
Appeal Decision

Site visit made on 12 July 2017

by Grahame Gould BA MPhil MRTPI

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

Decision date: 2nd August 2017

Appeal Ref: APP/D3830/W/17/3166938

The Little House, Old Road, East Grinstead RH19 3NQ

- 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 Providence Group against the decision of Mid Sussex District Council.
 - The application Ref DM/16/3131, dated 21 July 2016, was refused by notice dated 21 October 2016.
 - The development proposed is erection of a two storey detached dwelling with 3 No. parking spaces.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Prior to the application's determination an amended version of the site layout plan, drawing 15-29-104A, was submitted to the Council. The amended drawing shows access visibility information and I have had regard to this drawing in determining the appeal.
3. Conflict with various policies of the submission version of the Mid Sussex District Plan (emerging Local Plan) has been cited in the reasons for refusal. However, as the emerging Local Plan remains to be adopted, I consider limited weight can be attached to its policies.

Main Issues

4. The main issues are the effect of the development on:
 - the Ashdown Forest Special Protection Area and Special Area of Conservation (SPA/SAC);
 - the character and appearance of the area;
 - the living conditions of the occupiers of neighbouring properties, with particular regard to outlook and privacy; and
 - transportation, with particular regard to visibility at the site access and on-site bicycle storage.

Reasons

Ashdown Forest SPA and SAC

5. The development would involve the construction of a four bedroom house within the side garden of Little House. Little House is a semi-detached house which has recently been formed from the conversion of a house into two dwellings.
6. The house would be within 7Km of the SPA/SAC. While the SPA/SAC is in Wealden District Council's area, as opposed to the Council's area, regard still needs to be paid to any implications for the SPA/SAC. That is because the SPA/SAC it is subject to statutory protection under the Conservation of Habitats and Species Regulations 2010 (the Habitats Regulations). Having regard to the provisions of the Habitats Regulations the Council has determined that mitigation measures are required to ensure that the development either alone, or in combination with other plans and projects within 7Km of the SPA/SAC, would not cause significant harm to the protected species frequenting the SPA/SAC.
7. The appellant and the Council are agreed that mitigation is required to safeguard the SPA/SAC. There are two aspects of the mitigation strategy that the Council is pursuing. The first element of the mitigation strategy involves the provision of Suitable Alternative Natural Greenspaces (SANGs). The purpose of SANGs being to act as alternative recreational destinations for new residents living within 7Km of the SPA/SAC. The second mitigation element concerns the implementation of a Strategic Access Management and Monitoring (SAMM) strategy to protect the SPA/SAC from new recreational pressures through managing visitor access and behaviour and monitoring visitor and bird numbers in the SPA/SAC. I have no reason to believe that SANGs and SAMM contributions would not meet the tests for planning obligations set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (the CIL Regulations) and the National Planning Policy Framework (the Framework).
8. The appellant has indicated a willingness to enter into planning obligations made under Section 106 of the Act to secure financial contributions for the Council's SPA/SAC mitigation strategy. However, no Section 106 agreement or Unilateral Undertaking has been submitted either with the planning application or as part of the appeal. The Council has indicated that this development should make contributions of £3,140 and £2,033 respectively for the SAMM and the SANGs. As the implementation of the SAMM strategy does not involve the provision of infrastructure I am content that had a planning obligation been entered into to secure the SAMM contribution that firstly there would be no conflict with Regulation 123 of the CIL Regulations and secondly that the SAMM element of the Council's strategy to safeguard the SPA/SAC would have been addressed.
9. However, establishing SANGs amounts to the provision of infrastructure and financial obligations relating to them are subject to the pooling restrictions under the CIL Regulations. To address the need to mitigate the impact of the development on the SPA/SAC the Council has submitted that a condition could be imposed requiring the submission of a SANGs scheme (the SANGs condition). The requirements of the SANGs condition would be met by the establishment of a 'bespoke SANG' or the making a payment of £2,033 (the

payment) for the maintenance and operation of a SANG leased and operated by the Council. The wording of the SANGs condition does not identify the location of a Council operated SANG, although an informative included with the list of suggested conditions refers to a SANG at the East Court and Ashplats Wood.

10. The making of a payment under the terms of the SANGs condition would be likely to require the appellant to enter into a planning obligation under Section 106 of the Act. The conditions section of the Planning Practice Guidance (PPG) advises that a negatively worded condition precluding the undertaking of development until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. However the PPG further advises that in exceptional circumstances a negatively worded condition may be appropriate in the case of '... more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk'¹.
11. Having regard to the scale of this development I consider there would be little prospect of a bespoke SANG being provided as part of it. Accordingly to comply with requirements of the SANGs condition a financial contribution would be necessary, with its payment needing to be secured via a planning obligation or other agreement. However, I consider a development for one house cannot be considered to be 'complex' or 'strategically important'. Having regard to the advice contained within the PPG I therefore consider that imposing the SANGs condition would be an inappropriate means of seeking to mitigate the effects of the development on the SPA/SAC.
12. Even if I were to accept that it would be appropriate to impose the SANGs condition, very little evidence has been submitted demonstrating how any SANGs contribution would be used. I am therefore not content that any sum paid, further to entering into a planning obligation to discharge the SANGs condition's requirements, would comply with the limitations on the pooling of contributions. The wording of the SANGs condition provides no certainty about where a SANG would be relative to Old Road. Accordingly on the available evidence I cannot be certain that a SANG managed by the Council would be in a location that would be more accessible than the Ashdown Forest for the occupiers of the development and would therefore act as an alternative recreational destination.
13. For the reasons given above I conclude that it has not been demonstrated that there would be no harm to the SPA/SAC. The development would therefore be contrary to the Habitat Regulations and be in conflict with paragraphs 17 (the seventh core planning principle), 109 and 118 of the Framework because it has not been demonstrated that the biodiversity value of the SPA/SAC would be conserved by minimising the development's impact on it. While the third reason for refusal cites conflict with Policy C5 of the Mid Sussex Local Plan of May 2004 (the Local Plan), I consider that not to be the case. That is because Policy C5 makes no reference to the SPA/SAC and it addresses development that would physically be in a Site of Special Scientific Interest, a Site of Nature Conservation Importance, a Local Nature Reserve and an Ancient Woodland.

¹ Paragraph: 010 Reference ID: 21a-010-20140306

Character and Appearance

14. Old Road is characterised by dwellings or varied types, ages, sizes and designs and has been designated as being within an Area of Townscape Character by the Council. While the plot for the new house would be smaller than those of many of the dwellings in New Road, I consider that the plot could accommodate the house without this development appearing to be cramped within the streetscene.
15. In appearance terms the house would add to the variety of the dwelling designs in Old Road and I consider that this development's architecture would not look out of place within the streetscene, given that it is the variety that contributes greatly to this street's character. The height of the house would respect the stepped roofline found within this part of Old Road. While the development would involve some hardening in the appearance of the site's frontage, the area to the north of the forecourt parking area would be retained as a soft landscaped area. I consider the soft landscape area's extent would be sufficient to provide relief for the alterations to be made to the remainder of the site's frontage.
16. I therefore conclude that the development would not be harmful to the character and appearance of the area. The development would therefore accord with saved Policies B1, B16 and H3 of the Local Plan and Policies EG3 and EG5 of the made East Grinstead Neighbourhood Plan (Neighbourhood Plan) because the development would be respectful of the area's character, including the immediate townscape. I am similarly of the view that there would be no conflict with Policies DP24 and DP24A of the emerging Local, albeit this is not a determinative consideration.

Living Conditions

17. The new house would back onto the rear garden of Sui Generis. However, I consider that the siting of the new house's rear facing windows relative to Sui Generis would mean that the occupiers of this neighbouring dwelling would not experience any unacceptable overlooking. I am also of the opinion that siting and orientation of Sui Generis relative to the new house would mean that the occupiers of Sui Generis would experience no harmful loss of outlook.
18. The Council is concerned that the use of the new house's forecourt parking area could be disturbing for the occupiers of Little House. However, frontage parking is common in urban areas and I consider that there would be nothing particularly unusual about the siting or the intensity of the new frontage parking area for it to be considered unneighbourly. I am also of the opinion that the siting and scale of the additional house relative to Little House would not cause Little House's occupiers to experience a loss of outlook. I therefore consider that the development would have no adverse effect on the living conditions for the occupiers of Little House.
19. I therefore conclude that the development would not be harmful to the living conditions of the occupiers of the neighbouring properties. There would therefore be no conflict with saved Policy B3 of the Local Plan or Policy EG3 of the Neighbourhood Plan because the development would not be harmful to the living conditions (amenity) of nearby residents with regards to outlook, privacy and noise.

Transportation

20. The vehicles I observed using Old Road travel at quite low speed because of this road's layout. The access to the development would serve a single dwelling and I consider that when regard is paid to the number of vehicular movements that would be generated by one house, together with the speed of vehicles using Old Road, that the visibility for driver's using the access would be adequate. Accordingly I conclude that there would be no harm to highway safety and that there would be no conflict with saved Policy T4 of the Local Plan.
21. The Council is concerned that it has not been demonstrated that the development could provide an adequate level of bicycle storage for its occupiers. However, the plot for the house would be of an adequate size to enable bicycle parking to be provided and this is a matter that could be addressed through the imposition of a planning condition. I therefore conclude with the imposition of a suitability worded condition that adequate on-site bicycle storage could be provided, with the result that there would be no conflict with Policy T6 of the Local Plan.

Conclusions

22. I have found that the development would not be harmful to the character and appearance of the area or the living conditions of the occupiers of neighbouring properties, while there would be no adverse transportation impacts. However, I have found that there would be no adequate mitigation against the potential for the development's occupation to cause unacceptable harm to the SPA/SAC. I therefore consider that the adverse impacts of the development would significantly and demonstrably outweigh the limited benefit of providing an additional house.
23. The appeal is therefore dismissed.

Grahame Gould

INSPECTOR