



## Appeal Decision

Site visit made on 29 July 2019

**by Rajeevan Satheesan BSc PGCert MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23<sup>rd</sup> September 2019

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**Appeal Ref: APP/C1435/W/18/3216971**

**Land at Buttsfield Lane, East Hoathly BN8 6EE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Mr. Nurlan Bizakov on behalf of Hesmonds Stud against Wealden District Council.
  - The application Ref: WD/2016/2268/F, is dated 14 September 2016.
  - The development proposed is the erection of No. 2 Dwellings.
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### Decision

1. The appeal is dismissed, and planning permission is refused.

### Application for costs

2. An application for costs was made by Mr. Nurlan Bizakov on behalf of Hesmonds Stud against Wealden District Council. This application will be the subject of a separate Decision.

### Procedural Matters

3. The Council have referred to the emerging Wealden Submission Local Plan, 2019 (ELP), which was submitted to the Secretary of State for Examination on the 18 January 2019. The Examination in Public began on the 21 May 2019. However, there is no substantive evidence before me of the extent to which its policies and allocations are subject to unresolved objections. Furthermore, I have been provided with no indication as to the timetable for modifications and indeed whether the emerging policies included within the Council's appeal statement would be subject to modifications. Therefore, I give the ELP limited weight.
4. The Council did not issue a decision notice. As set out in its Statement of Case and Planning Committee Report the Council indicates that its two principal concerns with the current appeal relate to the proposed location of the dwellings beyond the adopted and emerging development boundary, and in combination impacts upon the Ashdown Forest, designated as a Special Protection Area (SPA) and a Special Area of Conservation (SAC) and Lewes Downs, designated as a SAC.

## **Main Issues**

5. The main issues are:

- whether the proposed development would provide a suitable location for housing, having regard to local and national policies, the accessibility of services and facilities and policies concerned with rural housing; and
- whether the proposed development would be likely to have adverse effects upon the integrity of the Ashdown Forest, designated as a SPA and a SAC, and Lewes Downs, designated as a SAC.

## **Reasons**

### *Suitability of the location*

6. The appeal site comprises an area of open grassland associated with Hesmonds Stud, surrounded by hedges and trees, located at the end of a private lane known as Buttsfield Lane. The proposal is for two new dwellings with associated off-street parking.
7. The Council advise that the development boundary (DB) for East Hoathly was removed by Policy WCS6 of the Wealden District Council (incorporating part of the South Downs National Park) Core Strategy Local Plan, 2013 (CS). The DB was removed to restrict further growth in this settlement, because the village was designated as one where further development was considered unsustainable. The site lies directly adjacent to the emerging Development Boundary in the ELP. As such, the site is not located within any defined DB in the adopted development plan or the ELP and thus lies within the countryside in planning policy terms.
8. Saved Policies GD2 and DC17 within the Wealden Local Plan, 1998 (LP) generally resists new housing development in the countryside which is not essential for agriculture or forestry needs or has some other similar justification for a rural location (such as rural affordable housing exception sites). The proposal is not a rural affordable housing exception site and no evidence has been submitted to demonstrate that the proposal would comply with any of the categories listed under the above policies. The site is also not within any area identified for growth within policy WCS6 of the CS.
9. The appellant considers that the site would make efficient use of an existing plot. However, the site is not a brownfield site and so there is no local or national planning policy support for building new houses on the site. Therefore, the principle of the development in this location would be contrary to the above mentioned policies of the adopted development plan.
10. Policies SP07 and SP08 of the CS encourage the reduction in the need to travel by car and a network of villages to support the day-to-day needs of rural communities and accord with the National Planning Policy Framework (Framework) policies on rural housing.
11. East Hoathly benefits from a primary school, a medical centre, a post office, a small number of shops, a café, a public house, a church, a hairdresser, a village hall, and recreation ground including tennis courts. These are all within a reasonable walking distance of the site. There are also additional bus services to Eastbourne, Uckfield, Hailsham, Brighton and Lewes. Therefore, despite the

location of the site outside any adopted DB, future occupiers would not be solely reliant on the private motor vehicle to access services and facilities.

12. Paragraph 78 of the Framework states that housing should be located where it will enhance or maintain the vitality of rural communities. For the reasons outlined above, the development would provide support for local services and facilities within East Hoathly and would contribute towards the vitality of rural communities. Furthermore, given the proposed dwellings' location adjacent to the existing dwellings in Buttsfield Lane, the appeal site would not be considered to be 'isolated'. Thus, there would be no conflict with paragraph 79 of the Framework.
13. Concluding on the first main issue, the proposed development would have reasonable accessibility to services and facilities and would contribute towards the vitality of rural communities in accordance with Policies SP07 and SP08 of the CS, and paragraphs 78 and 79 of the Framework. Notwithstanding this, the proposed development would not provide a suitable location for housing having regard to local policies concerned with rural housing. Therefore, it would not accord with the Saved Policies GD2 and DC17 of the LP, and Policy WCS6 of the CS. Amongst other things, these seek to preclude residential development outside development boundaries and in the countryside unless in accordance with specific policies in the Plan.

*Ashdown Forest (SPA and SAC), and Lewes Downs (SAC)*

14. The LP, CS and the ELP include policies to protect the Ashdown Forest (SPA and SAC), and Lewes Downs (SAC). These plans consider that these SPA and SACs are at risk from atmospheric pollution, from nitrogen deposition which is in part due to vehicle emissions from traffic on roads crossing or next to these areas. Under the precautionary principle in the Habitats Directive as embodied in the Habitats Regulations<sup>1</sup> it is necessary to ensure that development, either alone or in combination with other plans or projects, will only be permitted if it can be concluded that it will not affect the integrity of European sites, including these SPA and SACs. However, there is insufficient evidence before me to consider the likely effects of the proposal in combination with other plans and projects. Therefore, under the precautionary principle, I cannot be satisfied that the proposed development would not harm the integrity of these SPA and SACs, in combination with other plans and projects.
15. The Court of Justice of the European Union has issued a judgment<sup>2</sup> that potential mitigation for SPAs/SACs cannot be taken into account when determining whether an Appropriate Assessment (AA) is required but may be considered if an AA has been undertaken and determined that the development would harm the integrity of the designated European sites.
16. Even if there were sufficient evidence submitted, I note that the Council highlight that the proposed development would not be able to access appropriate mitigation with the ELP as the site lies outside of the DB and is not a policy compliant rural development.
17. Therefore, in the absence of sufficient evidence regarding to other plans or projects, I am unable to conclude, under the precautionary principle, that the proposal would not have an adverse effect upon the integrity of the Ashdown

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<sup>1</sup> The Conservation of Habitats and Species Regulations 2017

<sup>2</sup> People over Wind, Peter Sweetman v Coillte Teoranta Case C-323/17

Forest, designated as a SPA and a SAC, and Lewes Downs, designated as a SAC. On the basis of the evidence before me and the above reasoning I conclude that the proposal would conflict with Policies EN1 and EN15 of the LP, and Policy WCS12 of the CS. Together these require that regard be had to the effects of proposals on air quality, seek mitigation for the effects of nitrogen deposition and seek to safeguard designated nature conservation sites by resisting development likely to adversely affect their nature conservation value.

#### *Other matters*

18. The appellant has referred to a number of other decisions in support of their scheme. However, none of the cases referred to relate to the same site as the proposal before me, and the circumstances in each case are likely to be different. Furthermore, reference has been made to the appeal decision at Land at Camberlot Stables, Camberlot Road, Upper Dicker BN27 3RG<sup>3</sup>. However, this decision was challenged by the Council, and subsequently quashed. I have therefore not relied on that decision for the determination of this appeal. In any case I have determined the proposal on its merits and in accordance with the legislation and local and national policies.

#### **Planning balance and conclusion**

19. Applications for planning permission must be determined in accordance with the development plan, unless material considerations, which include the Framework, indicate otherwise. I recognise that there are policies in the development plan and Framework that are supportive of the provision of additional housing. However, I have identified that the proposal would be in conflict with the relevant development plan policies, and the development plan as a whole.
20. There is no dispute that the Council cannot currently demonstrate a five year housing land supply, with the Council stating that they have a 2.62 year supply. However, the 'tilted' balance within the Framework at Paragraph 11d)ii would not apply because the application of policies within the Framework that protect habitats sites, as set out within Paragraph 11d)i and Footnote 6 of the Framework, provide clear reasons for refusing the proposal. A presumption in favour of sustainable development does not apply.
21. There are no other material considerations of sufficient weight or importance to indicate that the decision should be taken otherwise than in accordance with the development plan.
22. Whilst I understand that the appellant has experienced delays with the application, and this will be a further setback, given the requirements of my statutory duty as the competent authority, and the precautionary principle when considering internationally important designations, I must conclude that, for the reasons above, the appeal should be dismissed.

*R Satheesan*

INSPECTOR

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<sup>3</sup> Appeal Ref: APP/C1435/W/18/3197286