Planning Inspectorate

Appeal Decisions

Site visit made on 12 December 2024

by R Lawrence BSc (Hons), PGDip (TP), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 February 2025

Appeal A Ref: APP/Z3825/W/24/3342928
Hurston Lane Depot, Hurston Lane, Storrington RH20 4AF

- 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 Joe Ray against the decision of Horsham District Council.
- The application Ref is DC/23/1622.
- The development proposed is Mixed Use of premises for Classes B2, B8 and E(g).

Appeal B Ref: APP/Z3825/W/24/3347929
Hurston Lane Depot, Hurston Lane, Storrington RH20 4AF

- 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 Joe Ray against the decision of Horsham District Council.
- The application Ref is DC/24/0454.
- The development proposed is Mixed Use of premises for Classes B2, B8 and E(g).

Decision

1. Appeal A is dismissed.

2. Appeal B is dismissed.

Applications for costs

3. Applications for costs were made by Mr Joe Ray against Horsham District Council in relation to appeals A and B. Those applications are the subject of a separate decision.

Preliminary Matters

4. As set out above, there are two appeals on this site. They differ only in terms of the supporting information originally submitted with the respective planning applications. I have considered each proposal on its individual merits. However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.

5. Since the appeals were lodged, a revised version of the National Planning Policy Framework (the Framework) was published (December 2024). This does not materially change the planning context in respect of the main issue for either appeal.

6. A Transport Statement dated February 2024, prepared by RGP Consulting Engineers Limited, has been submitted in support of appeal A. This information, which supports the appellants case in respect of reason for refusal 1 (appeal A), does not result in any changes to the scheme. Although this was not submitted with the respective application for appeal A, it was included with the planning application for appeal B and was therefore subject to public consultation. In

addition, the timeframes for this appeal have provided the opportunity for the Council together with interested parties to comment on it. I am therefore satisfied that accepting the transport statement in support of appeal A, would not lead to procedural unfairness.

7. The Council has confirmed that the Transport Statement is sufficient, subject to appropriate conditions, to address its concerns in relation to highway safety and parking, as set out in the first reason for refusal for Appeal A. The conclusions of the Transport Statement include that the development would reduce traffic at the site, with the access of sufficient geometry to accommodate the expected level of vehicular movements, and that adequate sight lines and parking would be provided. Appeal B, for which the same Transport Statement was a supporting document, was found to be acceptable by the Council in terms of highway safety and parking. Based on this, and the evidence before me, I have no reason to find differently and have defined the main issue on the bases of the remaining matters in dispute.

8. There appears to be an error in the description of development referred to the Council's statement of case for appeal A, which makes reference to residential development. For the avoidance of doubt, I have used the description of development set out within the above banner headings.

Main Issue

9. The main issue for both appeals is, the effect of the development on the Arun Valley Special Area of Conservation, Special Protection Area and Ramsar sites.

Reasons

10. The appeal site falls within the Sussex North Water Supply Zone. Natural England has raised concerns over the effect of existing abstraction within the Sussex North Water Supply Zone on the integrity of the Arun Valley SAC/SPA/Ramsar sites. These European Sties are legally protected for their wintering birds, wetland habitats, a rare snail species, invertebrates and several rare and uncommon aquatic and wetland plants.

11. Natural England is undertaking work to establish the condition of the SSSIs that make up the European sites. However, based on water levels, the present indication is that the sites' condition is unfavourable. Some areas have been shown to be linked hydrologically to a layer of rocks from which water is currently being abstracted, and in other locations the hydrological link cannot be ruled out.

12. Consequently, it is impossible to eliminate the possibility that the existing public water supply abstraction within the Supply Zone is having an adverse effect on biodiversity. Any further development which requires an increase in water abstraction would be likely to have an adverse impact on the European sites. This includes modest developments such as that proposed, due to their in-combination effects with other plans and projects.

13. Natural England is working in partnership with relevant authorities to develop a strategic long-term approach, but in the interim its advice is that schemes may only proceed where it can be demonstrated that they would be water neutral – in other words the proposed development should not result in a net increase in water consumption from the public supply.

14. The existing uses on site are listed as B2 & B8 on the respective planning application forms. However, there is no current planning permission or certificate of lawfulness to establish whether the uses are lawful. The last permission on the site dates from 1966, when permission was granted for a workshop for the repair and maintenance of vehicles[1] (the 1966 permission). That permission related to the building itself together with a modest curtilage, excluding the majority of the external areas subject of the current appeals. It is understood that the building was vacant for a significant portion of the three years preceding the respective planning applications.

15. There is a disagreement between the parties as to the lawful use of the site, and whether the 1966 permission encompasses the current uses on site. It is not my role, in the context of this disagreement and an appeal under section 78 of the Act, to determine whether a use or operation is lawful. This was a situation that the previous Inspector in the June 2023 decision[2] also faced and commented on. The appellant has made substantial submissions to seek to argue that the previous use is not materially different to the present use and detailed criticisms of the previous Inspector regarding how he considered that fallback position. However, no certificate of lawful use and development application has been submitted to seek to resolve the dispute with the Council over the lawful use of the site. This means that this situation, despite further submissions as part of this s78 appeal, has not been brought to a conclusion. Consequently, because the Council disagree regarding the lawful use of the site, there is clear uncertainty as to the baseline from which to consider the present activities and the related water use, so as to then compare with the present proposal. This uncertainty is a significant issue when considering whether the scheme would meet with the requirements of the Conservation of Habitats and Species Regulations 2017 (the Habitat Regulations).

16. I recognise that the appellant has proposed the installation of a rainwater harvesting tank to supply water to the toilets, together with use of water efficient fixtures and fittings, despite their position that the proposal, without mitigation, would achieve water neutrality. The willingness of the appellant to accept a pre-commencement condition to control the precise details of appliances to be installed, should I find that such a condition would meet the relevant tests, is also noted. However, as set out above, there is insufficient evidence to support the baseline figure calculated by the appellant and as such, even with the mitigation measures set out, I am unable to conclude that the proposal would be water neutral.

17. Natural England (NE) have noted that the baseline water value provided in the Water Neutrality Report and Statement appear to rely on water meter readings taken from periods encompassing the current uses on site and advise that it is not appropriate to consider potentially unlawful uses of a site within the baseline water usage. Consequently, it finds that it is unclear as to what the baseline of the existing lawful use is, and an adverse effect on the integrity of the Arun Valley SAC/SPA/Ramsar sites from the proposed development by way of increased water abstraction cannot be ruled out, either alone or in combination with other projects. I give great weight to the views of NE and the substance in the Water Neutrality report and statement does not convince me otherwise.

[1] SR/33/66
[2] APP/Z3825/W/22/3292174

18. It is acknowledged that my allowing the appeal, would enable greater control over activities on site compared with the 1966 permission, through the imposition of appropriate planning conditions. However, in this case I cannot be satisfied that the imposition of conditions would address the potential harm.

19. Drawing all these matters together, I am not satisfied that the information before me demonstrates, beyond reasonable scientific doubt, that the proposal would achieve water neutrality. As such, I cannot rule out the possibility that the proposal would adversely affect the integrity of the Arun Valley SAC/SPA/Ramsar sites. The proposal would therefore conflict with Policy 31 of the Horsham District Planning Framework (2015), which, insofar as relevant, states that development which is anticipated to have a direct or indirect adverse impact on sites or features for biodiversity will be refused unless it can be demonstrated that appropriate mitigation and compensation measures are provided. In addition, the provisions of the Habitat Regulations would not be met.

Other Matters

20. I note the concerns of the appellant regarding the handling of the respective planning applications by the Council. However, these are matters between the main parties and have no bearing on my consideration of these appeals.

Conclusion

21. The proposal would generate a number of employment benefits, including improved long-term certainty, continuation of the existing business use and staff employment. There could also be some environmental benefits from greater control over activities on site, through the imposition of conditions. However, the potential harm to the integrity of the Arun Valley SAC/SPA/Ramsar sites from increased water abstraction is a matter of considerable importance and the substantial weight I attach to it clearly outweighs the benefits.

22. The proposed development would conflict with the development plan and there are no material considerations which indicate that the appeal should be decided other than in accordance with it.

23. For the reasons given above, appeals A and B are both dismissed.

R Lawrence

INSPECTOR