Planning Inspectorate

Appeal Decision

Site visit made on 29 May 2025

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 June 2025

Appeal Ref: APP/Z3825/W/24/3355568
Ford Farm, Ford Lane, Ashurst, West Sussex BN44 3AT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr David Lean (Habin Limited) against the decision of Horsham District Council.
- The application Ref is DC/24/0180.
- The development is change of use from 3 farm buildings to B8 storage (retrospective).

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted retrospectively. The appellant's evidence indicates that the buildings in question have been in non-agricultural use for different periods over several years, in one case dating back to 2012. However, no Certificate of Lawful Development has been sought or granted. The question of whether a lawful use within Use Class B8[1] has become established for one or more of the buildings through the passage of time is outside the scope of this appeal, which I have considered on the basis that change of use is sought as described above.

3. A revised National Planning Policy Framework (the Framework) was published in December 2024. Although the application was considered in the context of the previous version of the Framework, the revisions made in December 2024 did not materially affect the issues which are relevant to the appeal. Therefore, I have not sought further submissions on the revised Framework and am satisfied that this approach was fair to both parties in the circumstances of this particular case.

Main Issue

4. The main issue is the effect of the development on the integrity of the Arun Valley European Sites, with particular regard to water neutrality.

Reasons

Site Description

5. The appeal concerns three buildings A, B and C, in a cluster of existing and former farm buildings to either side of a surfaced track. They are within a 147ha agricultural holding which is currently managed under a countryside stewardship scheme. The other buildings include a range of typically agricultural sheds, barns

[1] The Town and Country Planning (Use Classes) Order 1987 (as amended)

and similar, in various states of repair. Some have been converted to alternative use, but the appeal site retains the general appearance of a farmyard. Access is via Ford Lane, which is a narrow private road and bridleway and there are additional public rights of way through the appeal site and adjacent farmland.

6. Buildings A, B and C are all modern sheds of similar design, clad in corrugated metal sheeting on a structural frame, with large internal clear span, roller shuttered doors, high eaves and shallow pitched roofs. At the time of my site visit, Building C was in use with the doors open and signage identifying the wine and spirits storage use mentioned in the evidence. Buildings A and B were closed, although machinery was audible within Building A.

Arun Valley European Sites

7. The appeal site is within the Sussex North Water Supply Zone (SNWSZ) where mains water is supplied by means of groundwater abstraction. Natural England has issued a Position Statement dated September 2021 and Advice Note dated February 2022, advising that ongoing abstraction is having a detrimental effect on a number of designated sites which form part of the Arun Valley Special Protection Area (SPA), Special Area of Conservation (SAC) and Ramsar Site (the Arun Valley European Sites). These collectively provide nationally and internationally important wetland habitats for protected bird, plant and invertebrate species, which are vulnerable to further harm from increased water abstraction.

8. Natural England advises that development within the SNWSZ must not add to the existing adverse effect. In the absence of any strategic solution to offset increased water abstraction, individual developments are expected to demonstrate 'water neutrality'. In other words, the use of water in the supply area before the development should be the same or lower after the development is in place. The 2021 Position Statement sets out an agreed interim approach, which involves both minimising use of water in new builds and implementation of water offsetting measures such as rainwater harvesting and greywater recycling.

9. While the development in this case does not involve new build, Natural England's advice on the planning application was that adverse effects on the integrity of the Arun Valley European Sites could not be ruled out. Further information was sought to determine the significance of impacts on the designated sites and the scope for mitigation. More specifically, evidence was sought of proposed onsite mitigation measures, further evidence of the application's proposed water use, distinct from any additional offsetting measures and further reconsideration of water neutrality and water budget. The NE response is brief, but it is tailored to the specific development at the appeal site, as evidenced by the fact that the further information sought differs from that requested on the other two applications mentioned in the same response.

Habitats Regulations Assessment

10. As acknowledged above, the appellant's evidence indicates that the buildings have been used for non-agricultural purposes for several years. Nevertheless, at the time of considering this appeal, their authorised use is for agricultural purposes and not for non-agricultural storage. Therefore, the relevant comparison is between water consumption in agricultural use and in use for storage or distribution uses within Class B8.

11. Limited information has been provided about the precise purpose of the buildings when built, although Building C is described as having been a grain storage shed and all three buildings are of a similar scale and appearance. While I acknowledge that the growing of cereal crops on the wider holding will have consumed significant amounts of water, it is much less likely that use of the buildings themselves to store crops or other agricultural items generated any significant level of water consumption.

12. According to the appellant's statement of case, Building A has a tap, used to water manure heaps, and Building B has a toilet and washroom, although the evidence is ambiguous as to whether that is inside the building or elsewhere within the yard. Building C is described as having had no water connection as built. Nevertheless, there is no dispute that mains water is available within the appeal site as a whole.

13. For some storage uses, there is little need for staff to be present. Indeed, the appellant states that the current use is akin to self-storage and no increase in employment is intended. Nevertheless, there were clear indications of Buildings A and C being occupied at the time of my site visit and the evidence includes a modest, but more than negligible, level of anticipated vehicle movements, confirming that staff are expected to be present at least part of the time.

14. Furthermore, the B8 use sought encompasses a wide range of storage or distribution uses, differing in intensity and staffing requirements. The nature of the location, which relies on vehicular access along narrow rural lanes, is a constraint on the intensity of use and therefore the level of staff presence is somewhat unlikely to reach the maximum number indicated in the Homes & Communities Agency Employment Densities Guide. Nevertheless, it could feasibly be higher than when the buildings were in agricultural use.

15. I accept that the existing foul drainage arrangements are a constraint on the range of facilities which could be provided. However, a toilet and washroom is described, indicating that some level of foul drainage is available. The three buildings are close together and could be used in combination, or facilities in one building could be made available to occupiers of the others. If so, the limited existing facilities could be used by a larger number of staff, in turn increasing the level of water use. Conditions preventing the introduction of additional sinks and toilets could not realistically be enforced, so would not meet the tests for planning conditions in the Framework. It is significantly less likely that additional facilities of that nature would be introduced if the buildings reverted to agricultural storage.

16. The appellant's case otherwise relies largely on comparison with the high level of water consumption associated with growing cereal crops. Although no baseline water meter evidence is available, it has been explained, with figures, that the way the land is currently managed uses much less water than the regular crop spraying and washing down of machinery associated with arable farming in the past. However, if the land remains suitable and economic for cereal cropping, there is little clear evidence that use of the appeal buildings for B8 storage is preventing that from happening. Nor is any mechanism proposed to prevent the land being farmed for cereal, or for another agricultural use requiring significant water consumption, alongside the alternative use of the appeal buildings.

17. When the land was farmed by external contractors, for at least part of that time the grain shed at Ford Farm is described as having been redundant, as the crop was

transported for use elsewhere. Furthermore, the buildings are described as having been in B8 use for several years, whereas cereal cropping ceased only in 2022. On that basis, based on the evidence before me, the B8 use of one or more of the buildings could realistically be in addition to, not instead of, agricultural activities requiring high levels of water consumption.

18. Taking all the above factors into consideration, it has not been clearly demonstrated that water neutrality could be secured. Consequently, while accepting that any additional water consumption may well be modest, adopting the precautionary principle and based on the evidence before me I must conclude that the development has a likely significant effect on the European Sites, in combination with other development.

19. No mitigation measures are proposed to off-set any potential increase in the consumption of mains water. Therefore, on the basis of the evidence presented, it has not been demonstrated that the change of use of the buildings avoids having an adverse effect on the integrity of the Arun Valley European Sites.

20. I have noted that the appellant feels the issue of water neutrality was raised late in the application process. However, he did have the opportunity to address the issue through a Water Neutrality Statement dated May 2024, while the application was being considered. Natural England's advice and the Council's decision took account of that Statement. The appellant's Statement of Case elaborates on the water neutrality evidence and in part responds to the matters raised by the Council and Natural England. However, it does not purport to address the outstanding requirements in full, for example by proposing any onsite mitigation measures to offset water consumption.

21. In order to comply with the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations), a high level of certainty is required that a plan or project (in this case the change of use) can be carried out without adversely affecting the integrity of the European Sites. The evidence before me does not provide the required level of certainty. While I accept that may appear to the appellant to be a somewhat dogmatic approach, that is a consequence of the legal obligations imposed on the Council, and subsequently on me, as the competent authority responsible for undertaking the appropriate assessment under Section 63(1) of the Habitats Regulations.

Conclusion on Main Issue

22. For the above reasons, based on the evidence before me, I conclude that the development has an adverse effect on the integrity of the Arun Valley European Sites, with particular regard to water neutrality. As such, granting planning permission would be contrary to the Habitats Regulations and inconsistent with the statutory duty on public authorities for the conservation and enhancement of biodiversity[2].

23. The development also conflicts with Policy 31 of the Horsham District Planning Framework 2015 (HDPF) which requires, amongst other things, that development with the potential to impact the Arun Valley SPA will be subject to Habitats Regulations Assessment and that appropriate mitigation measures are provided, where relevant, having regard to the hierarchy of designated sites.

[2] s40 Natural Environment and Rural Communities Act 2006

24. In terms of the Framework, the development conflicts with the requirement in paragraph 192 to protect and enhance biodiversity, including by safeguarding nationally and internationally designated sites. Allowing the appeal would also be inconsistent with the guidance in paragraph 193 that where significant harm resulting from a development cannot be avoided, adequately mitigated or compensated for, then planning permission should be refused.

Other Matters

25. Policy 10 of the HDPF is generally supportive of sustainable rural economic development and enterprise, including farm diversification and activities which contribute to the rural economy. The same policy expresses a preference for conversion of rural buildings to business and commercial use, in preference to residential changes of use. The appeal buildings are suited to B8 use in terms of their design and form and it has not been alleged that there has been any harm to the rural character of the area.

26. Nor did the Council allege any harm as a result of the level of commercial activity, access and car parking arrangements or living conditions for occupiers of neighbouring properties. The way the appellant currently manages the land has other benefits in terms of biodiversity and reduced fossil fuel consumption, and it has reduced the effect of machinery noise and agricultural traffic on nearby residents, users of the lane and the nearby village. For those reasons, some support has been expressed by interested parties, and I recognise that these are benefits of the way the overall holding is currently managed.

27. The submission of the planning application has provided an opportunity for the use to be regulated going forward, for example by imposing conditions relating to hours of operation and noise emissions. That would not be possible if a Certificate of Lawful Development is sought and granted.

28. Nevertheless, these positive factors do not outweigh the lack of sufficient certainty that harm to the integrity of European Sites can or would be avoided. Paragraph 195 of the Framework makes clear that the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site. In this case, the Habitats Regulations Assessment (appropriate assessment) set out above has not reached that conclusion.

Conclusion

29. For the reasons given above, the appeal should be dismissed.

Jane Smith

INSPECTOR