



Appeal Decision

Hearing held on 29 January 2020

Site visit made on 29 January 2020

by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI

an Inspector appointed by the Secretary of State

Decision date: 6 April 2020

Appeal Ref: APP/C1435/W/19/3229579

The Forge, Eastbourne Road, Halland BN8 6PW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr P Bedi against the decision of Wealden District Council.
 - The application Ref WD/2018/0320/MAJ, dated 9 February 2018, was refused by notice dated 26 November 2018.
 - The development proposed is the construction of 21no. flats.
-

Decision

1. The appeal is dismissed.

Main Issues

2. While the Council's second reason for refusal of the planning application concerned highway safety, it confirmed at the Hearing that it no longer objected on this ground, subject to conditions to secure an appropriate layout. Following the outcome of the stage 1 hearings into the emerging Local Plan, the Council advised that no weight should be accorded to its policies, and it withdrew its comments relating to the effects of the proposed development on the Ashdown Forest Special Area of Conservation, no longer considering that an appropriate assessment is necessary.
 3. I have no evidence or reason to disagree with the Council's conclusions on these matters. Accordingly, and taking account of all the representations I have read and heard, the main issues in this appeal are:
 - whether the location of the proposed development would be appropriate, having regard to local and national planning policies concerning rural housing and the accessibility of services and facilities;
 - its effect on ancient woodland;
 - on the living conditions of future occupiers;
 - on the character and appearance of the area; and
 - whether it would make appropriate provision for affordable housing.
-

Reasons

The location of the proposed development

4. The development boundary around Halland, as shown in the Wealden Local Plan 1998 (LP), was removed by the adoption of the Core Strategy (CS) in 2013. This described the village as an unclassified settlement, with few or no facilities and where further development would be unsustainable. Saved LP policies GD2 and DC17 resist development outside development boundaries.
5. Saved LP policies EN1, EN2 and CS policy WCS14 reflect the presumption in favour of sustainable development in the Framework and indicate that the Council will seek to locate major developments generating significant travel movements efficiently in relation to existing development and to public transport.
6. Halland has relatively few services and facilities. Apart from a chapel, two public houses and a garage selling and servicing cars, there is a small farm shop at the garden nursery on the Eastbourne Road, within walking distance of the appeal site. The hotel, the garage, the nursery and a care home provide some opportunity for employment, though there is no data on the number of staff vacancies or staff turnover, and therefore the likelihood of future occupiers of this development having access to local employment.
7. I heard that Halland is surrounded by larger settlements with a greater range of facilities and services, including East Hoathly, which has a primary school and a doctors' surgery, but it is around two miles away. Uckfield has a secondary school, and a railway station connecting to London, but it is around three miles away. I saw that there are bus stops close to the site, whose boards indicated daily services towards East Hoathly, Uckfield, as well as to Lewes and Brighton.
8. However, because of the distance of the site from these settlements and the frequency of services to them, the likelihood of public transport being a realistic alternative to the private car is limited. The roads leading from Halland into the larger settlements lack footways and street lighting and tend to be single carriageway, which make them less attractive for cycling.
9. While I acknowledge that there are limited services in Halland and that the site is connected to surrounding settlements by bus, these factors suggest that the distance of the site from day to day services and facilities and the limited access to them, would make future occupiers of the development dependent on the car.
10. I have taken into account that the completion of the consented extension¹ to the hotel would generate trips, which the appellant claims would be greater than those likely to be generated in this proposal. However, it is not solely the number of trips which is relevant, but also their nature and importance. Trips for hotel guests tend to be related to the nature of the stay and its duration, typically for leisure or for business, arriving one day and leaving up to a few days later, with the hotel generally providing necessary services and facilities. By contrast, the trips of the residents of the flats would be more likely to be in

¹ LPA Ref: WD/2009/0881/MAJ

connection with schooling, employment, health, and food shopping; essential trips to services and facilities on which future occupiers would be dependent.

11. Further, the trip data suggests that the dominant mode of transport for guests choosing to stay over at the hotel would be the car, whereas, for future occupiers of the flats, for the reasons above, there would be little public transport alternative, an enduring condition for them. While I acknowledge the fewer number of trips in this proposal, the context of these two quite different uses has a bearing in applying the policies. Moreover, the hotel extension was permitted in 2011 and remains incomplete nearly ten years later which lessens the realism of the fallback as a prospect sufficient to justify this proposal, which though of the same form and footprint, seeks an alternative use.
12. The proposed homes would not be isolated in terms of the National Planning Policy Framework (the Framework)² which indicates that isolated homes in the countryside should be avoided. They would enhance or at least help to maintain the vitality of Halland and the surrounding rural settlements. However, the Framework³ also indicates that the planning system should actively manage patterns of growth through limiting the need to travel, and by offering a choice of transport modes.
13. The location of the proposed development would not be appropriate, conflicting with the policies of the Framework and with saved LP policies EN1, EN2, GD2 and DC17 which promote sustainable development, which seek to ensure that new developments generating significant travel movements are located efficiently in relation to public transport and which resist housing development outside development boundaries unless it accords with other policies in the Plan.

Ancient woodland

14. The standing advice⁴ of Natural England, the government's adviser on ancient woodland, is a material consideration to which I attach significant weight. It states that ancient woodland takes hundreds of years to establish and that there should be a buffer zone of at least 15m from ancient woodland to avoid root damage. It also advises that the buffer zone should avoid the inclusion of gardens and, where possible, contribute to wider ecological networks, and be part of the green infrastructure of the area.
15. There is presently no formal enclosure between the ancient woodland and the hotel site, rather a soft transition across improved grassland which runs up to the buildings. The footprint of the proposed building would be within around 5m of a large area of designated ancient woodland which stands to the north and east.
16. I acknowledge that the completion of the partially implemented planning permission would allow a building of the same footprint in the same position as proposed in this appeal. The effect of the building on the roots of trees in the ancient woodland and on the semi-natural habitat between the building and the ancient woodland would be the same in both schemes.

² National Planning Policy Framework, paragraph 79

³ National Planning Policy Framework, paragraph 103

⁴ Forestry Commission & Natural England standing advice - Ancient woodland, ancient trees and veteran trees: protecting them from development, published 2014, updated 2018

17. However, the permitted scheme concerns a building for hotel guests whereas this proposal is for a building for flats. Hotel guests would be unlikely to need as much direct access to outdoor amenity space during their stay as the occupiers of the flats which would be more likely to be occupied and for longer periods, and whose occupiers would more likely to need access to good quality outdoor amenity space; space to sit and relax in, to place clothes to dry, or where children could play.
18. I appreciate that the block of flats would be surrounded by space, however, a substantial part of this would be enclosed between the proposed flat block and the existing 2-storey section of hotel rooms, making for an overlooked space with little access to sunlight. The remaining space would be truncated by the car-park, circulation paths, a ditch, and the edge of the ancient woodland, and overlooked by the flats. I note that a fence would separate the ancient woodland from the ground around the proposed flats. However, there are no details of this, and it would not stop future residents entering the ancient woodland by an upgraded entrance to lead directly from the main entrance of the flat block and into or alongside the ancient woodland.
19. Given the number of flats proposed, this would lead to future occupiers using the ancient woodland as amenity space, resulting in indirect impacts from trampling, understorey clearance and recreational pressure, as well as the risk of the formation of new informal access points, increased disturbance to wildlife, potentially damaging impact from the promotion of non-native plant species and the predation of domestic pets living with residents. I have taken into account that there is a public path through the ancient woodland, which is popular with walkers, runners and families. However, the impact of their recreation on the ancient woodland would be likely to be less than this proposal, which would see the ancient woodland as a substitute for good quality amenity space.
20. Moreover, the flats are largely single-aspect, including those opposite the ancient woodland. Given the proximity of their living rooms and bedrooms to the ancient woodland, their access to daylight and sunlight and the outlook from them, would be limited. Consequently, it is reasonable to expect that there would be pressure from future occupiers of the flats for the felling of trees to improve their amenity. This would very likely be harmful to the ancient woodland, and to the landscape character of the area.
21. I appreciate that the partially implemented planning permission dates back to a 2011 permission. While it predates the Framework and the publication of the standing advice, as I find that the harm to the ancient woodland would be greater in this proposal, the completion of the alternative, hotel scheme is not therefore a fallback which weighs in favour of this proposal.
22. The Framework states⁵ that development resulting in the loss or deterioration of irreplaceable habitats should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists. There are no wholly exceptional circumstances suggested which would justify the proposal. And even if there were, there is no suitable compensation strategy proposed.

⁵ National Planning Policy Framework, paragraph 175

23. The appeal proposal would harm the ancient woodland, placing it in conflict with saved LP policy EN13 which says that the Council will resist development that would prejudice the ecology of ancient, semi-natural woodland, as well as with the Framework, and Natural England's standing advice on ancient woodland.

The living conditions of future occupiers

24. The partially implemented planning permission includes a 2-storey block of eight hotel rooms, which would stand around 3m from the openings of four of the flats of the proposed development. The openings opposite the block of eight hotel rooms would be windows, which would serve single aspect living rooms and bedrooms. There would be next to no outlook from these rooms, and the daylight admitted to them would be drastically reduced by the 8-room block. This would result in four of the proposed flats having an unacceptably poor standard of accommodation in terms of daylight and outlook. I appreciate that the appellant's intention is not to build the 8-room block in the event of the appeal being allowed. However, there is no undertaking or other legal mechanism to secure this.
25. Circulation paths would run around the outside of the block, within a few metres of the terraces, and the bedroom and living room windows of the ground floor flats. I appreciate that the paths may not be intended for frequent use, but they bring unnecessary risk of conflict between neighbours by reducing the privacy of the occupiers overlooked or disturbed by those using them as access. The path leading from the residential car-park to the entrance into the block of sixteen flats would pass directly in front of the terraces of three flats, and their living room and bedroom windows, reducing the privacy of their occupiers by an unacceptable degree.
26. I appreciate that a planning condition could secure changes to the layout around the blocks. For instance, the bin store could be amended so that its size, position and access would comply with the Council's guidance on safely collecting refuse. However, there is no landscape strategy accompanying this proposal, and given the proximity to ancient woodland, without clarity on this important design matter, I cannot be sure the impact on the living conditions of future occupiers identified above could be resolved by condition.
27. I conclude that the proposed development would provide unacceptable living conditions for future occupiers, placing it in conflict with saved LP policy EN27 which requires development to ensure a satisfactory environment for future occupiers and with the Framework which indicates that decisions should ensure that developments will function well over their lifetime.

The character and appearance of the area

28. The hotel occupies a prominent, corner site, fronting towards the roundabout on the A22, its principal buildings enclosing a visitor car-park beside the road, with ancillary buildings and further parking behind them, on the other side of the corner. The Blacksmith's Arms public house stands on the opposite corner of the roundabout which leads towards the care home and car sales garage further along it.
29. The remainder of this part of the village is characterised by its 2-storey houses occupying large plots, either detached or semi-detached, and set back from the

- street by front gardens or deep verges. Though there is variation in the street layout and in the age, style and detailing of the houses, they generally front towards the street and share a broadly consistent set-back from it, their front elevations generally reflecting the local cottage vernacular of picture windows and a front door under a prominent eaves.
30. In contrast, the long accommodation wing of the hotel, though its height, roof and materials reflect the appearance of the surrounding buildings, its quite different typology is apparent in its length, in the lines of guest parking in front of it, and the repetitive arrangement of the full-height openings in its frontage. The design of the building reflects its use as a hotel, while expressing some of the architectural characteristics of the surrounding buildings.
 31. While the footprint and elevations of this proposal are similar to the consented scheme, the appeal proposal would be a block of flats, not an enlargement of the existing hotel. While I did not see any blocks of flats in this section of the village, the architectural form and language of the hotel and the housing in Halland are quite different. The external fire escape stairs of the proposed block would appear as utilitarian elements in a domestic context, and its repetitive, paired openings and small windows would be at odds with the fenestration which characterises the housing in this area.
 32. More significantly, the siting of the building behind the long wing of the hotel, would reinforce its identity as part of the hotel, whereas its use and social function are quite different. Its lack of bearing in the street scene, its siting far back from the street, its entrance at the back of the site, and its siting to form an enclosed space behind the hotel would give the misleading visual cues of it being part of the hotel development, while failing to give it an identity of its own, as a building people live in rather than stay in.
 33. Far from delighting future occupiers and passers-by, the architectural confusion between the use of the building and its siting, form and appearance would undermine the coherence in the pattern of development of the village which distinguishes between these two quite different uses. This typological entropy would result in substantial harm to the distinctive local character of buildings and landscape in Halland, ultimately undermining its legibility and the architectural qualities which make it a place.
 34. The completion of the partially implemented development by building this block for use as part of a hotel is not a fallback to justify this proposal which is for an independent block of flats. The uses of the consented and proposed buildings are materially different, and the harm I have identified belongs to the proposed scheme. I conclude on this issue that the proposed development would harm the character and appearance of the area. It would conflict with LP policies EN1 and EN27 which require the Council to pursue sustainable development in considering the location, layout and design of development.
 35. It would also be at odds with the Framework⁶ where it says that developments should add to the overall quality of the area and be visually attractive as a result of good architecture, layout and appropriate landscaping. This indicates⁷ that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an

⁶ National Planning Policy Framework, paragraph 127

⁷ National Planning Policy Framework, paragraph 130

area, taking into account local design standards or style guides in supplementary planning documents. The Council's Design Guide⁸ encourages legible environments which present a clear impression of their form and function and demonstrate how they fit with their surroundings, as well as other good design practice, sound guidance with which this proposal would conflict.

Affordable housing

36. The Council has identified that the provision of affordable housing is a high priority policy objective, in response to which LP policy AFH1 requires new residential development of 5 or more dwellings to provide 35% of its dwellings as affordable homes, with financial contributions in lieu of on-site provision in exceptional circumstances.
37. The Council does not object to a financial contribution in this case, and both parties have agreed that the sum of £699,707 would be required to satisfy the policy, which should be secured by a planning obligation. From the information provided, I am satisfied that the affordable housing contribution sought by the Council is necessary, directly related to the development, and fairly and reasonably related in scale and kind as required by Regulation 122(2) of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended).
38. However, there is no completed obligation or undertaking before me. I have considered whether a planning condition requiring the appellant to enter into a planning obligation would make the development acceptable. However, the proposed development is neither complex nor strategically important, and there is no clear evidence that the delivery of the development would be otherwise at serious risk. It does not meet the exceptional circumstances for a negatively worded condition as set out in the Planning Practice Guidance⁹. I can only conclude that the proposal would fail to secure appropriate financial contributions towards the provision of affordable housing, placing it in conflict with LP policy AFH1.

Other Matters

39. I have had special regard to the desirability of preserving Hartfield Farmhouse, a grade II listed building on the opposite side of the road from the appeal site. In view of the distance between the sites, and the buildings and trees between them, I consider that the setting of the listed building would be unaffected and therefore preserved.
40. While the appellant's statement indicates a play area to be formed within the ancient woodland, he confirmed at the Hearing that this was not a formal amendment to the scheme but an indication of what might be possible. I have already considered the effect of the proposal on ancient woodland, the conclusion to which would not be altered by the play area.

Planning Balance

41. The proposed development would provide 21 homes which is a social benefit that attracts significant weight. It would bring economic benefits from its construction, and from the spending of future occupiers in the local economy. However, the development's location would be contrary to the development

⁸ Supplementary Planning Document: Wealden Design Guide 2008 section 7, pages 8,9,14,15,16,20 & 22

⁹ Planning Practice Guidance paragraph 010 Reference ID: 21a-010-20140306

plan's spatial strategy to ensure that new developments generating significant travel movements are located efficiently in relation to public transport and to resist housing development outside development boundaries. It would also conflict with the Framework which seeks to manage patterns of growth in order to promote sustainable transport. In addition, it would lead to harm to ancient woodland, as well as to the character and appearance of the area. It would provide an unacceptably poor standard of accommodation for future occupiers, and there would be no appropriate means to secure the affordable housing sought in the Local Plan.

42. The Council accepts that it cannot demonstrate a 5-year supply of deliverable housing sites. This means that policies relating to the supply of housing should not be considered up-to-date, and the proposal should be considered in the context of the presumption in favour of sustainable development as set out in the Framework. However, given my conclusion on the effect of the proposal on ancient woodland, defined in the Framework as an irreplaceable habitat, and in accordance with footnote 6 of its paragraph 11, this does not indicate that permission should be granted in this case. Even were this not the case, because of the environmental harm identified, the proposal would not be sustainable development, its environmental impacts significantly and demonstrably outweighing its social and economic benefits when assessed against the policies in the Framework as a whole.
43. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that I determine this appeal in accordance with the development plan unless material considerations indicate otherwise. I have concluded that the proposal conflicts with the development plan when read as a whole. Given that on the basis of the planning balance it would not be sustainable development, there are no material considerations warranting a decision other than in accordance with the development plan.

Conclusion

44. For the reasons given above, and having considered all matters raised, I conclude that the appeal should be dismissed.

Patrick Whelan

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Paul Bedi	Appellant
Mr Doug Wright	WPS Planning

FOR THE LOCAL PLANNING AUTHORITY:

Mr Ralph Forder	Planning Officer, Wealden District Council (WDC)
-----------------	--

INTERESTED PERSONS:

Mrs Carolyn Robins	Parish Councillor East Hoathly with Halland Parish Council (EHHPC)
Ms Kathryn Richardson	Local resident
Mr Jonathan Walker	Local resident

DOCUMENTS SUBMITTED AT THE HEARING

1. WDC: Two photocopy extracts from WDA's Magic Map, indicating; Ancient Woodland designation; and, overlay of the proposed building
2. EHHPC: statement released 27 January 2019

DOCUMENTS SUBMITTED AFTER THE HEARING

1. WDC: Policy AFH1 (Affordable Housing) of the Wealden District Council Local Plan, adopted May 2016
2. WDC: Ancient woodland, ancient trees and veteran trees: protecting them from development: standing advice of the Forestry Commission & Natural England
3. WDC: The Wealden Design Guide, Supplementary Planning Document, adopted October 2008