
Appeal Decision

Site visit made on 27 February 2017

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: 22 March 2017

Appeal Ref: APP/C1435/W/16/3164381

Clanfield Systems Ltd, Beaconsfield Road, Chelwood Gate RH17 7JU

- 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 Brian Saxton against the decision of Wealden District Council.
 - The application Ref WD/2016/1203/F, dated 12 May 2016, was refused by notice dated 11 August 2016.
 - The development proposed is to demolish building and rebuild as a 1½ storey x 3 bedroom house and home office.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effects of the proposal on the:
 - a) wildlife and conservation interests of the Ashdown Forest Special Protection Area (SPA), Special Area of Conservation (SAC) and Site of Special Scientific Interest (SSSI);
 - b) living conditions of occupiers of adjoining properties in relation to privacy.

Reasons

3. The appeal site is almost fully occupied by a two storey building with a pitched roof. Its lawful use is Class B1 and it is currently being used as workrooms, storage and an office. It is within Chelwood Gate, a settlement without a defined boundary that lies within the High Weald Area of Outstanding Natural Beauty (AONB). Notwithstanding the fact that it is enclosed on three sides by residential development, for planning purposes it is within the countryside. The proposal seeks to replace the commercial building with a detached dwelling.

Ashdown Forest

4. The appeal site is approximately 220m from Ashdown 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
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- presumption in favour of sustainable development does not apply where development requiring an Appropriate Assessment under the Birds or Habitats Directive is being determined.
5. 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, especially that 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.
 6. The appellant has undertaken an assessment¹ of the appeal proposal in accordance with the Habitats Regulations. This concluded that there would be a net reduction in air pollution arising from the development, no significant changes in hydraulic conditions and a negligible increase in visitor pressure on Ashdown Forest. The report accepted that the damage that could be caused by domestic pets could be more difficult to address. Nevertheless, it recommended that a combination of measures would ensure that the development would not cause significant harm to the SPA. These included implementing good working practices during the construction phase, a proportionate contribution to the Council's Strategic Access Management and Monitoring (SAMM) programme, an information pack and code of conduct for future residents (primarily dealing with dog walking practice) and a S106 agreement prohibiting the keeping of domestic cats.
 7. I appreciate that these proposed measures could go some way to address the potential harm to Ashdown Forest, if they could be implemented successfully throughout the lifetime of the development. However, a condition that required the provision of information and a S106 agreement that restricted the keeping of domestic cats would be inappropriate mechanisms to secure such measures in perpetuity, as they would be impractical to enforce. They would therefore not meet the relevant tests set out in Paragraphs 203-206 of the Framework. The offer of a contribution to the SAMM programme is not appropriate for reasons I will explain later in this decision.
 8. In any event, those measures and restrictions could not prevent future residents undertaking recreational activities within the protected area either on foot or by car. In my view this would be highly likely given the site's proximity to Ashdown Forest, regardless of whether or not future occupants of the proposed dwelling had a dog. I therefore cannot be certain that the proposal would not result in significant harm to the protected area.
 9. The Habitats Regulation Assessment undertaken for the Core Strategy² concluded that it is not possible to mitigate disturbance impacts associated with residential development on sites that are close to the protected area. It therefore included a recommendation that developments resulting in a net increase in one dwelling or more should not be permitted within 400m of the SPA/SAC. This exclusion zone was based on research undertaken by Natural England and the approach was tested and found to be sound through the examination of the Core Strategy.

¹ Middlemarch Environmental: Habitats Regulations Assessment: Stage 1 Screening Report

² Wealden District (Incorporating Part of the South Downs National Park) Core Strategy Local Plan

10. Policy WCS12 of the Wealden Core Strategy seeks to protect Ashdown Forest from additional visitor pressure firstly, through the creation of an exclusion zone of 400m where it is proposed that there would be no net increase in the number of dwellings. The Policy does not set out any tests for exceptional circumstances, or permit contributions towards mitigation measures, such as the SAMM, as a means of making development within this zone acceptable. In an area between 400m and 7km of the SPA/SAC, Policy WCS12 originally anticipated that development would be permitted, subject to contributing to mitigation measures. Although the extent of this outer zone was challenged and that element of the policy quashed by the Court of Appeal in 2015³, the 400m exclusion zone was not challenged and continues to be part of Policy WCS12.
11. As the exclusion zone remains part of the policy it would not, in my view, have been necessary for the Council to consult Natural England on the appeal proposal since there is a clear and well-established presumption against any new residential development within that zone. The whole purpose of the 400m exclusion zone is to reduce the possibility of significant harm arising from the cumulative effects of individual, small scale developments within an area where mitigation would be ineffective. In these circumstances, whilst the number of visits to Ashdown Forest which the appeal proposal would be likely to generate would be only small, I cannot exclude the possibility that it would, if considered in combination with other similar developments, have a significant effect on the integrity of the SPA/SAC.
12. I accept that the proposal would result in a net reduction in the number of vehicular movements associated with the site. There would therefore be no harmful effects arising from additional pollution that would adversely affect the SAC. Nevertheless, as any reduction in the number of traffic movements would be small, this change would not amount to a tangible benefit arising from the scheme.
13. Reference to permitted development rights is noted. However, Regulation 73(1) imposes controls to ensure that permitted development does not breach the Conservation of Habitats and Species Regulations 2010. Development could not begin until the developer had received written notification of the approval of the local planning authority under Regulation 75. The local planning authority may approve development only after having ascertained that it will not adversely affect the integrity of the protected area. In view of the exclusion zone around the SPA, the local planning authority would be unable to do so in this case. This effectively removes the ability to exercise the permitted development right to convert the commercial building on the appeal site into a dwelling.
14. Taking all these factors into account, I conclude that the proposal would be harmful to the wildlife and conservation interests of the Ashdown Forest SPA/SAC and SSSI. It would therefore be contrary to Policy WCS12 of the Core Strategy and saved Policies EN15 and EN7 of the Local Plan. These policies, amongst other things, seek to protect sites that are designated for their nature conservation interests and conserve the landscape and habitats of Ashdown Forest.

³ Ashdown Forest Economic Development LLP v SSCLG and Wealden District Council and South Downs National Park Authority: C1/2014/1148, July 2015.

Living conditions

15. The existing building has first floor windows that overlook the adjacent property to the south. There would be no high level windows in the flank elevation of the proposed dwelling, but there would be some oblique overlooking of the adjacent garden from the first floor window in its rear elevation. The proposed deck could be screened from these neighbours with an appropriate boundary treatment to prevent unacceptable loss of privacy. This could have been secured by condition, if the development had been acceptable in all other respects.
16. There would also be some oblique overlooking of the garden of Old Orchard, the property to the north of the site. However, oblique views of this nature are not unusual in the context of development within a settlement such as Chelwood Gate. I am therefore not persuaded that this matter would result in sufficient harm to cause the scheme to fail.
17. Of greater concern would be the direct overlooking towards the rear of Leba, the house immediately to the west of the site. At present several conifer trees provide screening along this boundary. However, the narrow gap between the building and the rear boundary of the site and the height and depth of the existing vegetation did not enable me to fully assess the effects of the proposal on this adjacent property. The occupants of Leba wished to see the existing trees retained in order to protect their privacy. However, they did not object to the proposal as it would represent a visual improvement over the appearance of the existing utilitarian, commercial building.
18. I note that the Council considered that it might have been possible to consider amendments to the windows or planning conditions to overcome the concerns of various neighbours. However, whilst this might have been appropriate in relation to a boundary treatment, no suggestions for other conditions, such as means of protecting the trees, were put before me in the context of this appeal. In these circumstances it is necessary for me to exercise a precautionary approach to prevent unacceptable harm to adjoining occupiers.
19. I therefore conclude that the proposal would be harmful to the living conditions of the occupants of Leba, arising from an unacceptable loss of privacy. This would be contrary to saved Policy EN27 of the Wealden Local Plan which, amongst other things, seeks to protect the privacy and amenity of adjoining occupiers. The Council's decision notice also referred to policies GD2 and HG10 in relation to this matter. As the scheme also lies outside any defined development boundary, it would conflict with Policy GD2. However, I do not consider Policy HG10 is directly relevant to this case as it seeks to protect the amenity of neighbours where development is being proposed within development boundaries.

Conclusions

20. 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. However, in this case, even in the absence of a five year supply of deliverable housing sites, the presumption does not apply. This is because the site lies within an exclusion zone which has been identified in order to prevent harm to species and habitats protected by The Habitats Regulations. The location of the site within that zone

and the need to exercise a precautionary approach are sufficient reasons for the appeal to fail, as recommended by paragraph 118 of the Framework. In addition I have found that the proposal would result in harm to the living conditions of adjoining occupiers.

21. The proposal would therefore not be a sustainable development. It would conflict with the development plan, including Policy WCS14 of the Core Strategy and Policy EN1 of the Local Plan, as well as the requirements of the Framework. For this reason, and having regard to all other relevant matters raised, I conclude that the appeal should be dismissed.

Sheila Holden

INSPECTOR