

Appeal Decision

Site visit made on 30 January, 2017

by C. Jack, BSc (Hons) MA MA(TP) MRTPI

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

Decision date: 1st March, 2017

Appeal Ref: APP/D3830/W/16/3163068

Garage Block, Street Lane, Ardingly, RH17 6UA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr and Mrs Mark and Judith White against Mid Sussex District Council.
 - The application Ref DM/16/2317 is dated 26 May, 2016.
 - The development proposed is the conversion and alteration of existing store building to create a detached 2-bedroomed house.
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Decision

1. The appeal is dismissed and planning permission for the conversion and alteration of existing store building to create a detached 2-bedroomed house is refused.

Application for costs

2. An application for costs was made by Mr and Mrs M White against Mid Sussex District Council. This application will be the subject of a separate Decision.

Preliminary Matters

3. The appeal results from the Council's failure to determine the planning application within the prescribed period. There is no formal decision on the application, as jurisdiction over that was taken away when the appeal was lodged. However, I note the assessment and conclusions submitted in the Council's statement and I have treated those as the basis of the decision the Council would have made, had it been empowered to do so. The Council is principally concerned by the effect that the proposed development would have on ancient woodland, the character and appearance of the area, including the High Weald Area of Outstanding Natural Beauty (AONB), living conditions for future occupants, bats, and the Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation (SAC). I have drawn on the Council's concerns, together with other evidence before me, to inform the main issues in this appeal.
 4. The Council accepts that it is currently unable to demonstrate a five-year supply of deliverable sites for housing. Policies of the Mid Sussex Local Plan 2004 (MSLP) relevant to the supply of housing are therefore not up-to-date in the context of 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 any adverse impacts of so doing would significantly and demonstrably outweigh the benefits, when
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assessed against the policies in the Framework as a whole; or specific policies in the Framework indicate development should be restricted.

5. In reaching my decision I have had regard to the saved policies of the MSLP insofar as they are consistent with the Framework, and I have attributed them weight as set out in my conclusions on the main issues. I am aware that the emerging Mid Sussex District Plan 2014-2031 (MSDP) is currently at examination. However, the extent to which there are unresolved objections to relevant policies is not clear. I have therefore afforded the emerging policies limited weight in my consideration of this appeal, having regard to Paragraph 216 of the Framework.
6. The Neighbourhood Planning Written Ministerial Statement (WMS) of 12 December 2016 requires that, where there are relevant policies for the supply of housing in a recently made neighbourhood plan, these policies should not be considered out-of-date unless there is a significant lack of housing supply. The Council has confirmed that it cannot currently demonstrate a three-year supply of deliverable housing sites and therefore the specific circumstances set out in the WMS do not apply. Relevant policies for the supply of housing in the Ardingly Neighbourhood Plan 2013 – 2031 (ANP) are therefore also not up-to-date in the context of Paragraph 49, and I have attributed them weight as set out in my conclusions on the main issues.
7. The Council has considered the principle of residential development. By virtue of the proposal's location in the countryside it would be contrary to the housing supply elements of saved Policy C1 of the MSLP and Policies ARD 2 and ARD 3 of the made ANP, which among other things set out criteria for development outside built up areas and for windfall development. The Council's position is that limited weight can be afforded to these policies as they cannot currently be considered up-to-date, and it therefore raises no significant issue with the principle of the proposal.
8. The appellant has provided recent correspondence from Natural England confirming that the yard and parking area associated with the existing garage building, the strip of land between the garage building and the former Oak Inn public house, and an area of garden associated with Little Hollow, do not constitute ancient woodland and are to be removed from the ancient woodland inventory, following a full report. The Council does not disagree with Natural England's findings, but considers that the south-eastern corner of the site is ancient woodland, and points out that the south-western and north-western boundaries of the site would be positioned approximately 1 to 3 metres from the amended ancient woodland boundary.

Main Issues

9. The main issues are the effect of the proposed development on:
 - i) Habitats and protected species, with particular regard to the Ashdown Forest SPA and SAC and to bats;
 - ii) Ancient woodland;
 - iii) The character and appearance of the area, with particular regard to the High Weald AONB; and
 - iv) The living conditions of future occupants.

Reasons

10. The site consists of a triple bay garage block, also known as Oak Garages, and the associated parking and yard area to the side. The site lies a very short distance outside the built up area of the village, within the Ardingly Conservation Area and the High Weald AONB. There is a wide vehicular access onto The Street and the site is surrounded on three sides by woodland known as Butcher's Shaw. To the rear and the western side of the site the woodland is identified by Natural England as ancient woodland.
11. I note that the lawful use of the site has not been formally established. The Council considers on the one hand that the site is redundant and vacant, while the case officer's report notes a limited degree of storage and the Council's Statement of Case also acknowledges that the site has been used for storage purposes but identifies a current absence of activity. I saw during my site visit that it was being used for storing various building-related items within and around the building and in the yard area, but the scale of this was not extensive and the use appeared low-key in nature. The building has a rundown appearance and the yard, which is surfaced with rubble, is informal and unkempt in appearance. Historic photographs and maps show that until the mid-20th Century the site was occupied by cottages, the foundations of which are partially exposed on and near the site.
12. It is proposed to convert the garage building into a two-bedroom dwelling with associated parking, turning and garden space to the side. The access would be reduced to provide a single width access to the house, and the hard-standing area in front of the building would be replaced by lawn.

Habitats and protected species

13. The site lies within 7km of the Ashdown Forest SPA and SAC. It is established that any development resulting in a net increase in the number of dwellings within 7km of the SPA, without avoidance measures, would be likely to have a significant effect on the SPA within the meaning of the Conservation of Habitats and Species Regulations 2010 (the Habitats Regulations). 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 and Habitats Directives is being determined.
14. Saved Policy C5 of the MSLP does not refer to the SPA, but does state that the weight to be attached to nature conservation interests will reflect the relative significance of designations. The Ashdown Forest SPA is of local, national and European significance and it follows that great weight should be given to its nature conservation interests.
15. The Council has in place a Strategic Access Management and Monitoring (SAMM) Interim Mitigation Strategy 2013, and a Suitable Alternative Natural Greenspace (SANG) Strategy with associated SANG Tariff 2016. It is suggested that the identified SAMM contribution would be secured by way of a S106 planning obligation, and that bespoke SANG provision or a contribution to a SANG operated by the Council would be secured by the imposition of a negatively worded condition, in the event of the appeal being allowed. It is clear that both SAMM and SANG are required to satisfactorily mitigate the effects of the development on the SPA.

16. A completed Unilateral Undertaking has been provided in relation to the appeal, which makes provision for a financial contribution in respect of the proposed net additional dwellings, in accordance with the Interim SAMM Strategy.
17. However, the Planning Practice Guidance (PPG) sets out that a negatively-worded condition should be used only in exceptional circumstances and in the case of more complex and strategically important development. The provision of one dwelling does not meet these requirements. On this basis, I consider that the use of such a condition would not be reasonable and would conflict with the PPG. Therefore, there is no mechanism before me for securing the necessary provision of SANG.
18. Given the importance of the protection of the SPA, the regulations require me to take a precautionary approach. Even if the SANG provisions sought were appropriate and adequate, there is no mechanism by which to secure such mitigation. I therefore cannot be satisfied that there would be no likely significant effects arising from the development and therefore that it would not adversely affect the overall integrity of the SPA.
19. I note that the Appellant's ecology survey found no live bats or signs of recent occupation, and few obvious bat entry points, concluding that the building is of low potential for roosting bats. However, having regard to Natural England's standing advice¹, I note that only one bat inspection was apparently undertaken, and on a day in January, outside bats' active season of May to September. Taken with the proximity of ancient woodland, which may indicate a reasonable likelihood of bat activity on or near the site, I consider that insufficient evidence has been provided to ascertain the likely effect on bats, all species of which are protected. I therefore consider a precautionary approach is appropriate, having regard to the Habitats Regulations, and that the proposal would present a potential risk to protected species.
20. I therefore conclude that the proposal would harm habitats and protected species, with particular regard to the Ashdown Forest SPA and SAC and to bats. It would therefore conflict with Paragraph 118 of the Framework and saved Policy C5 of the MSLP, which is consistent with the objectives of the Framework and I have therefore afforded it significant weight.

Ancient Woodland

21. The Council and appellant now agree that the proposal would not result in the loss of ancient woodland, with the exception of the south-eastern corner which is still in dispute. However, it seems to me that the south-eastern part of the site would fall within the two areas that Natural England is to remove from the inventory. Either way, no trees stand in this corner of the site. Notwithstanding, the development would be situated adjacent to the ancient woodland on two sides, and so a 15m semi-natural buffer zone between the site and the ancient woodland could not be achieved. Such a buffer is one of several measures listed in Natural England's standing advice² that could be used to mitigate development affecting ancient woodland, depending on the development. It is not set out as an essential requirement in all cases.
22. The proposal would include fencing around the site, which would provide a barrier, where there currently is none, between the site and the woodland

¹ Bats: surveys and mitigation for development projects 28 March, 2015;

² Ancient woodland and veteran trees: protecting them from development 29 October, 2015

immediately beyond. When taken against the existing use, the proposed use would be no more likely to encroach upon the adjacent woodland, and a physical boundary demarcation would discourage this. Furthermore, it is not a given that future residents would undertake activities such as fly-tipping garden or other waste, or that domestic activity associated with one small dwelling would otherwise encroach into the wood.

23. The site is only partially under the canopy of nearby trees. The closest trees would be adjacent to the east elevation of the house, where there would be no windows, and the trees would principally overhang the roof. As a result, any future pressure to trim or remove trees is unlikely to be significant.
24. There is no significant evidence before me that the proposal would materially worsen the direct or indirect effect on the ancient woodland, compared to the existing, albeit low-key, use of the site. Indeed there may be some improvement, given that the house would be fenced-off from the wood. A buffer zone would not be necessary, taking account of the existing use and relationship of the site with the woodland, and the modest scale and nature of the development proposed. Accordingly, I am satisfied that the proposal would not be likely to give rise to any loss or deterioration of ancient woodland.
25. I therefore conclude that the development would not harm ancient woodland. It would therefore comply with saved Policy C5 of the MSLP, which among other things requires the design and layout of development to minimise nature conservation impacts, including on ancient woodland, and saved Policy C6 of the MSLP, which generally seeks to resist development that would result in the loss of woodlands, hedgerows and trees that are important in the landscape, as natural habitats, or historically. It would also comply with Policy ARD 8 of the made ANP, which generally seeks to support proposals that would protect and enhance natural features and provide favourable conditions for biodiversity. These policies are consistent with Paragraph 118 of the Framework and I therefore give them significant weight.

Character and Appearance

26. The site is screened on three sides by woodland and faces existing residential development on the opposite side of The Street. The residential use would be provided within a yard area and the building, which would retain substantially the same form. As a result, the development would not be intrusive in the AONB. There would be a more domestic appearance, including from the introduction of domestic grade doors and windows and possible associated paraphernalia in the garden area. However, the proximity to existing residential development and the significant screening provided by the woodland, mean that this would not have any significant adverse effect on the general character of the area. The condition of the building would be improved, and sympathetic materials would be used, thereby enhancing its appearance in the street scene.
27. Paragraph 115 of the Framework sets out that great weight should be given to conserving the landscape and scenic beauty of the AONB, and I note that ancient woodland is a key landscape component of the High Weald. However, I have found that the proposal would not have a significant effect on the woodland and, due to the nature and scale of the proposal; I consider that it would also not have a significant effect on the landscape and scenic beauty of the wider AONB.

28. I therefore conclude that the proposed development would not harm the character and appearance of the area, with particular regard to the High Weald AONB. It would therefore be consistent with Paragraph 115 of the Framework and Policy ARD 2 of the made ANP, which among other things requires that it is demonstrated how proposals outside the built up area boundary would conserve the AONB. Policy ARD 2 is consistent with the Framework and I have given it significant weight.
29. Saved Policy C4 of the MSLP principally gives priority to conserving and enhancing the natural beauty of the AONB and is therefore generally consistent with Paragraph 115 of the Framework, and I note Footnote 9 of Paragraph 14 includes policies relating to the AONB. I have found that the siting, scale, design, external materials and screening of the new house would enhance, and not detract from, the visual quality and essential characteristics of the area. In these respects I find the proposal to be consistent with the aim of Policy C4.
30. However, Policy C4 also requires development in the AONB to be reasonably necessary for a use that has to be located in the countryside, essential for local social or economic needs, or to be in the national interest. No significant evidence has been put to me that the proposal meets any of these criteria, and I see no reason to conclude otherwise than that the proposal would conflict with this element of the policy.
31. The Council accepts the proposal would not harm the Ardingly Conservation Area, a designated heritage asset. On the basis of the scale and nature of the proposal, and the improvement that would arise to the appearance of the building, I see no reason to disagree. I therefore further conclude that the character and the appearance of the Ardingly Conservation Area would be preserved, consistent with the expectations of the Framework.

Living Conditions

32. The internal room sizes of the proposed bedrooms would not accord with the Nationally Described Space Standards (NDSS). While I note that the emerging Policy DP25 of the MSDP seeks compliance with the NDSS, this policy is not yet in force. The Written Ministerial Statement of 25 March, 2015 makes it clear that such standards can only be applied where there is a relevant current development plan policy. In this case there is no current policy and consequently this is not a matter which carries any significant weight against the proposal.
33. Due to the proximity and orientation of the house in relation to the woodland, direct sunlight would be very substantially limited to the rear of the property. However, there is no significant evidence before me that the level of natural daylight received would be harmfully low so as to result in an unacceptable quality of life for future occupiers. Furthermore, the main living room would have a second window in the front elevation, which would not be significantly affected by trees in this respect.
34. I conclude that the development would not be significantly detrimental to the living conditions of future occupiers. It would therefore be generally consistent with Paragraph 17 of the Framework, which sets out the core planning principles, including seeking a good standard of amenity for all existing and future occupants of land and buildings. The Council has not identified any relevant development plan policies in this regard.

Planning balance

35. The proposal would provide one home, which would make a small, but nevertheless important, contribution towards meeting housing needs in the district. The proposal would also bring modest benefits to the local economy during the construction and occupation of the house. The house would be situated in an accessible location, within a short walk of the various facilities and services available in the village, where it would contribute in a modest way to enhancing and maintaining the rural community. These factors weigh in favour of the appeal.
36. The house would also be provided without harm to the landscape and scenic beauty of the AONB, matters to which I have attributed great weight. While I have identified a partial conflict with Policy C4 of the MSLP, the proposal would accord with the central aims of that policy, and with Paragraph 115 of the Framework. Criteria a, b and c of Policy C4, with which the proposal conflicts, are only partially consistent with the Framework, particularly in respect of a development that would not be an isolated new home within the context of Paragraph 55 of the Framework. I have therefore given limited weight to criteria a, b and c in this case. Accordingly, I consider that the benefits of the proposal would outweigh the partial conflict with Policy C4. The proposal would also not harm the living conditions of future occupiers.
37. A significant shortfall in housing land supply is a matter to which I attach significant weight. However, in exercising a precautionary approach, I have identified harms in relation to protected species and to the designated SPA which weigh against the appeal. Footnote 9 of Paragraph 14 of the Framework advises that policies related to sites protected under the Birds and Habitats Directives are included as specific policies that indicate that development should be restricted. In this respect, Paragraph 119 of the Framework applies in relation to the Ashdown Forest SPA, and the presumption in favour of sustainable development therefore does not apply in this case. The harms I have identified in relation to the SPA are therefore not outweighed by other material considerations.

Other Matters

38. I note that the nearby Oak Inn is listed Grade II. Preserving the setting of the listed building is a matter of considerable importance and weight having regard to Section 66(1) of the planning (Listed Buildings and Conservation Areas) Act. While the development would result in a measure of perceptible change to the setting of the former inn, and the context in which it is experienced, this would not be of a magnitude to constitute harm given the degree of separation and the wooded screening between the site and the listed building. Hence the effect of the proposed development would be neutral in this regard and the setting of the listed building would be preserved.

Conclusion

39. For the reasons given above, and having regard to all matters raised, I conclude that the appeal should be dismissed and planning permission refused.

Catherine Jack

INSPECTOR