
Appeal Decision

Site visit made on 15 May 2018

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 July 2018

Appeal Ref: APP/C1435/W/17/3189368

Land adjacent to Recreation Ground, Framfield Road, Blackboys TN22 5LR

- 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 Mr Joshua Feldman against the decision of Wealden District Council.
 - The application Ref WD/2017/0942/O, dated 21 April 2017, was refused by notice dated 20 October 2017.
 - The development proposed is an outline application for the erection of 7 no. dwellings, access, landscaping and other infrastructure. Dwelling mix comprising 6 no. semi-detached properties up to 106m² and 1 no. detached property.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline with all matters reserved. I have dealt with the appeal on this basis, treating the site layout plan and potential site access showing visibility splays as illustrative only.
3. The description I have used has been taken from the Council's decision notice. It is the same as is shown on the appeal form. It differs from that shown on the planning application form since the scheme was amended during consideration by the Council, increasing the number of dwellings from five to seven. I have therefore proceeded on this basis.

Main Issues

4. The main issues raised by this appeal are: -
 - (a) Whether the proposal would be an appropriate location for new residential development in terms of access to services and facilities; and
 - (b) The effect of the proposed development upon the habitat and biodiversity at the Ashdown Forest Special Protection Area (SPA).

Reasons

Accessibility

5. The Core Strategy Local Plan (CSLP) identifies Blackboys as an unclassified settlement with few or no facilities and services. The Council contends that it is

- not a sustainable location for the proposed development, with very limited services or facilities, leading to dependency upon the private car to access services and facilities at larger settlements some distance from the appeal site.
6. Nonetheless, Blackboys has some services, these being a public house, village/farm shop and a primary school that are accessible from the site by a footpath link. However, I accept that these would not provide for the full day to day needs of residents, although I note they provide the village with some employment opportunities.
 7. The closest bus stop is approximately 170m from the centre of the appeal site with stops on both sides of the highway. The nearest town, Uckfield, is approximately 4.6 miles and Heathfield is about 4.7 miles to their centres. The bus route would provide a fairly frequent bus service over the course of the day to these centres, as well as a school service. In the context of this rural location, the bus service appears to provide reasonable access to other larger centres with a fairly good overall frequency. Given it lacks a bus service later in the evenings and at weekends, this detracts to some limited extent from the benefits of the bus service overall.
 8. It is possible to cycle to Uckfield and Heathfield but I consider this would not be an attractive option during winter months given the lack of any dedicated highway cycle provision.
 9. There is a footpath on the south side of the B2102 but it is of limited width and unlit in the vicinity of the appeal site. The traffic speed limit changes from 50mph to 40mph at a point roughly in line with the eastern boundary of the appeal site. I observed that both the speed and frequency of traffic varies as it passes the appeal site. Whilst there is no formal crossing point, the road does not appear to be such a busy one that would make crossing the road to access the bus stop on the northern side of the highway particularly hazardous. However the lack of street lighting would reduce the comfort of accessing bus stops during early evening in winter months.
 10. I note local concern to additional traffic generation and speed of traffic travelling along the B2102. I do not consider the size of scheme proposed and resulting traffic likely to be generated would create any significant highway safety issues.
 11. Paragraph 34 of the Framework seeks to reduce the need to travel and to maximise modes of sustainable travel. It, however, also recognises the need to take into account other policies in the Framework that relate to development in rural areas. Policy SPO7 of the CSLP also encourages the reduction in the need to travel by car and seeks improvements in journey quality for those people making trips on foot, bicycle or by public transport.
 12. In the context of its rural location where accessibility is not normally as good as that of urban areas, I consider that the proposed development would have reasonable access to facilities and services without being solely dependent on private car. Notwithstanding this, occupiers may opt to use their cars for travel, particularly for supermarket trips, given Blackboys has overall limited facilities or services. The bus service would not provide accessibility at weekends and later on weekday evenings.

13. I find that although the location would not have as high a level of accessibility as sought by the Framework and development plan policies there is reasonable accessibility that would prevent full reliance upon private car. I conclude that the proposed development would be an appropriate location for new residential development in terms of accessibility to services and facilities. The proposal would therefore not materially conflict with Policies EN1 and EN2 of the Wealden Local Plan (LP), Policies SPO1, SPO7 and SPO8 of the CSLP and the Framework that seek, amongst other matters, to reduce the need for travel by car and concentrate development close to public transport opportunities.

Ashdown Forest

14. The proposal, through increased activity and disruption arising from the occupiers of seven new households has the potential to have an adverse impact upon biodiversity of the Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation (SAC) located approximately 7.5km from the appeal site.
15. During the course of the appeal, I wrote to the parties regarding the recent Court of Justice of the European Union judgement¹ and the outcome that requires an Appropriate Assessment (AA) to be undertaken. I also asked the Council to provide any proposed measures to avoid or mitigate impacts on the SPA and the evidence base that would enable the effectiveness of any proposed measures to be assessed. I also sought details of how any proposed measures would be secured.
16. Ashdown Forest contains a large area of lowland heath and includes both European dry heath and North Atlantic wet heath. The designation reflects the importance of its habitats and species, which include vulnerable bird species. The Forest is also designated as a Site of Special Scientific Interest. The conservation objectives of both the SPA and SAC aim to ensure that the integrity of the designated sites are maintained or restored as appropriate. An AA should seek to establish whether or not the development alone, or in combination with other projects, will lead to adverse effects on site integrity, in view of the site's conservation objectives. Where adverse effects cannot be avoided then mitigation measures are introduced to remove or reduce the effects to the level of non-significance.
17. There are two key impacts on the SPA and SAC from recreational pressure and air quality.
18. Looking firstly at recreational pressure, the Council has undertaken a Habitats Regulations Assessment (HRA) and has produced Habitats Regulations Assessment Guidelines (HRAG). These indicate that the Forest is home to the UK's populations of breeding Dartford warbler and Nightjar. Both these species are considered to be rare and vulnerable birds. The Forest is identified as being unique in terms of its size and experience in terms of its landscape features and quality of habitat. One of the principal threats to the Dartford warbler and Nightjar is visitor disturbance during their breeding period, which extends from February to August. Freely roaming dogs exacerbate the disturbance caused by people visiting the site. These cause harm to the ground or near-ground nesting breeding birds and adversely impact the site's

¹ People over Wind, Peter Sweetman v Coillte Teorana Case C-323/17

integrity and conservation objectives designed to maintain favourable conditions at the site.

19. Surveys have shown there to have been a decline in Dartford warblers and Nightjars at the Forest. Natural England's conservation objectives for the SPA are to avoid the deterioration and significant disturbance of the Dartford warbler and Nightjar habitats, ensuring the integrity of the site is maintained and the site makes a full contribution to achieving the aims of the Bird Directive.
20. The HRA and HRAG have been informed by visitor surveys finding that even one more visit may have the potential to exacerbate the situation by further displacing one ground nesting bird. These reports and surveys indicate that new dwellings within 15km of the SPA will have visitor impact on the SPA. Increasing the number of homes around the Forest would compound the effects of disturbance from recreation on these birds of European importance. I therefore consider that the proposed development has the potential to increase disturbance through increasing recreational pressure upon the Ashdown Forest SPA. I consider the conclusions of the Council's HRA and HRAG in terms of screening to be valid.
21. I therefore must consider whether measures could be put in place to avoid or mitigate the impacts of increased recreational pressure arising from the proposed development on the SPA and the effectiveness of any proposed measures.
22. In terms of avoidance Suitable Alternative Nature Green Spaces (SANGS) can provide alternative places for recreation and dog walking of a comparable experience to that of the Forest. Although this would not prevent the occupants of the proposed dwellings from travelling to the Forest for recreation purposes, they can attract future occupiers to use the SANGs as alternative green spaces for recreation. The Council indicate that it has delivered a SANG in Crowborough that is open and fully functioning. Another SANG on the south-west of Uckfield is operational, but additional works are required. This would be in combination with implementing a mitigating management and monitoring strategy on the Forest to ensure that there would be no likely significant effect resulting from residential development (Strategic Access Management and Monitoring (SAMMS)). This aims, amongst other matters, to promote responsible dog ownership and the close control of dogs and to develop a Forest Code of Conduct, recruitment of volunteer dog rangers and access management officers, on-going visitor monitoring, all of which aim to influence behaviour. I note that the delivery of SANGS and SAMMS has been supported by Natural England and the examining Inspector. Based on these avoidance and reduction measures the likely significant effects upon the SPA and SAC have been screened out.
23. In terms of the recreational impact from incoming residents to the appeal dwellings, the Council say that it would be possible to mitigate the effects on the Forest by considering schemes such as SANGS and SAMMS, a combination of the two approaches, or a more bespoke response proposed by the appellant. The Council indicated that it has considered a number of avoidance and mitigation measures, including SANGS and SAMMS but are not limited to them. Given the list of measures set out in the Councils HRAG, I have no reason to

- doubt that appropriate SANGS avoidance and SAMMS mitigation could avoid or mitigate the impacts of the development.
24. The Council says that a mitigation scheme to be secured before development commences could be a requirement of an appropriately worded Grampian planning condition that would not necessarily require a financial contribution or a legal agreement.
25. The Planning Practice Guidance (PPG) advises that negatively worded conditions requiring an obligation or other agreement to be entered into is unlikely to be appropriate in the majority of cases. It states that ensuring any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed. However, the PPG also advises that in exceptional circumstance a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence 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. I do not consider this proposal to be of a complex and strategically nature that might justify such an approach.
26. The Council has indicated that the mitigation scheme may not require a legal agreement and has pointed toward other appeal decisions in the district where Inspectors had accepted such a condition. The Council has put forward a condition that advocates a scheme for mitigation and an appropriate mechanism to secure delivery of the mitigation to be approved prior to development taking place. However, I am mindful of PPG advice that says such an agreement is unlikely to be appropriate in the majority of cases and that the best way to deliver sufficient certainty for all parties about what is being agreed is to enter into an agreement prior to granting planning permission.
27. Further to this, the Council's HRAG indicates the proposed cost of SAMMS is £1,710 per unit. The 'note' associated with condition 3 put forward within Council's Planning Committee report advises that the proposal warrants a contribution of £1,170 per dwelling towards the provision of recreational mitigation (SAMMS). The PPG indicates that no payment of money can be positively required when granting planning permission. Whilst the Council's suggested condition does not set out a specific financial fee, it requires a scheme of mitigation to be entered into which, appears to me, likely to require the payment of monies to the Council. Whilst I accept other Inspectors may have accepted a similar condition, on the available evidence before me I do not conclude that the Grampian style planning condition put forward by the Council would accord with PPG advice.
28. I note that it is common ground between parties that it is possible to mitigate the effect of the proposed development on the Forest. The appellant has offered a draft Unilateral Undertaking that seeks to secure a financial contribution to both SANGS and SAMMS. This, however, has not been completed, therefore, I give it little weight. In addition, the use of CIL leaves open the possibility that the mitigation might not be provided in the event of the scheme being exempt from CIL.

29. Turning to impacts of air quality upon Ashdown Forest and the SAC designation in particular, the HRA highlights the impacts of the effects of nitrogen emissions and other air pollutants from vehicles. However, the Council indicate that the low level of impacts identified could potentially be offset by the removal of other trip generation development in the area. At the time of the determination of the planning application it had been identified that once the residential development at Blackboys Nursery site commences this would release vehicle trip credits. However, since then, the redevelopment of Annan Court (Council ref: WD/2015/0933/MAJ) has taken place. The Council is undertaking monitoring of vehicle trips that become available through redevelopment of sites with less intensive uses within the Parish. If there are any new trips generated as a result of new development within the Parish these could be offset by trip credits from the register. It has been identified that the development at Annan Court has released sufficient headroom that would offset the vehicle trip generated by the proposed development. Consequently, I am satisfied that there would be no harmful air quality impacts upon Ashdown Forest SAC.
30. Concluding on this second main issue and on the evidence before me, when assessed within the framework of an AA, I do not have sufficient certainty that the recreational impact generated by the proposed development that would have a likely significant effect on the SPA and SAC have been satisfactorily mitigated to allow the development to come forward. Therefore, I exercise a precautionary approach and consider that the proposal fails to adequately address issues relating to the recreational impact on the SPA and SAC. Therefore, the development would not accord with Policy EN1, EN7 and EN17 of the LP or Policy WCS12 of the CSLP. These policies seek to assess the effect of development on the environment and include a requirement to conserve the landscape of the Ashdown Forest including heathland areas, safeguard designed nature sites and prevent a net loss of biodiversity.

Other Matters

31. The application site lies in open countryside therefore the development conflicts with Policies GD2 and DC17 of the LP. These policies indicate that development will be resisted outside defined development boundaries. The Council acknowledges these policies are out-of-date in the absence of a five year supply of deliverable housing sites. However, in accordance with paragraph 119 of the Framework the presumption in favour of sustainable development does not apply where development requiring an AA under the Birds or Habitats Directives is being considered or determined.
32. **Conclusion**
33. A number of nearby residents raise a series of other concerns about the proposal but in view of my conclusions on the main issues there is no need for me to address these in the current decision.
34. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Nicola Davies

INSPECTOR