



Appeal Decision

Site visit made on 3 June 2019

by Tim Crouch DipUD MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: Friday, 29 November 2019

Appeal Ref: APP/C1435/W/19/3223599

Land south of South Street, East Hoathly, East Sussex

- 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 outline planning permission.
 - The appeal is made by Prime Crest Homes Limited against Wealden District Council.
 - The application Ref WD/2018/1508/MAO, is dated 11 July 2018.
 - The development proposed is described as "Outline planning application (with all matters reserved except for means of access from South Street) for residential development of up to 74 residential dwellings".
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Prime Crest Homes Limited against Wealden District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The application seeks outline permission with all matters reserved except for means of access. For the purpose of this appeal I have taken the proposed site layout included within the application documents as illustrative only.
4. After the appeal was submitted the Council considered the application and resolved that, if it had been in a position to determine the application, it would have refused planning permission. The Council set out three reasons for refusal encompassing their principal concerns regarding the proposal. These relate to the location of the proposed development beyond the adopted and emerging development boundaries, the in-combination effects upon the Ashdown Forest which has European environment designations, and the effect of the proposal on biodiversity and protected species. I have had regard to these in the determination of this appeal.
5. During the course of the appeal, an appeal decision¹ within the district was quashed. This related to the need for an appropriate assessment and relationship with Natural England advice. The main parties were given the opportunity to add additional material relating to this.

¹ Appeal reference APP/C1435/W/18/3197286

Main Issues

6. The main issues are therefore,
 - whether the principle of residential development is acceptable having regard to local planning policy,
 - the in-combination effects of the proposal on the Ashdown Forest, designated as Special Protection Area (SPA) and Special Area of Conservation (SAC), and Lewes Downs SAC, and
 - the effect of the proposal on biodiversity.

Reasons

Principle of Residential Development

7. The appeal site is mainly agricultural fields with some areas of woodland to the northern and eastern edges. There is further woodland as a backdrop to the adjacent field to the south, which lies outside the appeal site. To the west of the site are the rear gardens of a linear row of houses fronting South Street. The southern half of these dwellings are separated from the site by an open paddock.
8. The appeal site is outside of the defined settlement boundary of East Hoathly. In accordance with saved policies GD2 and DC17 of the Wealden Local Plan (1998) (LP), development in such a location is not be permitted unless it conforms with other policies contained in the Development Plan, which the appellants does not contend that it does.
9. The site itself has some merits. It is positioned on the edge of a village with several key facilities and an hourly bus service to larger centres on weekdays. It is also visually well contained from the public realm, although there is a nearby public right of way, and free from significant site-specific constraints. The emerging submission Wealdon Local Plan (2018) (eLP) categorises the village as a sustainable settlement and proposes a settlement boundary. Although this has yet to complete examination and I afford it little weight, the evidence underpinning the eLP identifies that the settlement benefits from a number of facilities and a level of accessibility to support a scale of new development.
10. However, the scale of proposal, 74 units, would be significant within this large village. It would also be set to the rear of characterful ribbon development fronting South Street on the less dense approach to the centre of the village. Critically, it would be set outside the adopted settlement boundary. The principle of residential development would therefore not be acceptable having regard to local planning policy as it would be contrary to policies GD2 and DC17 of the LP and Policy WCS6 of the Wealden District Core Strategy Local Plan (2013) (CS). These, taken together and amongst other objectives, preclude development outside settlement boundaries and set a classification of settlements suitable for additional housing.
11. However, the proposal is presented on the basis of wider planning considerations, which I shall return to in the planning balance.

Ashdown Forest and Lewes Downs SACs

12. The site lies approximately 12km from the Ashdown Forest SAC and 9km to Lewes Downs SAC. Ashdown Forest is protected for its habitat regularly supporting nationally important ground nesting bird populations. Lewes Downs is designated partly due to its extremely rich chalk grassland and scrubland, for which the Council's evidence notes that it is one of the best areas in the United Kingdom, and includes a nationally rare orchid.
13. Both sites have prioritised issues (pressures or threats) affecting the designations due to air pollution. This is as a result of the impact of atmospheric nitrogen deposition which can change the composition of the nutrients within the soil, affecting habitat quality. This is related to traffic movements within the vicinity of the designations. The ground nesting birds are also particularly susceptible to disturbance from recreation and dog walking.
14. The appellant's Report to Inform a Habitats Regulation Assessment (HRA) states that the proposal would have an effect on the internationally designated sites, with about 15% of generated vehicles trips passing the Ashdown Forest and 30% potentially reaching the Lewes Downs. However, it concludes that these trip numbers are insignificant given the predicted increase in traffic overall (at most 1.22% of the predicted increase in traffic occurring between 2015 and 2028 for Ashdown Forest and 2.89% for Lewes Downs, as identified in the report) and that those generated by the development alone would have a negligible impact on air quality.
15. The Report also concludes that based upon the HRA for the eLP, it is not possible to conclude no adverse effect on the integrity of Ashdown Forest or Lewes Down SACs for the proposal in combination with other plans and projects. Whilst there is some uncertainty over the progress of the Local Plan, and so limited weight may be applied to policies, allocations and proposed mitigation, the evidence behind it is becoming more established and it is very likely that the area will be subject to housing growth of some form during this period. I am also aware that there are differing positions between Natural England and the Council as to whether mitigation is required to ensure no likely significant effects on Ashdown Forest SAC for the eLP. However, this is currently unresolved, and I do not have the full information supplied.
16. Therefore, as the proposal is not directly connected with, or necessary to site management for nature conservation, without an objective demonstration, with supporting evidence, that there will be no adverse effects on the integrity of the European sites, in combination with other plans and projects, the precautionary principle should be applied and adverse effects must be assumed.
17. Given the increase in population and likely vehicle movements, this is likely to contribute to air pollution and the associated effect of the change in composition of the nutrients of the soil at both SACs. The increased population and proximity, and draw, of Ashdown Forest is also likely to increase visitor pressure and affect the internationally protected bird species present.
18. The appellant has submitted Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act (1990) (as amended) to make a financial contribution towards mitigation towards Ashdown Forest SAC and the Council's

Air Quality Mitigation Interim Tariff (amongst other items) in the event that I consider it necessary.

19. I note that the appellant's intention was to supply a completed Section 106 document agreed with the Council, although this has not been possible. However, the UU, whilst detailed and following model formats, does not currently legally bind the Council or guarantee delivery of mitigation prior to development. I also do not have all the information relating to the Council's Strategic Access Management and Monitoring Strategy (SAMM) or its relationship to the site to conclude that this will ensure effective avoidance and mitigation as required. The effects and mitigation for Lewes Downs SAC are also unclear.
20. Therefore, it is not possible to conclude that there will not be likely significant effects on the Ashdown Forest, designated as Special Protection Area (SPA) and Special Area of Conservation (SAC), and Lewes Downs SAC from the proposal in combination with other plans and projects. Therefore as there are no alternative solutions presented that would have a lesser effect, or avoid an adverse effect, on the integrity of the site and the proposal might adversely affect a priority habitat and species, the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) states that permission may not be granted unless there are imperative reasons of overriding public interest. Whilst the proposal is for a significant number of dwellings and would make a social and economic contribution locally, I do not consider that it would represent an imperative reason of overriding public interest over and above that of the internationally important ecological designations.
21. Therefore, evidence before me indicates that there is potential for habitat degradation within the SACs through air pollution and additional activity associated with the proposed development, which has the potential to affect the integrity of the SACs. The proposal would therefore be contrary to Policy WCS12 of the CS which seeks to ensure development does not have an adverse effect on the integrity of the Ashdown Forest Special Protection Area of Conservation.

Biodiversity

22. The application was accompanied by an indicative site plan showing a residential layout which introduces development into an existing area of woodland, which supports protected species. Whilst this is indicative, with full details of layout intended to be addressed subsequently in a reserved matters application, it does indicate a tension on the biodiversity that the woodland accommodates.
23. It would be expected for a site layout to demonstrate how the quantum of development could be accommodated suitably, albeit as an example rather than then fixed. The indicative site plan provided requires loss of habitat to do this and therefore doesn't provide a demonstration of site capacity. I realise that this can be a matter for detailed discussion, and that the application is for "up to" 74 units. However, any loss of units would place additional pressure on other parts of the site to become more dense in order to continue to deliver the headline figure of 74 homes and maximise the site.
24. I note that the appellant is concerned that undue prominence has been placed on this indicative plan and that the proposal intends carefully selected tree

removal and can offer biodiversity mitigation. However, in its current form, the proposal indicates a loss of biodiversity features and therefore is contrary to policies SPO1, SPO13, WCS12 and WCS13 of the CS and Policy EN12 of the Wealden District Council Local Plan 1998. Taken together, and amongst other objectives, these require development to protect and enhance biodiversity, preventing a net loss, and to promote local distinctiveness and green infrastructure.

Planning Balance

25. The Council states that it cannot demonstrate a five year supply of deliverable housing sites against their local housing need. The figure provided by the Council is 2.62 years of housing land. This is a significant shortfall. The Council considers that this position will change once 'relevant consents' are issued (those with resolutions to grant permission, awaiting the completion of legal agreements) to 5.69 years. However, I do not have all the information as to any barriers to these, risks, timings or likelihood of delivery required to achieve this figure. In any event, whilst this may be positive for the future, my concern is with the current position.
26. Given this position on housing supply, whilst the proposal is contrary to the development plan taken as a whole, the appellant considers that paragraph 11 d (ii) of the National Planning Policy Framework (2019) (the Framework) applies. This sets that that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. This is known as the 'tilted balance' in consideration towards housing supply.
27. However, the Council refers to paragraph 177 of the Framework which qualifies that the presumption in favour of sustainable development does not apply where a project is likely to have a significant effect on a habitats site unless an appropriate assessment has concluded that it will not adversely affect the integrity of the habitats site.
28. There would be significant benefits to housing supply from 74 homes, especially given the current levels of supply. However, given the uncertainty of the effects on Ashdown Forest and Lewes Downs SAC, and the precautionary principle to such matters, I am more persuaded by the Council's position that the 'tilted balance' does not currently apply, based on the information and evidence before me.
29. Overall, taking account of the Framework and the benefits of the development and all other matters raised, I find that material considerations do not indicate that planning permission should be granted for the development, which is in conflict with the development plan.

Conclusion

30. For the reasons given above, I conclude that the appeal should be dismissed.

Tim Crouch

INSPECTOR