
Appeal Decision

Site visit made on 10 October 2016

by David Prentis BA BPI MRTPI

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

Decision date: 30 December 2016

Appeal Ref: APP/C1435/W/16/3152250

11 Views Wood Path, Uckfield TN22 1JL

- 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 Jon Wilson and Mrs Larissa Wilson against the decision of Wealden District Council.
 - The application Ref WD/2015/2494/F, dated 6 November 2015, was refused by notice dated 14 January 2016.
 - The development proposed is construction of a 3 bedroom two storey detached dwelling and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for construction of a 3 bedroom two storey detached dwelling and associated works at 11 Views Wood Path, Uckfield TN22 1JL in accordance with the terms of the application, Ref WD/2015/2494/F, dated 6 November 2015, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) Before erection above ground level of any part of the dwelling hereby approved, samples of materials to be used on the external surfaces of the development shall be submitted to and approved in writing by the local planning authority. The approved materials shall be used in the implementation of the development.
 - 3) Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015, (or any Order revoking or re-enacting that Order with or without modification) no windows or openings (other than those expressly authorised by this permission) shall be inserted into the north east elevation of the dwelling hereby permitted.
 - 4) The development hereby permitted shall be carried out in accordance with the following approved plans: UD.15.205/01/B; UD.15.205/02; UD.15.205/03; UD.15.205/04; UD.15.205/05A

Preliminary matters

2. The Council's single reason for refusal related to the impact of the proposal on the Ashdown Forest Special Area of Conservation (SAC) and Site of Special Scientific Interest (SSSI). The Council's concern was that the proposal, in

combination with other plans and projects, would have an adverse effect on the integrity of the SAC and SSSI through intensification of nitrogen deposition as a result of the additional traffic generated.

3. In its statement of case the Council confirmed that it is currently in the process of monitoring the effect of air quality upon the Forest and, in time, this will inform the evidence base. At this stage the Council no longer considers that the proposal would be likely to have a significant effect on the SAC or the SSSI as a result of nitrogen deposition. Accordingly, it no longer contests the appeal.
4. However, the Council considers that the proposal, in combination with other plans and projects, would be likely to have a significant effect on the Ashdown Forest Special Protection Area (SPA) and SAC as a result of additional recreational impacts. The Council initially suggested that any permission should be subject to a condition as follows:

The development shall not be commenced until the local planning authority has approved, in writing, a scheme to secure mitigation of the additional recreational pressures to the Ashdown Forest Special Area of Conservation and Special Protection Area, together with an appropriate mechanism to secure delivery of the mitigation.

5. I was concerned that this approach might not accord with advice in Planning Practice Guidance regarding the use of negatively worded conditions limiting the development that can take place until a planning obligation has been entered into. Accordingly, I allowed a further period for the Council and the appellant to discuss the matter and for any planning obligation (if felt to be necessary) to be submitted.
6. The appellants submitted a Unilateral Undertaking dated 30 November 2016 which provides for contributions to the Council's mitigation measures in relation to the SPA/SAC. The Council provided a written statement of compliance with Regulations 122 and 123 of the Community Infrastructure Levy (CIL) Regulations. Subsequently, the Council and the appellants entered an Agreement dated 15 December 2016 which was in similar terms to the Undertaking. The Council and the Appellant consider that the Agreement supersedes the Undertaking. I have no reason to disagree with the Council's statement of compliance with the CIL Regulations (which applies equally to the Agreement) and I have therefore taken account of the Agreement in my decision.

Main issue

7. The main issue is the effect of the proposal on the Ashdown Forest SPA, SAC and SSSI.

Reasons

8. The site lies within 15km of the Ashdown Forest SPA, SAC and SSSI which forms part of a complex of heaths in southern England that support breeding bird populations of European importance. Policy WCS12 of the Core Strategy Local Plan (CSLP) seeks to prevent a net loss of biodiversity and to ensure that there is a comprehensive network of habitats. Policies EN1 and EN15 of the Wealden Local Plan (WLP) are also relevant. These policies seek to pursue sustainable development and safeguard designated nature conservation sites.

In addition, the appeal falls to be considered in the context of the Habitats Regulations¹.

9. The Council has published the *Ashdown Forest Special Protection Area – Habitats Regulations Assessment Guidance* (the Council's Guidance). The appeal site is within an area identified in the Council's Guidance where there is a likelihood that residential development would result in additional visitor impact on the Forest. Although the appeal is for a single dwelling, which would have a very small impact on its own, the Council considers that in combination with other plans and projects the appeal scheme would be likely to have a significant impact on the Forest.
10. The Council has identified avoidance and mitigation measures through the provision of alternative places for dog walking and other forms of recreational activity. In this case the Council considers that appropriate mitigation could be provided by way of a contribution to maintenance of Suitable Alternative Natural Greenspaces together with a package of Strategic Access, Management and Monitoring Measures. Further details of the measures are set out in the Council's Guidance. The Council's strategic approach to mitigation is set out in its published guidance and I see no reason to doubt that it would be effective.
11. With the appropriate contribution secured through a planning obligation, I consider that the appeal scheme would not be likely to have a significant effect on the SPA, SAC or SSSI either alone or in combination with other plans and projects. It would accord with CSLP Policy WCS12 and with WLP Policies EN1 and EN15.

Other matters

12. The Town Council is concerned that the proposal would be out of keeping with surrounding development and would represent over-development. However, the proposed dwelling would be a natural extension of the line of dwellings on the northern side of Views Wood Path. The height, design, front and rear building lines and front and rear garden depths would all be consistent with the adjoining houses. Consequently, I do not consider that the proposed house would appear out of place.
13. The occupiers of No 23 Views Wood Path consider that the proposed dwelling would cause overshadowing of the garden and would be visually overbearing. On my site visit I noted that the application plans do not show the layout of the house and garden at No 23 as it is now. However, I was able to make my own assessment based on what I saw. The flank elevation of the proposed house would be readily apparent from the back garden of No 23. However, it would be separated from it by an intervening path. As seen from the rear windows of No 23 the flank wall would be at an oblique angle and would not have an unduly enclosing effect. I note that there would be some additional shadowing of part of the garden. However, the garden as a whole would still be an attractive and useable outdoor space. My overall assessment is that the proposal would not result in material harm to the living conditions of the neighbouring occupiers.
14. Consultees also raised concerns about traffic and parking. The proposal relates to a medium density suburban housing estate with off-street parking provided

¹ Conservation of Habitats and Species Regulations

in garage courts. No technical objections have been made on highways or parking grounds. The evidence before me does not indicate that this is a matter which would justify withholding planning permission.

Conclusion

15. I conclude that the proposal would accord with the development plan. I have not identified any considerations which indicate that the appeal should be determined other than in accordance with the development plan. The appeal should therefore be allowed.
16. The Council has suggested conditions which I have considered in the light of Planning Practice Guidance. A condition requiring development to be in accordance with the plans is needed in accordance with that guidance. A condition regarding facing materials is needed in the interests of the character and appearance of the area and a condition restricting flank windows is necessary to prevent overlooking of the neighbouring property. However, a suggested condition requiring obscure glazing to bathroom windows is not necessary as these would not be located in positions which would give rise to harmful overlooking.

David Prentis

Inspector