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The Planning Inspectorate

COMMENTS ON CASE (Online Version)

Please note that comments about this case need to be made within the timetable. This can be found in the notification letter sent by the local planning authority or the start date letter. Comments submitted after the deadline may be considered invalid and returned to sender.

Appeal Reference: APP/Z3825/W/25/3368192

DETAILS OF THE CASE

Appeal Reference	APP/Z3825/W/25/3368192
Appeal By	MRS JEAN GORTON
Site Address	Sailtops, Cox Green Rudgwick HORSHAM RH12 3DE

SENDER DETAILS

Name	[redacted]
Address	Medecroft Cox Green Rudgwick HORSHAM West Sussex RH12 3DD

ABOUT YOUR COMMENTS

In what capacity do you wish to make representations on this case?

- ☐ Appellant
- ☐ Agent
- ☑ Interested Party / Person
- ☐ Land Owner
- ☐ Rule 6 (6)

What kind of representation are you making?

- ☐ Final Comments
- ☐ Proof of Evidence
- ☐ Statement
- ☐ Statement of Common Ground
- ☑ Interested Party/Person Correspondence
- ☐ Other

YOUR COMMENTS ON THE CASE

I do of course expect that the primary consideration of the appeal will be to address the substantive matter as to whether the proposed amendment to the already permitted scheme (under DC/24/0462) is justified in planning terms. However, I would respectfully request that the planning inspector also (at least initially) considers the validity of the amendment under a S73 application.

A number of members of the public questioned this aspect but the Planning Committee Report and subsequent committee meeting did not address this point at all, nor even acknowledge that it had been raised.

My initial representation dated 19th January 2025 (filed by HDC under address MEDECROFT) concentrated on that particular aspect. I can now draw attention to the point I made about new conditions being applied to the potential new permission. We can now see (from the DC/24/1967 Committee Report dated 1st April 2025) that in order for the amended scheme to be acceptable an additional (pre-commencement) condition (numbered 7) relating to the PROW was required, exactly as I thought. This is in clear contravention of the PPG that I had referred to. Also, reference must be made to the legal case "Fiske, R (On the Application Of) v Test Valley Borough Council [2023] EWHC 2221 (Admin) (06 September 2023)" in which Lord Justice Holgate notes:

"129. (3) The power in s.73 is subject to the restriction that it may not result in a permission, the operative part and/or the conditions of which are inconsistent with the operative part of the earlier permission, either in terms of the language used or its effect".

This seems conclusive evidence that the proposed amendment to fundamentally change the new dwelling's access so as to utilise agricultural land outside of the host dwellings garden curtilage, does not comply with the current rules for a valid S73 application. This is because to make it acceptable in planning terms a new condition is required that is self-evidently materially inconsistent with the original permission that was for development wholly within the existing Sailtops garden curtilage (residential land with no PROW impact whatsoever).

Before moving on to the planning justification for the proposed amendments themselves, it is useful to outline the chronological context leading to the S73 application under consideration.

In Summer 2023 a significant Oak Tree that featured within the 'field access strip' of agricultural land (alongside the PROW) was cut down. I subsequently submitted a document entitled 'Removal of Significant Tree – Sailtops Paddock/Field Access Land' (attached) when DC/23/1723 was submitted. It is worthy of note that HDC's Tree Officer (much later) reported the following comment in his report of 4/2/2025 on the S73 application "The formerly dominant early mature oak tree within the area of the proposed site access was removed in 2023".

DC/23/1723 to Horsham District Council and WA/2023/02130 to Waverley BC were submitted in September 2023 to (inter alia) reclassify the agricultural use land comprising the field access (including PROW) as residential and absorb it into the Sailtops garden curtilage.

Rodway Planning noted then it its Planning Statement:

"We are aware that there is a public footpath to the south west side of the site (Footpath 449Sy), which would be unaffected by the proposal (refer to Fig 6) and as detailed above, the site is well screened to this side. Further, our client would be happy for conditions to be imposed regarding boundary treatment and additional landscaping if the Councils both considers this to be both reasonable and necessary", and, "other than the repositioning of a post and rail fence to demarcate the extended domestic boundary of Sailtops, the proposals would not result in any other physical change to the appearance of the Site".

Both HDC and WBC refused to grant permission, with HDC stating:

"The development would result in the incremental erosion of the character in this countryside location and would detract from the openness currently present between the built-up area boundary and surrounding open land. The change of use is not considered to be essential to the countryside location and would result in harm to the character and appearance of the locality, contrary to Policies 25, 26 and 33 of the Horsham District Planning Framework (2015)".

The applicants true intent was finally revealed when DC/24/0462 was submitted in March 2024 and approved in August with no community concerns expressed (despite being development outside of the settlement boundary) other than with regard to replacement tree planting. Residents had doubtless noted that the original somewhat clandestine attempt to 'annex' the agricultural land and PROW into the red line boundary of the (now disclosed) development had apparently been abandoned.

Then, on 17th December 2024, a S73 application was submitted to amend the approved application to fundamentally change the access. This has attracted many objections from residents, the Rudgwick Preservation Society and from both 'local' parish councils.

I will not repeat the detailed points I raised in my objection dated 22nd January 2025 as I know that this document will have already been supplied the planning inspector (filed by HDC under address MEDECROFT). In summary when considering the planning balance arising from the proposed amendment there are absolutely no benefits, but there is clearly significant harm identified, that has no justification whatsoever. The Appeal Statement of Case (SoC) put forward by Rodway Planning makes no case, because there is no planning case to justify the amendment. The benefits provided by the approved application arising from an extra market dwelling are not increased or enhanced, yet there are numerous planning issues arising, as set out in my 22/1/25 document.

The following extracts are taken from the Agent's SoC. comprising comments that I consider questionable or contentious.

"As part of the development, the appeal proposal seeks to enlarge the consented site to include the existing Public Right of Way to the south, which lies between the existing properties of 'Sailtops' and 'Pilgrims Rest'. The PROW will remain in situ for public use, albeit the land surrounding it will change from an agricultural use to residential. The existing line of the footpath will run alongside the new driveway. The existing public right of way (footpath 449Sy) will be unaffected and will be segregated from the proposed driveway. No diversion of the PROW is required".

"The site of the new driveway is set within a residential context and is part of the existing defined built up area of Rudgwick. We are of the opinion that the change of use and alteration of appearance to domestic residential for a small section of this footpath would be acceptable in this context".

"The proposed site area in this Section 73 application would be increased, and would now incorporate parts of the existing Public Footpath 449Sy to the curtilage of the proposed dwelling. The section of the Public Footpath proposed to be incorporated to the curtilage of the proposed dwelling is located to the south of the proposed dwelling, between the existing plots of Sailtops and Pilgrims Rest, and is proposed to be the new vehicular access to the public highway, replacing the approved vehicular access in DC/24/0462".

My comments on the above:

The footpath absolutely would be affected. It would be shifted south to a new position running tight to the Pilgrims Rest boundary and its setting would be dramatically affected. I have been unable to obtain objective parameters as to what would require a 'PROW diversion order', but without doubt the footpath would be realigned to the south (also see below re Footpath correct route).

It is also clear from the above statements that if the S73 amendment is approved it would change the use of the land from agricultural to residential and incorporate it into the curtilage of the approved new dwelling. But this would be the exact 'equivalent' of what was proposed in DC/23/1723 and was soundly refused by both HDC and WBC (see above).

So, since this clearly articulated harm to both countryside and local character (as detailed in the 2023 refusal notices) is totally avoidable, and is not mitigated in any way by the addition of any positive impact to the planning benefits of already approved DC/24/0462 (still the same one new house), there is absolutely no justification for this unnecessary change of access.

What is the existing correct Footpath Route (449Sy)?

The PROW definitive map (now held by WSCC) lacks sufficient detail to show the exact position.
The stile (now missing) and 'ramblers gate' are however both on the northern side of the field strip (adjacent Sailtops), albeit the path trodden by ramblers runs more-or-less down the middle.

I attach 2 plans that evidence that the correct existing route of the PROW Footpath is down the northern edge of the field strip i.e. tight to the Sailtops boundary. These plans are both taken from the records of Waverley BC. The footpath has not been altered since the Sussex/Surrey boundary commission change in 1992/93 and so the Waverley BC records can be considered an accurate and true record of the footpath route.

The S73 application shows the then necessary re-alignment of the PROW to the south of the field access strip, thereby running tight to the Pilgrims Rest boundary, in order to accommodate a new metalled driveway.

I cannot therefore comprehend how Rodway Planning (Appellant's Agent) can therefore state that the PROW remains 'in situ' and is 'unaffected' and also state that no diversion of the PROW is required.

Without doubt, the PROW is significantly affected and definitely realigned to a new position, with its setting materially degraded.

Conclusion
Even if the planning inspector determines that this is a valid S73 application, then for the reasons stated above and also with reference to the points raised in my objection submitted with date 22nd January 2025 (under ref MEDECROFT), I respectfully request that the appeal be dismissed.

COMMENT DOCUMENTS

The documents listed below were uploaded with this form:

Relates to Section:	REPRESENTATION
Document Description:	Your comments on the appeal.
File name:	Removal of Significant Tree (Sailtops).pdf
File name:	Sailtops Plans.pdf
File name:	Pilgrims Rest Plans.pdf

PLEASE ENSURE THAT A COPY OF THIS SHEET IS ENCLOSED WHEN POSTING THE ABOVE DOCUMENTS TO US

Removal of Significant Tree – Sailtops Paddock/Field Access Land

DC/23/1723 – Horsham District Council

WA/2023/02130 – Waverley Borough Council

The Bidiversity Report submitted on behalf of the applicants is somewhat misleading as it fails to mention the unnecessary removal of a significant deciduous tree (believed to be oak) well within 3 months of the planning submission being made.

This oak was sited immediately adjacent to the PROW, on the left hand side, having entered the PROW via the stile from the pavement adjoining the B2128 i.e. within the area now under consideration. The submitted biodiversity report actually states:

"There is (sic) no proposed changes to the existing planting and landscape features on or adjacent to the site" !!

This tree was a substantial specimen and reported in good health by local residents, at time of its removal believed to be around (late) August 2023.

Photographs below show the street scene with/without the tree, including the significant stump that now remains.

The Place Services Ecology Report dated 23rd October 2023 (commissioned by HDC) makes the following important observations:

- *We therefore understand that no trees or hedgerows will be removed in association with this change of use application*
- *We highlight that any works to trees or hedging or new external lighting in the future could result in impacts on bats, including Barbastelle, and should trigger an assessment for any mitigation measures needed to avoid an adverse effect on the integrity of the Men's SAC.*
- *We highlight that if any trees are to be affected by the proposed works or the stables are to be removed, then these trees and/or the stables must be subject to preliminary roost assessment for bats prior to determination and the results submitted to the LPA, including any mitigation measures to support a lawful decision, according to Government Standing Advice*

And the Government Standing Advice referred to (inter alia) states:

All bat species are designated and protected as European protected species (EPS). EPS are protected under the Conservation of Habitats and Species Regulations 2017.

It is an offence to:

- *deliberately kill, injure, disturb or capture them*
- *damage or destroy their breeding sites and resting places (even when bats are not present)*
- *possess, control or transport them (alive or dead)*

So, given the comments of Place Services regarding the sensitive nature of this area for 'bat protection' surely the applicant should be required explain and justify how they have complied with the Conservation of Habitats and Species Regulations 2017 regarding the felling of the aforementioned significant tree?.

Pre-emptive removal of this significant tree perhaps reveals that this application is merely the first step of an incremental approach to achieve a yet unknown aim.

Whilst accepting that is speculation, what is certainly clear is that:

- The Conservation of Habitats and Species Regulations 2017 may have already been breached
- The tree removal in advance of the application was a deliberate act, presumably to avoid retention of the tree being a condition of any planning permission granted
- The tree removal has already degraded the ambience of the footpath for users. Further potential degradation by the proposed land use redesignation as 'garden' should be resisted.

It is also worth noting that the Applicant's Agent (Rodway Planning) will be completely familiar with the need to consider bat habitats and resting places in this area as (literally just across the road) at Oakfield, they are the agents for development there (DC/21/2211) which has a pre demolition condition requiring the local planning authority to be provided with:

"either: a) A licence issued by Natural England pursuant to Regulation 55 of The Conservation of Habitats and Species Regulations 2017 (as amended) authorizing the specified activity/development to go ahead;

or b) A method statement relating to a registered site supplied by an individual registered to use a Bat Mitigation Class Licence for Bats;

or c) A statement in writing from the Natural England to the effect that it does not consider that the specified activity/development will require a licence."

The respective case officers are therefore respectfully requested to fully investigate the above and take necessary action including using any findings as material considerations to this planning application, where "allowed".

Some members of the Cox Green community are unimpressed by this pre-emptive felling of an apparently healthy tree that featured in the Cox Green street scene and PROW. This approach is very disappointing and is to be regretted, but perhaps unsurprising as an apparent 'tactic' to avoid planning scrutiny of the actual landscape change.

Aerial view of removed tree



View of tree from street in winter—no leaves



20/10/2023—Tree no longer present and removed from street scene

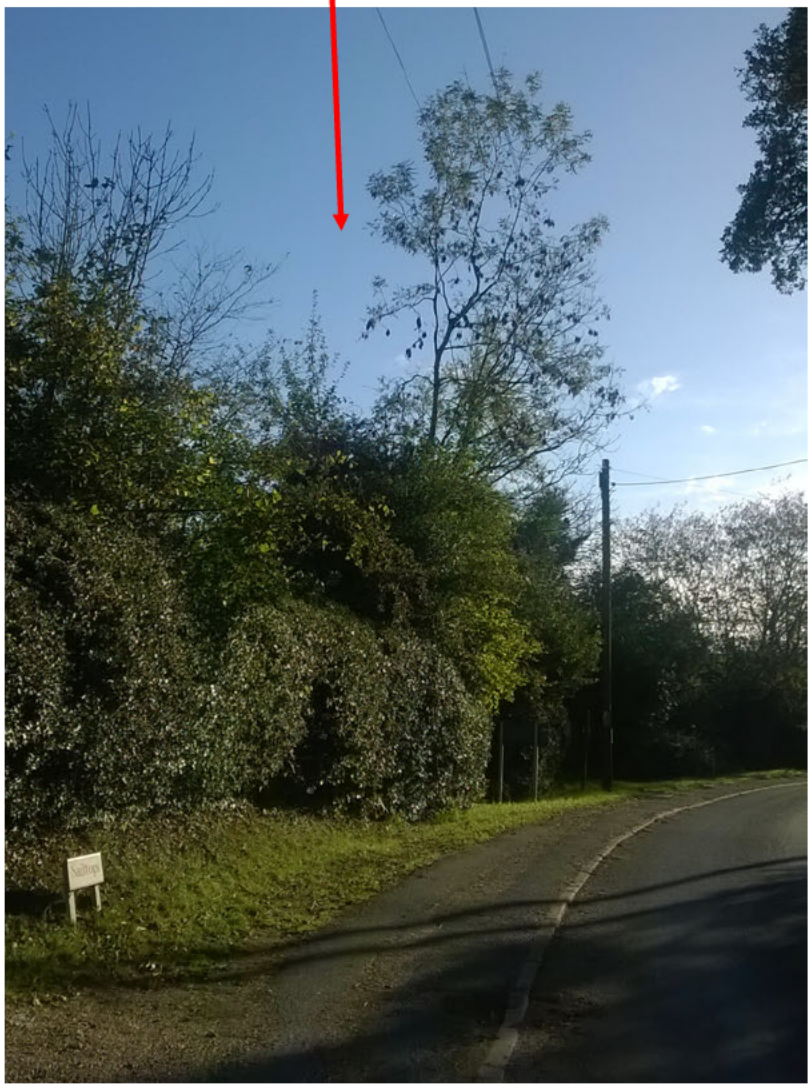


Photo shows route of PROW through field access to paddock.

In the foreground the stump of felled tree is visible

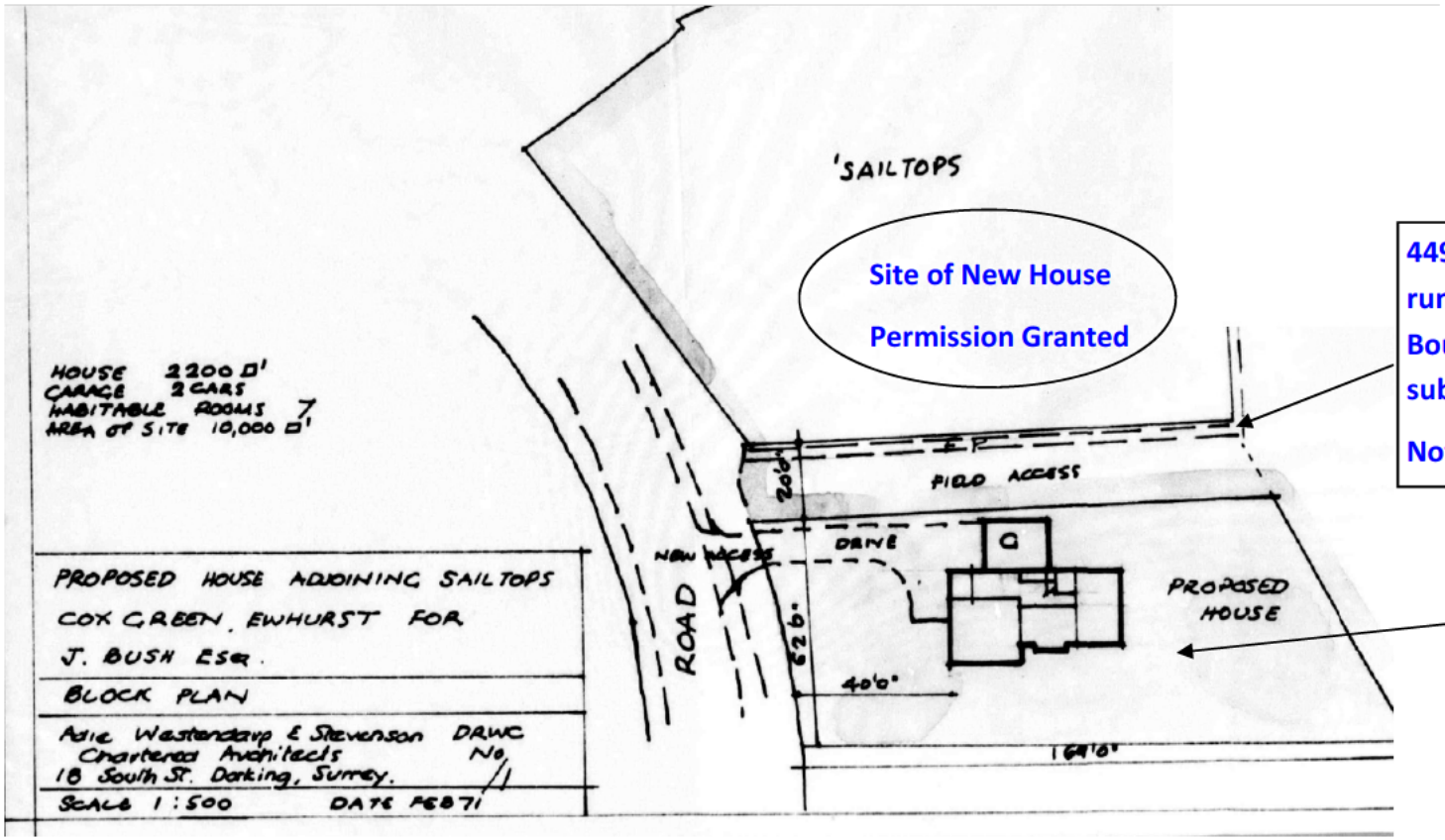


I HEREBY CERTIFY THAT THE MICROFILM IMAGE IS A COMPLETE AND ACCURATE REPRODUCTION OF THE ORIGINAL DOCUMENT FORMING PART OF THE RECORD KEPT BY WAVERLEY B.C. IN THE ORDINARY COURSE OF THE BUSINESS.

Todays date 27.2.95 Name [redacted]



COX GREEN, RUDGWICK
PARISH OF ENGHURST



449Sy clearly shown to run tight to the Sailtops Boundary on these plans submitted in 1970s.

Not tight to Pilgrims Rest.

Pilgrims Rest

Plan supplied by Waverley BC from its historical planning records when (what is known today as) Pilgrims Rest was being proposed in the early 1970s.

Footpath is clearly shown as running to the north of the field access strip of land i.e. tight to the Sailtops boundary.