Documents

Plan Type	Description	Drawing Number	Received Date
Plans		2212013-01 REV B	15.04.2024
Plans		2307/PL08 REV A	28.05.2024
Location Plan		2307/PL01	25.03.2024
Block Plan	Existing	2307/PL02	25.03.2024
Site Plan	Layout	2307/PL03	25.03.2024
Floor Plan	Proposed	2307/PL04 REV B	25.03.2024
Roof Plan	Proposed	2307/PL05 REV C	25.03.2024
Elevation plan	Front and Side	2307/PL06 REV B	25.03.2024
Elevation plan	Rear and Side	2307/PL07 REV C	25.03.2024
Elevation and Floor Plan	Existing	23/5966	25.03.2024

- The reason given for the condition is: 'For the avoidance of doubt and in the interests of proper planning.'

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application subject of this appeal is made under Section 73 (s73) of the Planning Act. It seeks some minor revisions to the design of the dwelling approved in August 2024. The site is also proposed to be enlarged to include part of an existing Public Right of Way, No. 449Sy (PROW), resulting in a change from agricultural to residential use. Access to the site would also be relocated.

3. Whether the appeal proposals go beyond the scope of an application made under s73 has been raised by interested parties. My attention has been drawn to recent

case law[1]. However, a more recent judgment[2] reconfirmed that the legislation under s73 does not contain any language that prevents conditions making substantial or fundamental alterations to the development permitted. Both main parties have been given the opportunity to comment on the validity of the application, having particular regard to Article 7 of the Town and Country Planning (Development Management Procedure) (England) Order 2015. Both parties agree that the application is possible as a condition was imposed on the original permission specifying the approved plans and, crucially, the proposed changes would not affect the operative part of the permission. From everything I have seen and read, there is no reason to disagree. On this basis, the appeal can proceed.

4. This appeal effectively seeks the removal of the plan condition and its replacement with a condition specifying the plans that reflect the amendments.

5. The Council do not raise concerns with the proposed revisions to the dwelling, and I confine my considerations accordingly.

6. Since the Council's decision, a further application (Ref: DC/25/0294) made under s73 has been granted, which the appellants indicate they intend to implement. An amendment to the description of development was requested in the event this appeal was allowed. As the decision is for dismissal, I do not need to consider this matter, or the conditions, any further.

7. From the evidence before me, there is significant doubt regarding the ability of the Horsham District Local Plan (2023-2040) submitted under Regulation 19 for examination, to proceed. I have therefore determined the appeal in line with the adopted development plan.

8. Although not mentioned in the Council's reason for refusal, my attention has been drawn to relevant policies within the Rudgwick Neighbourhood Plan 2031 (made 2021) (NP) which is part of the development plan. Planning applications must be determined in accordance with the development plan, unless material considerations indicate otherwise. Accordingly, I have considered the proposals in light of the NP.

Main Issue

9. The main issue in determining this appeal is the effect of the proposed access on the PROW, having particular regard to the character of the area.

Reasons

10. The appeal site is situated between two residential dwellings known as Sailtops and Pilgrims Rest in the hamlet of Cox Green, a linear extension of Rudgwick. Currently forming part of the garden of Sailtops, the majority of the existing site frontage with the highway is defined by a mature hedgerow interspersed with trees. Immediately adjacent is the PROW, where a pair of field gates currently mark the entrance at its junction with the road. This leads south-east to the countryside and county border. Its open, wide grassed entrance, surrounding greenery and the informal trodden path contributes to a distinctly tranquil, rural character and verdant appearance of the area.

[1] Fiske, R (On the Application Of) v Test Valley Borough Council [2023] EWHC 2221 (Admin) (06 September 2023)
[2] Test Valley Borough Council v Fiske, 2024, WL 05056044 (2024) (10 December 2024)

11. The approved plans show that a vehicular access serving the proposed dwelling would be taken through the existing frontage hedgerow of Sailtops. The appeal proposals instead seek vehicular access alongside the PROW which would be upgraded to a surfaced route. This would necessitate the enlargement of the appeal site to encompass additional agricultural land, including part of the adjacent PROW.

12. The introduction of a new vehicular access point at the PROW entrance would invoke change to an inherently rural character. The grassed verge and greenery of the entrance would give way to a formal driveway laid with hardstanding. Whilst of a domestic scale, due to the necessary segregation of the PROW and the minimum 2m width expected for this, it would appear as an overly engineered access which would be out of context with the rural character of the hamlet. This change to the street-scene would be harmful, eroding the informal verdant character of the area.

13. Noting that the surface would be upgraded, in this context it is not necessarily a betterment. I find that the pleasant, verdant, open setting to the PROW would be significantly diminished, as would the sense of rural ambience and recreational value for walkers. This harm to character outweighs the benefits of the proposed surface upgrade.

14. No evidence of previously laid tarmac was observed during my site visit. In any event, given the passage of time, the site has assimilated back to a more rural character and appearance, such that this is now the context in which the appeal should be assessed. Whilst conditions could secure additional landscaping and surface treatments, this would not overcome the fundamental harm to character that I have found. Furthermore, the omission of the previously approved access point, that the plans show would leave the existing hedgerow and greenery intact, does not fully compensate for the harm either.

15. I therefore find that the effect of the proposed access on the PROW, having particular regard to the character of the area, would not conserve or enhance the natural and built environment. This runs counter to the expectations of Policy 33 of the Horsham District Planning Framework 2015 (HDPF). It also fails to meet NP policies RNP1 and RNP9 which seek to avoid the diminution of a settlement's individual identity and requires that new or improved vehicular and/or pedestrian accesses to be in keeping with the property and the surrounding street scene.

Other Matters

16. It is not clear from the evidence whether the PROW would be realigned or not. Nevertheless, given the PROW would be safeguarded, I do not find conflict with paragraph 105 of the National Planning Policy Framework (the Framework) which sets out that decisions should protect and enhance public rights of way and access, including taking opportunities to provide better facilities for users.

17. The Council's appeal statement mentions a perceived or actual conflict between pedestrian users and vehicles that did not feature in the reason for refusal. However, this is not a matter that has been substantiated with evidence. From everything I have read and seen, I am not persuaded that the level of activity from just one dwelling would cause conflict with users of the PROW. Indeed, I note no objections have been raised by West Sussex County Council acting as Highways Authority or the Rights of Way team.

Conclusion

18. I have found that the effect of the proposed access on the PROW, having particular regard to the character of the area, would be demonstrably harmful. Whilst noting the positive recommendation of Council officers, my findings align with the Planning Committee and local residents on this matter. The harm to the character that I have identified is decisive.

19. Drawing everything together, the proposal would conflict with the development plan, when read as a whole. Material considerations, including the Framework do not indicate that a decision should be made other than in accordance with the development plan.

20. For the reasons set out above the appeal should be dismissed.

C Walker

INSPECTOR