

## Appeal Decision

Site visit made on 9 January 2017

**by Richard Aston BSc (Hons) DipTP MRTPI**

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

**Decision date: 3<sup>rd</sup> February 2017**

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**Appeal Ref: APP/C1435/W/16/3155048**

**Land at Tollwood Road, Crowborough, East Sussex**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Millwood Design Homes Ltd against the decision of Wealden District Council.
  - The application Ref WD/2015/2272/MAO, dated 9 October 2015, was refused by notice dated 25 January 2016.
  - The development proposed is 29 dwellings, including creation of new access from Kemps Farm Road.
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### Decision

1. The appeal is dismissed.

### Procedural Matter

2. The application was submitted in outline form and the application form makes it clear that all matters are reserved for future consideration apart from 'Access'. Although the 'development layout' plan is not marked as 'indicative' because of this I have dealt with the appeal on the basis that the plan is indicative.

### Main Issue

3. The main issue is the effect of the proposal on biodiversity.

### Reasons

4. The appeal site is a substantial area of private woodland, classified as consisting of predominantly Lowland Mixed Deciduous Woodland ('LMDW'), a Habitat of Principal Importance in England<sup>1</sup>. The site is also subject to Woodland Tree Preservation Order 2015/0018. The proposal would be accessed from Kemps Farm Road, part of an adopted estate road network built in the late 1970's early 1980's and the indicative layout shows three distinctly separate areas of residential development.
5. The site is surrounded by residential development on three sides and lies immediately adjacent to Crowborough Country Park Site of Nature Conservation Interest ('SNCI') which is separated from the appeal site by Tollwood Road. Within the SNCI is a 3.8ha extent of Ancient Semi-Natural Woodland ('ASNW') known as Clay Pit and part of the boundary for this ASNW lies along the northern edge of Tollwood Road. In my view, the appeal site is

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<sup>1</sup> Section 41, Natural Environment and Rural Communities (NERC) Act 2006 and UK Biodiversity Action Plan.

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part of a network of natural habitats and green spaces and as such, biodiversity is an important consideration, regardless of whether or not the site has been designated or specifically identified for its nature conservation interest.

6. It was evident from my visit that the site is divided into two distinct areas which are separated by a bank running south-east from Kemps Farm Road and broadly in line with the access road shown on the submitted 'Development Layout'. Whilst there is some early successional woodland, the majority of the woodland that slopes down towards Tollwood Road is a significant area of LMDW. Whether or not the site used to form part of ancient woodland, it contains in excess of 18 Ancient Woodland Vascular Plants ('AWVP') which to my mind indicates long established woodland of significant ecological interest. Overtime, there has also been a spread of Bluebell and there are areas of Ash, Oak and Holly and Hazel coppice understory.
7. Although I am mindful that the proposal is in outline form and layout is a reserved matter, it is highly likely that any future layout would incorporate development within the areas shown on the plan. The biodiversity value of LMDW lies in its habitat composition and structure, of which the proposals are highly likely to result in a significant area, including a large number of trees, being removed. In particular, the area of LMDW adjacent to Tollwood Road is the area that appears to me to be of the most ecological value and any development in this area would result in the loss of this habitat and would fail to maintain the existing ecological connection with the SNCI.
8. The appellant places significant reliance on the successful translocation of plant species by turf lifting and even then, the appellant states that the proposal would result in the loss of a total of 8 AWVPs<sup>2</sup>. Furthermore, indirect impacts on the woodland, adjoining Ancient Woodland, adjoining LNR and methods for avoidance or mitigation have not been detailed in the submitted ecological assessment. This adds to my concerns that the continuity of the woodland across the whole of the site and potentially further afield would be at risk.
9. Whilst parts of the site have been disturbed from recreational use and the woodland does contain some negative species such as brambles that restrict access, this could be addressed by improved management and is not sufficient justification to replace a significant area of the site with buildings and hardsurfacing. The enhancements proposed within the retained woodland are limited to the creation of woodpiles, woodland buffer strips to be seeded with Wild Daffodil and removal of non-native invasive shrubs. To my mind, this is not the same as a comprehensive management and enhancement scheme and I also note such measures would be focused toward the edges of the site and close to areas of existing residential development, limiting their effectiveness. In my view, they would not outweigh the significant loss of habitat, which would also be subject to increased disturbance from the new residents. The fact that the site is already under pressure, surrounded by residential dwellings and roads, strengthens the need to retain the ecological integrity and biodiversity of the site rather than to allow such a significant encroachment into it.
10. Turning to the effect on protected species, although the proposal is in outline form, it is essential that the presence or otherwise of protected species, and

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<sup>2</sup> Paragraph 5.29 of Ash partnership Ecological Appraisal 2015

the extent to which they may be affected by a proposal, is established before planning permission is granted.

11. The evidence before me demonstrates that there is a reasonable likelihood that bat species, grass snake, slow-worm; common lizards and hazel dormice could be present within the site and within the immediate vicinity. The large areas of relatively undisturbed soil and variety of mature and semi-mature trees on the site are likely to contain a diverse range of plants, fungi and invertebrates which in turn support bird and bat species. A number of the trees are ivy clad or have holes, cavities or broken limbs, making them suitable for roosting bats and the submitted Ash Partnership Ecological Appraisal ('the appraisal') confirms that at least 5 species of bat have been recorded in the area.
12. However, no detailed roost assessment is before me and only two site activity surveys appear to have been carried out, consisting of two location surveys on the periphery of the woodland, including an automated bat recorder within the woodland and I note that no further survey work is recommended. Moreover, the number and duration of the surveys does not appear to be in accordance with best practice guidelines, a point which I note is not disputed by the appellant. In my view, this is inadequate in order to truly establish the presence and extent of bat activity within the site.
13. In relation to other survey work, a dormice tube survey was carried out but this also appears to have been located near the periphery of the site, closest to residential development where disturbance and habitat degradation is highest. Furthermore, having regard to the relevant standing advice, tubes were not placed evenly across the whole site and suitable habitats adjoining the site and were not checked on a sufficiently regular basis.
14. As the appeal site forms part of a wider network of habitats, including arboreal pathways, it is likely that the nut searches undertaken indicate that such species do use the site for such things as foraging as evidenced by the further nut searches in 2015, but the survey work also places undue reliance on nut searches to evidence that dormice are absent from the site<sup>3</sup>.
15. The appraisal also states that it was not possible to access all of the boundaries of the site and therefore hidden Badger runs could also be present. In terms of Reptiles, the appraisal states that four species of reptile are recorded in excess of 1km to the west of the site but I also note that the representation from Crowborough Conservation contends that there are 'extensive records of all four species located 600m north-east of the site' and that there are records of Slow Worm, Common Lizard and Grass Snake less than 20m from the site in the SSCI. When combined with what appears to be a compression of the survey season to 5 days in mid-July, I am not persuaded that the surveys carried out are sufficiently adequate to inform the application and undermines the credibility and reliability of the appraisal.
16. Overall, I am satisfied that the evidence suggest that there is a reasonable likelihood of protected species being present on or near the site but I am not persuaded that the evidence before me demonstrates sufficiently the likely impact on such species and whether they would be an adverse effect. In reaching this view, I am mindful of the need to take a precautionary approach and that the Council's Biodiversity and Arboricultural Officer objects to the

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<sup>3</sup> 5.39 of Ash Partnership Ecological Appraisal 2015.

proposal on such grounds, to which I attach significant weight. Whilst I note the mitigation proposed, in the absence of a proper understanding of the likely effect on protected species, I give the mitigation little weight.

17. For these reasons and in this particular case, the proposal would result in a loss of habitat that would cause significant harm to the biodiversity of the appeal site and I am not satisfied that sufficient information exists for me to satisfactorily conclude that the proposed development would not result in material harm to protected species. The proposal would therefore be contrary to Policies SPO1, SPO13, WCS12, WCS13 and WCS14 of the Wealden District Core Strategy Local Plan 2013 ('CS') and Policy EN12 of the Wealden District Council Local Plan 1998 ('LP'). When read as a whole, these set out a presumption in favour of sustainable development, require protection and enhancement of biodiversity, achievement of a net gain in biodiversity and sustain wildlife in both rural and urban areas and that any harm to the network of green spaces incorporate measures to mitigate the effects of development or alternative and suitable provision is made.
18. The proposal would also conflict with one of the core planning principles set out in paragraph 17 of the Framework, in which planning should contribute to conserving and enhancing the natural environment and paragraph 118 insofar as it would fail to conserve and enhance biodiversity.

### **Other Matters**

19. The Council's second reason for refusal relates to a lack of information to demonstrate that a Sustainable Urban Drainage System could be satisfactorily accommodated and that without it, the effect on biodiversity cannot be fully assessed. Whatever the case may be, given my findings in relation to the main issue I have not considered it necessary to consider this in any further detail, although it adds to my concerns that the effects of the proposal on ecology and protected species have not been adequately assessed.
20. The Council accepts that it is unable to demonstrate a five year supply of deliverable housing sites. Thus paragraph 14 of the Framework applies. The development would make a modest contribution to housing supply, but in this instance, the adverse impacts in terms of environmental harm to biodiversity and potential harm to protected species would significantly and demonstrably outweigh the modest social and economic benefits of the proposal. Accordingly, it would not be the sustainable development for which local and national planning policy indicates a presumption in favour.
21. I note that a subsequent planning application for housing development has been approved by the Council for a scheme of 18 dwellings. However, I have not been provided with the full details and in any event, my decision must be taken on the merits of the case as put before me by the parties. It would also appear that this scheme was for a different layout and the Council were satisfied that in that particular case, there was no harm to biodiversity or protected species. I have found otherwise in the appeal proposal before me and accordingly, it does not alter my views in relation to the main issue.
22. The site is within a zone of influence around the Ashdown Forest Special Protection Area ('SPA') and Special Area of Conservation ('SAC'). If the circumstances leading to a grant of permission had been present, I would have given further consideration to the impact upon these in accordance with the

Habitats Regulations. However, as I am dismissing the appeal on the main issues above I have not found it necessary to consider such matters further.

23. The Council refer to Policy EN13 of the LP and SPO14 of the CS. However, the former relates to ASNW, which the site does not contain and the latter to the use of previously developed land. Consequently, these policies add little to my consideration of the main issue in this appeal.

**Conclusion**

24. For the reasons set out above, the proposal would conflict with the development plan, when read as a whole and the Framework. Material considerations do not indicate that the proposal should be determined other than in accordance with the development plan and having considered all other matters raised, I therefore conclude that the appeal should be dismissed.

*Richard Aston*

INSPECTOR