
Appeal Decision

Site visits made on 28 and 30 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: 16th December 2016

Appeal Ref: APP/C1435/W/16/3154568

Stone Mill, Dewlands Hill, Rotherfield, East Sussex TN6 3RU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Simon Milliken against the decision of Wealden District Council.
 - The application Ref WD/2016/0836/FA, dated 7 April 2016, was refused by notice dated 6 July 2016.
 - The application sought planning permission for construction of front porch, alterations to shower room, rear dormer windows and provision of bathroom, shower and utility rooms within garage block without complying with a condition attached to planning permission Ref WD/87/4575/PLB, dated 29 February 1988.
 - The condition in dispute is No 3 which states that: *"The garage accommodation shall be regarded and used as an integral part of the existing dwelling only and shall not be occupied as a separate dwelling unit"*.
 - The reason given for the condition is: *"To enable the District Planning Authority to regulate and control the development of land"*.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the condition is reasonable and necessary to prevent use of the annexe adversely affecting the wildlife and conservation considerations of the Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation (SAC).

Reasons

Background and introduction

3. Stone Mill is a Grade II listed building set in a landscaped garden and surrounded by woods in the High Weald Area of Outstanding Natural Beauty (AONB). Although the site is not far from Crowborough, it is located on a narrow lane in a remote and undeveloped part of the AONB. The existing double garage/annexe is physically separate from the house, but is an attractive building in its own right. Permission was granted in 1968 to create a bedroom above the garage and in 1988 further alterations were approved which included provision of a bathroom/shower room and utility room.
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However, in order to prevent the building being occupied as a separate dwelling, a condition was imposed on that permission which restricted its use to that of ancillary accommodation to the main house. The proposal seeks to remove this condition in order to allow the annexe to be used for holiday lets.

4. On my site visit I saw that the first floor accommodation in the annexe comprises a double bedroom, a single bedroom and a living/dining area which also includes kitchen facilities. The bathroom is downstairs. Although the room sizes are modest, the unit is therefore self-contained and capable of being occupied either as a separate dwelling or a holiday let. There was no specific evidence presented with the appeal to suggest how or when the annexe has been used as ancillary accommodation. However, the appellant indicated that it currently remains unused for considerable periods.
5. The location of Stone Mill means that all visitors, whether family, friends or potential tenants to a holiday let, are going to be highly dependent on a car for getting around in the local area. In my view the occupation of the annexe as a holiday let would generate additional trips by car, over and above those which could be expected from its use as ancillary accommodation to the main dwelling. I consider this would be the case, due to the independent nature of the accommodation, even if holiday lettings did not result in continuous occupation of the building throughout the year.
6. Whilst tourists are likely to visit a variety of different destinations when staying in the area, they are particularly likely to visit Ashdown Forest (the Forest), as it is well known for its intrinsic natural beauty. This would increase visitor pressure on the Forest. Future users of the annexe may also drive across the Forest to other destinations in the vicinity. It is therefore necessary to consider the effects of these additional trips and visits on the integrity of the Forest.

Ashdown Forest

7. The appeal site is approximately 6km from the Forest, which 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 (the Habitats Regulations). 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 National Planning Policy Framework (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.
8. The SPA designation is principally concerned with the protection of two rare and vulnerable bird species, the nightjar and the Dartford warbler. The SPA is affected by recreational and visitor pressure associated with walking and dog walking which can disturb the ground nesting birds. The SAC is protected because it is one of the largest single continuous blocks of lowland heath in south-east England. It is particularly sensitive to the effects of pollution associated with vehicle movements, including nitrogen deposition.

9. The Council's original approach to addressing visitor pressure on the Forest arising from development was set out in Policy WCS12 of the Core Strategy¹. This policy sought contributions towards mitigation measures in the form of Suitable Alternative Natural Greenspace (SANGS) and Strategic Access Management and Monitoring (SAMM) from any net increase in residential development that took place between 400m and 7km of the Forest. However, this approach was challenged and as a consequence of the decision of the Appeal Court², reference to the 7km zone of influence has been removed from the policy. In response to the Court's decision the Council is taking a precautionary approach by undertaking an assessment of the effects of any proposal within 15km of the Forest. It does so using the procedure set out in ODPM Circular 06/2005³. In my view the screening opinion which assesses whether or not an application requires an Environmental Impact Assessment is not a means of discharging the duty set out in the Habitats Regulations.
10. The Council's assessment was set out in the officer's report and indicated that the change of use of the annexe from ancillary accommodation to a self-contained unit would be likely to have a significant effect. It therefore concluded that mitigation measures would be required to deal with both air quality and the impact of additional visitors.
11. The Council is currently adopting a highly precautionary approach to the issue of air quality, pending the outcome of monitoring work that began in 2014. However, this requires several years of study before any conclusions can be reached. At present no mitigation measures have been identified that could reduce the impact from additional traffic on the Forest. However, in response to the appeal proposal, Natural England has indicated that it is highly unlikely that emissions from this development, either alone or in combination with other proposals, would have a significant effect on air quality. I am therefore inclined to accept Natural England's view that in this case there would not be any significant harm to the SAC arising from additional emissions from the appeal site. In coming to this view I have had regard for a recent appeal for a new dwelling in Forest Row⁴ which the Inspector dismissed because of its proximity to the Forest and the lack of mitigation in relation to emissions.
12. However, the Council and Natural England agree that in order for the annexe to be used as holiday accommodation without causing harm to the Forest, mitigation in respect of visitor impact is needed. An appropriate contribution towards SANGS and SAMM should therefore be secured. Where new development is proposed, this contribution would normally be secured through the Community Infrastructure Levy. However, this mechanism is not available in this case as it relates solely to the removal of a condition on an existing planning permission.
13. The Council has suggested that the mitigation measures could be secured by condition. However, in view of the Planning Practice Guidance's (PPG's) advice in relation to conditions, I am not persuaded that this would be an appropriate mechanism to secure the contribution in this case. This is because the PPG advises that positively worded conditions should not be used to secure a

¹ Wealden District (Incorporating part of the South Downs National Park) Core Strategy Local Plan

² Ashdown Forest Economic Development LLP v SSCLG and Wealden District Council and South Downs National Park Authority: C1/2014/1148, July 2015.

³ ODPM Circular 06/2005: Biodiversity and Geological Conservation – Statutory obligations and their impact within the planning system

⁴ APP/C1435/W/15/3138021

payment of money or other consideration. It also 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.

14. I note the appellant's objection to the proposed condition on the basis that removing the existing condition would not result in any increase in the floor area. However, for the reasons set out above, I have found that the mitigation would be needed as a consequence of the change of use of the annexe. There is therefore no agreed mechanism to secure the necessary mitigation. Furthermore, I note that the appellant has sought information about the basis upon which the suggested financial contribution has been calculated. Without this I am unable to satisfy myself that it would be reasonable, even if the amount was not in contention. In these circumstances I must exercise a precautionary approach in view of the potential harm to the SPA.
15. I appreciate that the appellant has indicated a willingness to have a condition restricting any letting to persons without a dog. Whilst this could go some way to addressing the potential harm done by dog walkers, it would not prevent visitors choosing to go for walks on the Forest. In any event, I cannot be certain that such a condition would be practical or enforceable, in which case it would not meet the tests of paragraph 206 of the Framework. It would therefore not be a satisfactory means of mitigating the harm to the SPA that has been identified in this case.
16. I acknowledge that the provision of bicycles for guests and details of alternative places of interest outside the Forest would clearly be helpful, but such measures are insufficient to guarantee that harm to the SPA would be avoided. I recognise that the Core Strategy and the Framework are supportive of rural tourism and that the provision of a holiday let in this area could contribute to a sustainable rural business. However, these benefits are insufficient to set aside the environmental harm to an internationally designated site.
17. Taking all these factors into account, both in relation to the appeal proposal and in combination with other known developments, I am satisfied that the use of the annexe as holiday accommodation would not result in significant harm to the SAC as a result of increased vehicle emissions. However, this finding is outweighed by the harm to the SPA as a consequence of additional visitor pressure on the Forest, for which there is no agreed mechanism for delivering appropriate mitigation measures.
18. I therefore conclude that the condition is reasonable and necessary to prevent the existing annexe being used as a self-contained holiday accommodation. The proposal would conflict with the statutory requirement to protect a site designated for its nature conservation interests and would fail to comply with Policy WCS12 of the Core Strategy, which seeks to protect the integrity of Ashdown Forest. For this reason, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Sheila Holden

INSPECTOR