
Appeal Decision

Site visit made on 28 February 2017

by L Gibbons BA (Hons) MRTPI

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

Decision date: 31 March 2017

Appeal Ref: APP/C1435/W/16/3163299

Forest Springs Fish Farm, Cat Street, Upper Hartfield, Hartfield, East Sussex TN7 4DU

- 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 & Mrs R J King against the decision of Wealden District Council.
 - The application Ref WD/2016/1351/F, dated 26 May 2016, was refused by notice dated 2 September 2016.
 - The development proposed is part conversion of barn into dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. For the sake of clarity I have used the date of the planning application as set out on the appeal form.

Background and Main Issues

3. The appeal site has a planning history where outline planning permission was granted for an agricultural dwelling which is occupied by the appellants. The history also includes an appeal in 2012 which was dismissed¹. I have considered the previous Inspector's findings and recognise the need for consistency. The proposal in that case was for a new build agricultural workers dwelling. The main issues related to the justification for the proposed dwelling and the effect on the character and appearance of the area. I acknowledge that the scheme before me seeks to overcome the concerns of the previous Inspector and the Council. This includes changing the nature of development to a conversion of one part of a large barn which is located within the appeal site.
4. The main issues are:
 - i) Whether the proposal for a new dwelling is justified having regard to local and national planning policy on the location and provision of new housing within the countryside; and,
 - ii) The effect of the proposed development on the Ashdown Forest Special Area of Conservation (SAC).

¹ APP/C1435/A/12/2170504

Reasons

Principle of residential development

5. The appeal site lies outside of the defined development boundaries as identified in the Council's Wealden Local Plan (LP) 1998 and retained in the Wealden Core Strategy Local Plan (CS) 2013. It is in the countryside for development plan purposes. The site is also within the High Weald Area of Outstanding Natural Beauty (AONB). The site is at the end of a single lane track. It is some distance from other residential properties which are along Cat Street and at the western end of the track. The appeal scheme would involve the conversion of part of a barn with the addition of a new floor for first floor accommodation.
6. Paragraph 55 of the National Planning Policy Framework (the Framework) indicates that local planning authorities should avoid isolated new homes in the countryside unless there are special circumstances. These circumstances set out in bullets (1) and (3) are the essential need for a rural worker to live permanently at or near their place of work in the countryside; or where the development would re-use redundant or disused buildings and lead to an enhancement of the immediate setting. I deal with each of these in turn.
7. In relation to the first bullet of paragraph 55 of the Framework, saved Policy DC2 of the LP permits new permanent dwellings for those employed in agriculture where it can be demonstrated that a number of criteria are met. The policy was written some time before the publication of the Framework. However, I consider the criteria are consistent with the requirements of the Framework in relation to essential need and permanent dwellings. I therefore give the policy significant weight.
8. I acknowledge that the existing dwelling on the site was granted planning permission in relation to on site supervision. Notwithstanding, it is still necessary to establish whether there is an essential need for a second dwelling on the site, and how this relates to the way the business operates some years after the original dwelling was established.
9. I accept that the appellants wish to retire and that also includes health reasons, and I acknowledge that this has been the case for some time. I note that it is intended that the applicants' son would manage the fish farm. However, I have not been provided with any details as to what the appellants' level of involvement is currently in the business, and how the son is currently active within the business or indeed whether there are any other employees.
10. In terms of the types of activity which might require on site attendance, I note that the previous Inspector indicated that the need for security contributed to the need for a dwelling on the site. Nevertheless, I have no evidence before me relating to how the business is managed at present, what the day to day processes are and what security requirements are at present, which would demonstrate the requirement for someone to be available on a permanent basis.
11. The Framework at paragraph 28 indicates that plans should support economic growth in rural areas. I accept that the business has been in existence for a number of years. However, I have no detail before me in relation to the financial aspects of the business, and whether it is financially sound. This is required in order to meet the requirements of bullet (3) of Policy DC2 of the LP

and provide an indication of the contribution of the business to the rural economy.

12. I have considered whether the proposal would satisfy the third bullet of paragraph 55 of the Framework. The appellants refer to the part of the barn proposed for conversion as being redundant. On my site visit, I noted that some of the rooms were not fully in use although others appeared to be fulfilling a role in terms of the management of and equipment used in the business. I am not persuaded on the evidence before me that the part of the barn that is to be converted is completely redundant, and that the remainder of the barn can satisfactorily accommodate the full needs of the business. Therefore I consider that the third bullet of paragraph 55 has not been demonstrated to be applicable in this case.
13. I accept that since the purchase of the site, the appellants have made improvements to the site including a significant amount of tree planting and that they work to maintain and improve natural habitats within the site. I also noted that the track to the house and the public right of way to the south appeared to be well maintained, and I acknowledge that this is appreciated by a number of local residents. However, these are not sufficient reasons to justify the proposal. The building is located on land that means that it would not benefit from permitted development rights in respect of conversion of agricultural buildings to residential development.
14. I am not persuaded on the basis of the evidence before me that there is an essential need for a permanent additional dwelling on the site, and accordingly I conclude that it has not been demonstrated that the proposal for a new dwelling in the countryside is justified. It would be in conflict with Policy DC2 of the LP and also Policy DC17 of the LP which indicates that housing development outside of the development boundaries will not be allowed unless it conforms with other policies in the plan. It would be contrary to paragraph 55 of the Framework.

Ashdown Forest

15. The Ashdown Forest is a European Site designated for the habitats and species present. It is a Special Protection Area (SPA) and an SAC. The area is designated as an SPA in relation to rare birds and is a national Site of Scientific Interest. The SAC designation is due to the presence of North Atlantic Wet Heaths and European Dry Heaths. The conservation objective of the SAC is to ensure that the integrity of the site is maintained or restored as appropriate. The main concern with effects on the SAC relates to nitrogen deposits from vehicle exhausts. Amongst other things, nitrogen can increase both acid deposits and nutrients which negatively affect both types of heath in the SAC.
16. The appeal site lies within 0.5km of the SAC. Policy WCS12 of CS seeks to prevent a net loss of biodiversity, and it refers to the need for the Council to undertake further investigation of the impacts of nitrogen deposition on the SAC 'so that its effects on development in the longer term can be more fully understood and mitigated if appropriate'. The explanatory text refers to the approach of seeking to avoid significant harm to biodiversity and geological interests before considering adequate mitigation measures or lastly seeking appropriate compensation measures.

17. The appellants refer to the potential benefits of nitrogen although there is an acknowledgement that nitrogen oxide can be deposited and cause harm before being dispersed. I note the experience of the appellants' representative in relation to air pollution. Several sources of nitrogen oxide are referred to, including the burning of wood or vegetation, boiler chimneys and aircraft. Through traffic and visitors to the area making a significant contribution to air pollution within the Forest are also referred to. I also note that a number of residents raise concerns about the evidence relating to the local contribution to air pollution within the Forest. The Council refer to an appeal decision² which was for a new dwelling. I accept that this was for an infill dwelling, and as such the circumstances of that case differ slightly.
18. The appellants refer to the need for the son to travel across the Ashdown Forest to get to and from the site to work, and that living on-site would remove the need to travel. However, no information is provided to confirm that the scheme would eliminate all journeys or how other journeys for the family would be reduced.
19. In any event, even taking account of the appellants' concerns in relation to the contribution towards air pollution from other sources, the Habitats Regulations 2010 indicate that a precautionary approach should be taken. This assessment is different to the approach needed to satisfy regulations relating to Environmental Impact Assessment. The Council consider that the proposal alone and in combination with other plans and projects would generate additional traffic with adverse effects on the plant species in the SAC. The Council are currently undertaking a programme of monitoring of the effects of atmospheric pollutants on the protected species of the SAC. The results of this will not be known for some time, and there is currently no mitigation for the impacts of air pollution. Consequently, I cannot be satisfied that a scheme would be put in place which would provide adequate measures to avoid or mitigate potential adverse effects on the SAC.
20. Taking a precautionary approach I am unable to conclude that the proposal would not have a likely significant effect upon the SAC. The proposal would be in conflict with Policy WCS12 of the CS and saved Policies EN7 and EN15 of the LP which seek to safeguard designated conservation sites and development that conserves the landscape and historic character of the Ashdown Forest. It would be contrary to the Framework in respect of conserving and enhancing the natural environment and minimising impacts on biodiversity.

Other matters

21. The Council have advised that the proposal would require mitigation for the effect on the SPA although there is no objection raised in respect of this matter. The matter relates to the effect of new residential development on recreational disturbance to species within the SPA. Mitigation would be in the form of a contribution towards Strategic Access Monitoring and Management (SAMM) and Suitable Alternative Natural Greenspace (SANG). The Council refer to the use of a condition to prevent development from proceeding until the form of mitigation has been agreed and indicate that this has been used in other cases. I note that the appellants raise concerns about whether SANG and SAMM can be provided locally. However, based on the evidence before me I am satisfied that the measures would provide appropriate mitigation. I

² APP/C1435/W/15/3138021

consider that were other matters acceptable a suitably worded condition could be attached to secure mitigation for the effect of the development on the SPA.

22. The barn is typical of buildings found within a rural landscape and appears to be in a very reasonable condition. The area surrounding the site is also tidy and is well maintained. There would be a significant change in the appearance of that part of the barn to a more domestic character through the addition of a number of larger windows. However, when balanced against the use of materials to match the existing barn I consider this would have a neutral effect on the character of the immediate surroundings. The raising of the roof of the barn would not be very noticeable within the landscape. There are trees and hedgerows surrounding the site, with a significant amount of vegetation around the ponds which screen the site well from the wider landscape, adjoining fields and nearby public rights of way. There would be no conflict with Policy EN6 of the LP as the scheme would conserve the natural beauty and character of the landscape of the AONB.
23. The appellants refer to a number of other developments which have occurred within the area, including planning permission for development at Faircote Hall and Stud and other local studs, distribution buildings and residential development. The appellants also consider that the Council have treated their application differently to those schemes. However, I have not been provided with the full details of these cases which led to them being accepted by the Council and so cannot be sure they represent a direct parallel to the appeal proposal. In any event, I have determined the appeal on its own merits.

Conclusion and balance

24. The scheme would not cause harm to the AONB and mitigation for the effect of the development on recreational disturbance of the SPA would be achievable. The Council indicate that they are unable to demonstrate a five year supply of housing land. Paragraph 119 of the Framework indicates that the presumption in favour of sustainable development does not apply where development requiring appropriate assessment under the Habitats Directive is being determined. In any event I consider that the contribution the proposal would make towards addressing any undersupply would be very minor and would not outweigh the harm that the scheme would cause to the SAC. In addition, the essential need for a permanent rural workers dwelling has not been demonstrated.
25. For the above reasons and having regard to all other matters raised including some local support for the proposal, I conclude that the appeal should be dismissed.

L Gibbons

INSPECTOR