
Appeal Decision

Site visit made on 31 October 2016

by S M Holden BSc MSc CEng MICE TPP FCIHT MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17th November 2016

Appeal Ref: APP/D3830/W/16/3155847

St James House, 150 London Road, East Grinstead, West Sussex RH19 1ES

- 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 Edgewater (East Grinstead) against the decision of Mid Sussex District Council.
 - The application Ref DM/16/1352, dated 24 March 2016, was refused by notice dated 25 May 2016.
 - The development proposed is erection of a part 2-storey and part 3-storey extension to the south side of the existing building to provide a total of 4 flats (Resubmission of application DM/15/3447).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council accepts that it is currently unable to demonstrate a five year supply of deliverable housing sites in the District. Policies in the 2004 adopted Mid Sussex Local Plan (Local Plan) relating to the supply of housing are therefore out-of-date when considered in relation to paragraph 49 of the National Planning Policy Framework (the Framework). Consequently, in accordance with paragraph 14 of the Framework, planning permission should be granted unless either: a) any adverse impacts of so doing would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole or; b) specific policies in the Framework indicate development should be restricted.
 3. In reaching my decision I have had regard to saved policies in the Local Plan insofar as they are consistent with the Framework, as required by paragraph 215. I have therefore attributed them weight as set out in my conclusions on the main issues. I am aware that the Council has recently submitted the Mid Sussex District Plan for examination. However, as the policies within that plan have not been tested, I can give them little weight in my determination of the appeal.
 4. At the time the Council determined the application the East Grinstead Neighbourhood Plan was at examination. Following receipt of the examiner's report a referendum was held on 20 October. The Council has subsequently confirmed that the plan has been 'made' and it now forms part of the development plan.
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Main Issues

5. The main issues are the effects of the proposed development on:
 - a) The living conditions of occupants of the ground floor flats (units 8, 9, 10 and 11) in relation to noise, disturbance and odours;
 - b) Wildlife and conservation considerations in relation to the Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation (SAC).

Reasons

Living conditions

6. The appeal site has been the subject of a number of applications¹ as part of a larger scheme to convert an office block into a total of 41 flats. The current proposal seeks to construct a two-storey extension to the south of the existing building to provide an additional four flats. The proposed layout would include a total of 34 parking spaces to serve the enlarged development of 45 flats. In view of the site's proximity to the town centre and the railway station, the highway authority is satisfied that this number of spaces would be an appropriate level of provision. A one-way system would provide access in and around the site with the entrance from London Road on the eastern side of the existing building. Most of the car parking would be situated to the west of the building and the exit would be via St James's Road.
7. It is proposed that four of the car parking spaces would be provided alongside the eastern section of the building adjacent to units Nos 8-10. This arrangement would inevitably lead to the need for vehicles to manoeuvre in order to park parallel to the access roadway, which is somewhat restricted in width. To prevent the access driveway being blocked, each vehicle would need to be parked with the driver's door immediately adjacent to a brick wall. This would be an awkward arrangement, making it difficult for drivers to get in and out of their vehicles and increasing the likelihood of noise and disturbance.
8. The front entrances of the apartments would be reached via a raised walkway with steps at either end of this brick wall. However, this walkway, which is narrow and enclosed by railings, provides only a minimal gap between the proposed parking spaces and the windows and doors of the flats. The proximity of the vehicles to the flats and the wall would therefore be likely to result in a significant amount of noise and disturbance as people enter, leave and manoeuvre their vehicles in this restricted space. I consider this would be detrimental to the living conditions of the occupants.
9. The future occupants of units Nos 9 and 10 would also have parking spaces on the other side of their respective flats, where the six of the nine proposed spaces would be at right angles to the building. This would introduce some light pollution into the flats during the hours of darkness. The flats are set above the parking area but in my view there is an insufficient difference in the levels to prevent future occupants from experiencing some limited disturbance from noise and light from manoeuvring vehicles. However, with vehicles parked on both sides of the building, the likelihood of unacceptable levels of noise and disturbance would increase when compared with earlier schemes.

¹ Refs: 13/03170/PDOFF, 14/00636/PDOFF, 14/00636/DCOND, 14/01369/FUL, 14/01370/FUL, DM/15/3447 and DM/16/0852

10. I will now move on to consider the location of the proposed additional communal bin store, which would be in a corner of the car park between spaces 10 and 11. This would be in close proximity to the bedroom windows of apartment No 11, giving a poor outlook from this part of the flat. The bin store would be accessible on foot to all residents of the development via the walkways adjacent to the building. However, its use would be likely to cause noise, disturbance and associated odours for the occupants of flat No 11. I am not persuaded that the modest difference in levels between the car park and the flat would be sufficient to prevent this harm. Furthermore, notwithstanding the lack of objection from the Council's waste and recycling officer, it seems to me that the layout would make it difficult for contractors and their vehicles to access and empty the bins, particularly if there were cars parked in the adjacent spaces. This could add further to the noise and disturbance experienced by residents throughout the development.
11. I therefore conclude that the proposal would be harmful to the living conditions of future occupants of apartment Nos 8-11, arising from noise, disturbance and odours. The proposal would be contrary to saved Policy B3 of the Local Plan, which seeks to prevent development causing significant harm to the amenity of residents due to noise and disturbance, and contrary to saved Policy H3 of the Local Plan, which requires new residential development to provide a high quality environment for prospective occupiers. These policies are consistent with the Framework's core principle of always seeking a high standard of amenity for all existing and future occupants of land and buildings. I therefore give them significant weight in my overall determination of the appeal.
12. The proposal would also fail to comply with Policy EG3 of the East Grinstead Neighbourhood Plan, which requires new development to provide adequate parking and refuse facilities on site. This policy is consistent with Paragraph 58 of the Framework, which states that planning decisions should aim to ensure that developments will function well. I therefore give it significant weight in my overall assessment of the proposal. Paragraph 58 goes on to advise that buildings should create attractive and comfortable places to live, work and visit. In my view the proposed arrangement of car parking spaces and siting of the bin store would not lead to the development as a whole meeting these objectives.

Ashdown Forest SPA and SAC

13. Ashdown Forest lies within Wealden District to the south of East Grinstead. It has been designated as a Special Protection Area (SPA) and Special Area of Conservation (SAC) and is protected as a European Site of Nature Conservation Importance. The designated areas are subject to statutory protection under the Conservation of Habitats and Species Regulations 2010.
14. Regulation 61(5) imposes a duty on local planning authorities as the competent authority, to consider whether any proposal may have a significant effect on such a protected area either alone, or in combination with other plans and projects. Paragraph 119 of the Framework states that the presumption in favour of sustainable development does not apply where development requiring an Appropriate Assessment under the Birds or Habitats Directive is being determined. Furthermore policies relating to sites protected under the Birds and Habitats Directives are listed in Footnote 9 of Paragraph 14 as ones where development should be restricted.

15. Policy C5 of the Local Plan does not specifically refer to the SPA. Nevertheless, it states that the weight to be attached to nature conservation interests will reflect the relative significance of designations and that special scrutiny will be applied to those sites which are statutorily designated. As Ashdown Forest is an asset of local, national and international importance, it follows that great weight should be given to its nature conservation interests.
16. The site lies within 7km of the SPA and the Council has therefore determined that residential development that leads to a net increase in dwellings will need to contribute to an appropriate level of mitigation. Mitigation would be in the form of contributions to Suitable Alternative Natural Greenspace (SANG) and Strategic Access Management and Monitoring (SAMM). There is no dispute between the parties about the need for this mitigation, and the appellant has indicated a willingness to make the appropriate contribution.
17. It has been suggested that the SAMM contribution would be secured through a planning obligation as it is agreed that the projects would not relate to the provision of infrastructure. The contribution would therefore not be affected by the pooling restrictions in the Community Infrastructure Levy (CIL) Regulations. However, no planning obligation has been submitted with the appeal.
18. It is proposed that the SANG contribution would be secured through the imposition of a negatively worded condition, in the event that the appeal was allowed. Even if the contribution sought was appropriate and adequate, the Planning Practice Guidance² (PPG) advises that negatively worded conditions should only be used in exceptional circumstances and in the case of more complex and strategically important development. An extension to a block of flats to provide four additional units of accommodation does not meet these criteria. On this basis, I consider that the use of such a condition would conflict with the advice of the PPG. There is therefore no acceptable mechanism to secure the necessary mitigation through provision of a SANG.
19. Given the importance of the protection of the SPA, the regulations require me to adopt a precautionary approach. Even if I was satisfied that the mitigation measures agreed by the parties were adequate and justified, there is no mechanism to secure the SANG projects and no planning obligation to secure contributions towards the interim SAMM strategy. The proposal could therefore contribute to a significant cumulative, harmful effect on the nature conservation interests of Ashdown Forest.
20. I therefore conclude that the proposal would be harmful to the wildlife and conservation considerations in relation to the Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation (SAC). The proposal would therefore fail to comply with paragraph 118 of the Framework and Policy CP5 of the Local Plan, which is consistent with the objectives of the Framework.

Planning balance

21. The proposal would provide four additional homes which would make a small, but nevertheless important, contribution to meeting the district's housing needs. It would do so in a highly accessible location close to a range of services and facilities. It would create jobs during the construction period,

² Para 010 Reference ID:21-010020140306

which would benefit the local economy. Future occupants would bring additional expenditure into the area and would make use of local services, also benefiting the local economy. These factors weigh in the schemes favour and demonstrate that the economic dimension of sustainable development would be met.

22. On the other hand, I have found that the proposed layout of the car park and siting of the bin storage area would be harmful to the living conditions of future occupants and would result in a development that would not function well. In so doing it would not only conflict with the Local Plan but also with the Neighbourhood Plan and the objectives of paragraph 58 of the Framework. The social dimension of sustainable development would therefore not be met.
23. In addition, in exercising a precautionary approach to the nature conservation interests of Ashdown Forest, which is a protected area under European legislation, I have found that any mitigation which is required cannot be secured due to the absence of an appropriate mechanism and a planning obligation. The environmental dimension of sustainable development has therefore not been achieved.
24. The lack of a five year supply of housing land is a matter to which I attach significant weight. However, paragraph 14 of the Framework advises that planning permission should not be granted if specific policies in the Framework indicate that it should be restricted. Footnote 9 of paragraph 14 includes areas protected under the Birds and Habitats Directives as an example of where restrictions apply. As this is the appropriate test to apply in this case, the proposal would not be a sustainable development.

Conclusion

25. For the reasons given, I find that there are no material considerations that outweigh the conflict with the development plan and the statutory requirement to protect a site designated for its nature conservation interests. This has led me to conclude that the proposal would not be a sustainable development and therefore the appeal should be dismissed.

Sheila Holden

INSPECTOR