
Appeal Decision

Site visit made on 7 November 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: 29th November 2016

Appeal Ref: APP/C1435/W/16/3155584

58 High Street, Heathfield, East Sussex TN21 8JB

- 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 Michael Bertelsen of Windward Estates Limited against the decision of Wealden District Council.
 - The application Ref WD/2016/0198/F, dated 5 August 2015, was refused by notice dated 27 May 2016.
 - The development proposed is conversion of first floor commercial use to five 1 & 2 bedroom flats.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mr Michael Bertelsen of Windward Estates Limited against the decision of Wealden District Council. This application is the subject of a separate decision.

Preliminary Matter

3. Although not cited as a reason for refusal, the officer's report on the application considers in some detail the potential effects of the development on Ashdown Forest (the Forest), an area which has been designated as a Special Protection Area (SPA) and Special Area of Conservation (SAC). The designated area is protected as a European Site of Nature Conservation Importance and is subject to statutory protection under the Conservation of Habitats and Species Regulations 2010. It is therefore my statutory duty to consider this matter as part of my determination of the appeal proposal.

Main Issues

4. The main issues are:
 - a) The effect of the proposal on the provision of retail space in Heathfield town centre;
 - b) Whether the proposed development would give rise to inconvenience for road users arising from additional demand for on-street parking;
 - c) The effect of the proposal on wildlife and conservation considerations in relation to the Ashdown Forest SPA and SAC.
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Reasons

Provision of retail floorspace

5. Nos 58-62 High Street lies within the main shopping area of Heathfield, one of the district's larger settlements. With the exception of the Co-op supermarket, whose main entrance does not face the main shopping street, the High Street appears to be predominantly characterised by independent retailers operating within small and modest sized units. The retail activities are focussed on the ground floor elements of these buildings. By contrast, the appeal property is currently operating as a retail store on two floors with some additional retail floorspace on a mezzanine floor. It therefore appears to be one of the largest stores in Heathfield which is capable of offering customers a wide range of comparison goods.
6. Policy SPO4 of the Core Strategy¹ seeks to ensure the long term viability of the district's five principal towns as centres for retail and service functions. In order to improve economic prosperity, Policy SPO6 of the Core Strategy supports an increase in retail floorspace in these town centres. However, there are currently no development plan policies that specifically resist the loss of retail space at first floor level. In support of his case, the appellant has therefore drawn my attention to saved Policy SH6 of the Wealden Local Plan², which encourages residential uses above ground floor level within main shopping areas. Nevertheless, the supporting text to this policy makes it clear that the primary purpose for permitting such changes of use is to bring empty and under-used floorspace above shops back into use.
7. In my view, there is some conflict between saved Policy SH6 and the approach advocated by Policies SP04 and SP06. Furthermore, Policy SH6 is not fully consistent with the Framework's approach to promote the vitality of town centres, advising that the needs for retail, leisure and other main town centre uses should be met in full, whilst recognising that residential uses may be encouraged on appropriate sites. I therefore do not agree with the appellant's contention that Policy SH6 should be the primary consideration and give it limited weight in my assessment of the appeal proposal.
8. Since national and local policies seek to focus retail activities in town centres, it seems to me that residential uses should only be considered appropriate when there is conclusive evidence that the existing retail space is no longer viable or needed. In this case, the first floor of the property is neither empty nor under-used. It appears to be performing a vital, functioning part of the store, thereby enabling a wide range of goods to be sold from this convenient and highly accessible location in the heart of the town centre.
9. There was no evidence before me to suggest that the current business has an excessive amount of floorspace that is affecting its viability. Neither was there any suggestion that the upper floor of the building is no longer required for the existing business. I therefore consider that the permanent loss of the first floor retail space, with its ability to provide customers with an extended retail offer, has not been adequately justified. On the contrary, in my view the conversion of the first floor to residential use would be harmful to the current vitality of

¹ Wealden District (Incorporating Part of the South Downs National Park) Core Strategy Local Plan, adopted February 2013

² Wealden Local Plan, adopted December 1998

the retail function of the town centre. I consider this to be the case, even in the absence of new strategic housing allocations in the Heathfield area within the Core Strategy.

10. I note that some additional housing development has been approved to the north-west of the town and other schemes are currently under consideration. The possibility of more housing being built in the Heathfield area is also being considered as part of the emerging Wealden Local Plan, notwithstanding the town's location, surrounded by the High Weald Area of Outstanding Natural Beauty. These developments could generate additional demand for retail provision within the town centre. I appreciate that the emerging plan and possible proposals within it are at an early stage of development and have yet to be examined through the local plan process. They can, therefore, carry only limited weight in my overall considerations. Nevertheless, they add to my concerns about the potentially harmful effects of a permanent loss of retail space in the town centre.
11. For all these reasons, I conclude that the proposal would result in an unacceptable loss of retail space, to the detriment of the long term viability and vitality of Heathfield Town Centre. It would therefore fail to comply with Policies SPO4, SPO6, SPO7 and WCS1 of the Core Strategy, which seek to ensure the long term viability of the district's town centres through improvements to, and increases in, retail provision. The proposal would also conflict with the advice of paragraph 23 of the Framework, which seeks to promote competitive town centres that provide customer choice and a diverse retail offer. However, I am satisfied that there would be no significant conflict with Policy BS5 of the Local Plan. As this policy is primarily concerned with the retention of business rather than retail uses, it is less relevant to this case.

Provision of parking

12. The site currently has a total of seven parking spaces accessed from Streatfield Road that are shared between the existing retail and residential uses. Servicing of the retail store is also undertaken from Cherwell Road. No additional vehicular parking is proposed as part of the appeal scheme, but cycle storage facilities would be provided to serve the proposed flats.
13. The site is conveniently located in the town centre with access to a range of local services on foot or by bike. The area is reasonably well served by public transport. On this basis the additional demand for on-street parking arising from the proposed flats would be likely to be small. In my view, the parking and servicing requirements of the residual retail space would be likely to remain little changed. I am aware that parking regulations in the surrounding residential streets restrict the number of on-street spaces available. The competing needs of shoppers and residents could therefore be difficult to accommodate. However, there is insufficient evidence before me to demonstrate that the proposal would result in significant additional pressure on the limited number of spaces that are available.
14. Consequently, I conclude that the proposal would not result in unacceptable inconvenience for road users in the town centre. In this respect the proposal would comply with saved Policies TR3 and TR16 of the adopted Local Plan, which seek to prevent development creating unacceptable traffic conditions and requiring provision of appropriate on-site parking. It would also comply with

the Framework's approach of only preventing development on transport grounds where the residual cumulative impacts are severe.

Ashdown Forest SPA and SAC

15. Ashdown Forest is protected as a European Site of Nature Conservation Importance and is subject to statutory protection under the Conservation of Habitats and Species Regulations 2010. 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.
16. Policy WCS12 of the Core Strategy advised that any net increase in residential development between 400m and 7km would be required to mitigate its recreational impact on the Forest. However, this approach was challenged and, as a consequence of a Court of Appeal judgment, reference to the 7km zone of influence and the specific mitigation identified in the policy has now been removed. The Council has therefore adopted a precautionary approach and all planning applications within 15km of the SPA and SAC are subject to the Habitats Regulations.
17. The appeal site is located in Sector 2; i.e. between 7-15km from the SPA and SAC. Having regard to the visitor survey, the Council considered that there would be a likelihood that the proposed dwellings would result in additional visits to the Forest. It went on to conclude that the overall visits could be accommodated through an approach that requires contributions to the Strategic Access Management and Monitoring Strategy (SAMMS). As the proposed development is a conversion, this contribution could not be secured through the Community Infrastructure Levy and therefore the Council was intending to impose a condition. The notes that accompanied the suggested condition state that a contribution of £1,170 would be required for each new dwelling. The appellant indicated a willingness to make this payment.
18. However, I have some concerns about this approach in view of the Planning Practice Guidance's (PPG's) advice³ in relation to conditions. Firstly, the PPG advises that positively worded conditions should not be used to secure a payment of money or other consideration. Secondly, the PPG advises that negatively worded conditions requiring a planning obligation, or other agreement to be entered into before certain development can commence, should only be used in exceptional circumstances and in the case of more complex and strategically important development. I am therefore not persuaded that the proposed condition would be an appropriate mechanism for securing the necessary mitigation, in which case a planning obligation would be needed to address the matter.
19. I therefore conclude that, in the absence of a planning obligation, the proposal would be likely to have a significant effect, either alone or in combination with other development, upon the integrity of the Ashdown Forest SPA and SAC. Consequently, it would conflict with amended Policy WCS12 of the Core

³ Para 010 Reference ID:21-010020140306

Strategy and saved Policies EN7 and EN15 of the Local Plan, all of which seek to protect Ashdown Forest.

Planning balance

20. The Council accepts that it is currently unable to demonstrate a five-year supply of deliverable housing sites in the District. Where this is the case, paragraph 49 of the National Planning Policy Framework (the Framework) is clear that relevant policies for the supply of housing should be considered out-of-date. Policies WCS1, WCS2 and WCS4 of the Core Strategy appear to fall into this category. However, as the appeal site lies within the development boundary of Heathfield, there does not seem to be any objection in principle to a residential development.
21. The Government is seeking to significantly boost the supply of housing and requires applications for housing development to be considered in the context of the presumption in favour of sustainable development. In assessing the current scheme, in the context of the acknowledged lack of a five-year housing land supply, I have therefore adopted the approach set out in paragraph 14 of the Framework, which advises that 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.
22. The Framework explains that there are three dimensions to sustainable development: economic social and environmental. In social terms, the provision of five additional units of accommodation would make a small, but nevertheless important, contribution to meeting the district's housing needs. It would do so in a location that is close to a range of services and facilities. The conversion would not adversely affect neighbours and in this respect would comply with the requirements of saved Policy EN27 of the Local Plan. These are benefits to which I attach moderate weight.
23. In economic terms, the proposal would create a limited amount of short-term construction employment for those involved in converting the building. Future occupants would bring additional expenditure into the area and make use of local services. The scheme would therefore generate limited, but primarily short-term, economic benefits. However, it would result in the permanent loss of retail floorspace in the centre of Heathfield, one of the district's five principal towns. This would reduce both customer choice and the diversity of the retail offer within the main shopping area. Even if the existing business continued, or an alternative operator occupied the residual space, it is likely that fewer people would be employed. These changes would be harmful to the local economy and, in my view, would outweigh the limited economic benefits. This overall economic harm is a matter to which I attach significant weight.
24. In environmental terms, it is necessary for me to exercise a precautionary approach to the nature conservation interests of Ashdown Forest, which is a protected area under European Legislation. From the evidence presented, and in the absence of a suitable mechanism to secure the identified mitigation measures, I cannot be certain that the proposal would not adversely affect the integrity of the SPA and SAC. This environmental harm is a matter to which I attach significant weight.

25. The lack of a five year supply of housing land is a matter to which I attach significant weight. However, in this case I consider that the adverse economic effects of the proposal would significantly and demonstrably outweigh the social benefits. In addition 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. The proposal would therefore not be a sustainable development and would fail to comply with Policy WCS14 of the Core Strategy and saved Policy EN1 of the Local Plan.

Conclusion

26. For the reasons given, I find that there are no material considerations that outweigh the conflict with the development plan, the advice of the Framework in relation to the promotion of competitive town centres and the statutory requirement to protect a site designated for its nature conservation interests.
27. This has led me to conclude that the proposal would not be a sustainable development and that the appeal should be dismissed.

Sheila Holden

INSPECTOR