



Planning Statement

PROPOSAL:
REMOVAL OF CONDITION NO.4
(WATER NEUTRALITY) FROM
PLANNING PERMISSION
REF. DC/23/1728

SITE:
COOLHAM HOUSE COTTAGE
BILLINGSHURST ROAD
COOLHAM
WEST SUSSEX RH13 8QN

APPLICANT:
MR & MRS M AVERY

Planning Background

Under application ref. DC/21/1027 planning permission was granted for the demolition of the existing dwelling and the erection of a replacement four-bed barn-style dwelling with ancillary three-bay cart shed garage.

This permission for a replacement dwelling pre-dated the issuing, by Natural England, of its Water Neutrality Position Statement for the Sussex North Water Supply Zone. It was therefore not subject to a Water Neutrality test at the time of its grant of consent.

However, in the case of *CG Fry & Son Limited v Secretary of State for House, Communities and Local Government* (formerly known as Secretary of State for Levelling Up of Housing and Communities), the High Court held that development approved prior to the instigation of Nitrate Neutrality Tests could be made the subject of such tests at the time of the submission of any subsequent Submission of Details or Discharge of Conditions Application.

Consequently, the permission granted under DC/21/1027 was retrospectively caught by a Water Neutrality Test at the time of the Discharge of Condition Applications. This resulted in the submission of Application DC/23/1728. This application was described as follows:

‘Variation of Condition 3 of previously approved application DC/21/1027 (Demolition of Existing Dwelling and Erection of a Replacement Four-Bed Barn-Style Dwelling with Ancillary Cart Shed Garage). Variation sought to allow for consideration of Water Neutrality Requirements.’

As part of this application, a Water Neutrality Report was prepared. The details of this Report were approved. Condition 4 of this consent sought to secure the implementation of the agreed Water Neutrality Strategy. It stated:

‘The development hereby permitted shall not be first occupied until evidence has been submitted to and has been approved in writing by the Local Planning Authority that the approved Water Neutrality Strategy for that residential unit has been implemented in full. The evidence shall include the specification of fittings and appliances used, evidence of their installation, and completion of the as built Part G water calculator or equivalent. The installed measures shall be retained as such thereafter.’

Under application ref. DISC/25/0234 application was made to provide the details reserved by Condition 4 on DC/23/1728. Consent was not given on the basis that the details of the Water Neutrality Scheme, as implemented by the applicant during the course of construction of the dwelling, differed from the details approved under application ref. DC/23/1728.

That is not to say that the implemented scheme was not water neutral, but that the Condition could not be discharged because the revised details did not accord with those originally approved. On the revised Water Neutrality Scheme, a grey water harvesting system became a significant part of the water saving measures. This was not part of the approved Water Neutrality Strategy.

The replacement dwelling is now nearing completion and the grey water recycling scheme proposed in the revised Water Neutrality Report (copy attached) has been implemented.

The Proposal

Two significant factors have occurred recently.

The first is that Natural England, as of the 31st October 2025, withdrew their Water Neutrality Position Statement for the Sussex North Water Supply Zone.

Consequently, residential development in the Sussex North Area is no longer subject to a Water Neutrality Test. Consents subsequently issued for residential development have reverted to the standard water consumption condition which reads as follows:

‘The dwelling hereby permitted shall meet the optional requirement of Building Regulation G2 to limit the water usage of each dwelling to 110 litres per person per day. The subsequently approved water limiting measures shall thereafter be retained.’

Ordinarily, the removal of a Water Neutrality Condition, such as proposed here, would be accompanied by a replacement water consumption condition as set out above.

In this instance, there is no need for this to occur as such a condition already exists on planning permission ref. DC/21/1027 (Condition No. 11). This is the consent that has been implemented and therefore Condition No. 7 still bites.

In the circumstances of the withdrawal of the Natural England Position Statement, Condition No. 4 on permission ref. DC/23/1728 can be removed. There is no need for a replacement water consumption condition.

The replacement dwelling is nearing completion and the water saving measures implemented comfortably produce a consumption rate well below the figure of 110 litres per day per person. The consumption rate achieved is set out in the revised Water Neutrality Report prepared by CGS Civils. This Report accompanies this application.

A secondary point to note is that the Supreme Court on the 22nd October 2025 found in favour of the appellant in the case of CG Fry & Son Limited vs. The Secretary of State for Housing, Communities and Local Government.

Effectively, the ruling established that where planning permission reserves matters for subsequent approval of a Local Planning Authority, the extent to which the Authority can withhold its approval is restricted to what has been expressed to be so reserved.

The Authority is not permitted to go back on points of principle which it has accepted by granting the planning permission. In layman's terms, this means the rights conferred by a grant of planning permission are defined by that grant and cannot be overridden or diluted by subsequent Government policy.

The imposition of a Condition on a consent does not import a general power for the Planning Authority to refuse to give approval in order to further a purpose or policy objective which is not fairly related to the subject matter of the Condition.

Applying that to the case here, it was not lawful to subject the initial planning approval (DC/21/1027) to a subsequent Water Neutrality Test when that was not a requirement at the time of approval.

This gives a secondary reason for removing the relevant water neutrality condition.