



Appeal Decision

Site visit made on 20 May 2019

by P Wookey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 July 2019

Appeal Ref: APP/C1435/W/18/3217241

Royal Mires Nursery, Lye Green, Crowborough, TN6 1UU

- 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 Royal Mires Nursery against Wealden District Council.
 - The application Ref: WD/2018/0903/F, is dated 25 April 2018.
 - The development proposed is described as demolition and clearance of existing retail garden centre and erection of 8 family dwellings (2x3 bedroom 3x four bedroom and 3x five bedroom) with associated garages, landscaping and hardstanding.
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Decision

1. The appeal is dismissed and planning permission is refused for the demolition and clearance of existing retail garden centre and erection of 8 family dwellings (2x3 bedroom 3x four bedroom and 3x five bedroom) with associated garages, landscaping and hardstanding.

Preliminary Matters

2. The appellant has submitted as evidence a completed planning obligation in relation to the contribution towards affordable housing within the Council's area in lieu of onsite affordable housing provision. I shall refer to this further below.

Main Issues

3. The Council has set out its objections to the proposal on three main matters which have defined the main issues in this appeal which are the effect of the development on:
 - the character and appearance of the surrounding area, with particular regard to the High Weald Area of Outstanding Natural Beauty (AONB); and
 - the integrity of the Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation (SAC); and
 - whether the development would be suitable for housing having regard to access to services.

Reasons

Character and Appearance

4. The appeal site is located some distance from the nearest defined settlement boundary of Crowborough, which is approximately 1.5km away and forms part of the hamlet of Lye Green. It is located within the AONB and also lies within the Ashdown Forest SPA and SAC, which is a Site of Special Scientific Interest (SSSI).
5. The appeal site is currently a retail garden centre, which the appellant states has been in decline in recent years. It is accessed directly off the London Road which runs parallel to the site.
6. The appeal site is surrounded by open countryside with fields being used for a range of agricultural uses, enclosed by hedgerows and lines of mature trees. The surrounding area is also characterised by areas of dense woodland and these natural landscape features contribute significantly to the intrinsic beauty of the AONB. In the vicinity there are scattered residential dwellings on plots which are generally well screened and enclosed by mature trees and hedgerows and as a result blend in with the surrounding countryside. The appeal site's general characteristic is one of openness and spaciousness and due to the single storey height of the buildings, it has limited visual impact on the surrounding area.
7. I note that the appellant has submitted as evidence a Landscape and Visual Impact Assessment (LVIA) in support of the application which has not been contested by the Council and which states that the overall effect of the development proposed on the landscape would be limited. Whilst it states that the development proposed would be consistent with the form and scale of development of existing nearby residential properties, it is acknowledged that it would bring about a notable change to the character of the appeal site, which in my view is a use not out of context in its rural context.
8. The existing garden centre is a combination of low lying, single storey buildings used for retail purposes, mainly located in the central part of the site. In front of the indoor retail buildings there is a customer car parking area, accessed directly off the London Road. To the side of the retail buildings, there is an outdoor area and polytunnels used for the display of plants and landscaping products and to the rear is a small unused area of land separating the developed area with the site boundary, along which runs a public right of way.
9. The development proposed would demolish and clear the existing garden centre uses and construct eight dwellings, with garages and parking areas around two courtyards which the appellant has described as having a farmstead form. The dwellings would be two storeys in height and accessed from the existing site access. A substantial part of the development proposed would occupy the area currently covered by the retail and car parking uses of the garden centre. That part of the site towards the boundary with the public right of way would remain largely undeveloped and I note the appellant

proposes to ensure that this large open amenity area would be retained as such for the long term. However, the development proposed would be partially visible by users of the public right of way, who would have a perspective of the site significantly different from its current open and spacious appearance which blends in with the surrounding countryside.

10. Notwithstanding that the proposed boundary treatment of the appeal site would provide some limited screening, due to the location of the proposed dwellings towards the centre of the site they would significantly alter its appearance, particularly when viewed from the adjacent London Road. The new dwellings, principally units¹ No 6, No 7 and No 8 would be highly visible from where the site has access to London Road. Whilst the appellant has proposed a landscaping strategy that would provide a tree buffer to that part of the boundary with London Road, the time it would take for this to establish itself would not mitigate the short to medium term visual impact of the development and the paraphernalia associated with residential uses.
11. Whilst I acknowledge that the development proposed has a variation of roof pitches, with dwellings built around courtyards which helps to soften some of the visual impact, its overall massing and two storey dwelling height would alter significantly the site's open and spacious appearance. It would introduce a sense of urban development, with some buildings which are prominent and in view of London Road, higher than those which exist on the site at present. This harmful visual effect would create a sense of encroachment into the open countryside. In this respect, the development proposed has not addressed the concern of the Inspector who previously dismissed an appeal on the same site², that the height of the new dwellings would introduce an urbanising effect and diminish the rural character and appearance of the location and its surrounding countryside. As a result, the development proposed of eight dwellings would have a significant detrimental effect to the character and appearance of the surrounding AONB, to which paragraph 172 of the National Planning Policy Framework (the Framework) (2019) attaches great weight to conserving and enhancing the landscape and scenic beauty which has the highest status of protection in relation to these issues.
12. I conclude that the development proposed would have a significant and detrimental effect on the character and appearance of the surrounding area and the AONB. It would therefore be contrary to saved Policy DC17, GD2 and EN6 of the Wealden Local Plan (1998)(WLP) and the Framework, which when read together seek to manage development in rural locations, prevent development taking place outside of the defined settlement boundaries and to protect the intrinsic qualities of the AONB. Whilst the Council has referred to a number of policies contained within its emerging local plan, given the early stage of its preparation, and the unresolved objections to them, I attach little weight to them.

Effect on the integrity of the SPA and SAC

13. The appeal site lies within the zone of influence of The Ashdown Forest SAC and SPA. The Council has concerns regards the effect of the proposal either alone or in combination with other projects on the integrity of the SAC with

¹ Ref Drawing DHA/11097/43

² PINS Ref APP/C1435/W/17/3167839

regard to atmospheric pollution and nitrogen deposition as a result of an increase in vehicle trips on roads near to it or through it. Under the precautionary principle in the Habitats Directive as embodied in the Habitats Regulations it is necessary to ensure that development, either alone or in combination with other plans or projects, will only be permitted if it can be concluded that it will not affect the integrity of the SAC and SPA.

14. In accordance with the Conservation of Habitats and Species Regulations 2017 (Habitats Regulations) and in the light of the outcome of the High Court judgement *People over Wind v Colette Teoranta*, as the competent authority, I would be required to carry out an appropriate assessment to address any effect of the development proposed on the SPA and its conservation interests, if the appeal were to be allowed.
15. The Council argues that in the event of the existing use ceasing to operate, the traffic would be re-distributed to other similar operations in the area and therefore there would be no net benefit to vehicle trips. Further, its updated model for transport, which was included in its submission Local Plan has altered the position with regard to the impacts to the SAC from nitrogen deposition as a result of increased traffic movements.
16. The appellant has submitted as evidence a Transport Statement³ which states that the development proposed would result in an estimated 95 fewer vehicle trips per day and result in a net benefit to air quality. The development proposed would significantly reduce the number of daily vehicle movements and there is no certainty that there would be a re-distribution of traffic movements to other nurseries within the SAC, which may have been visited in any event. Therefore, on the basis of the evidence before me, I am satisfied that the development proposed would result in a net benefit on the air quality of the SAC.
17. I note the appellant's Habitats Regulations Assessment Report submitted as evidence and its willingness to make the appropriate financial commitments to mitigate the development proposed impact on the SPA. However, as the appeal is dismissed on character and appearance and harm to the AONB and as there would be no pathway for the development proposed to have a detrimental effect on the SPA, I am not required to consider undertaking an appropriate assessment any further.

Access to facilities

18. The appeal site is some distance from Crowborough and does not have convenient public footpath links which would be available to the future occupiers of the development proposed. There are no pedestrian footways, cycleways or street lighting along London Road which would discourage any alternative mode of movement other than the use of a private vehicle, particularly at night time or in inclement weather.
19. The future occupiers would therefore be reliant on a private vehicle for their everyday needs and this has to be balanced against the existing use which is reliant on cars to get customers to and from the site and delivery vehicles which service the garden centre use.

³ DHA Transport Statement Royal Mires Nursery, Lye Green, East Sussex 2018 PL/HA/11331

20. Based on the appellants' evidence, submitted in its Transport Statement, the development proposed would have the potential to generate an estimated 95 fewer vehicle trips each day. Further, there would be fewer goods vehicle movements in and out of the site which would result in benefits to the local highways and to air quality. As with the previous Inspector's decision, I agree that moderate weight should be attached to the benefits resulting from reduced traffic movements and that this should be balanced against the reliance of the future occupiers on private vehicles.
21. The Council states that the appeal site is located outside of any defined development boundary and would not comply with its existing countryside restraint policies⁴ and those in the EWLP. The Council further states that since the previous appeal decision, the policies in its EWLP would not support unsustainable development outside of defined development boundaries unless it accords with specific policies in the development plan. However, given the early stage of preparation of the EWLP, I attach limited weight to these policies. Whilst I acknowledge the future occupiers would be reliant on private vehicles, there would be a net benefit in terms of nitrogen deposition which would be an advantage to the air quality of the SPA and SAC.
22. I conclude that as a result of the benefits identified in relation to the reduction in vehicle trips and the net benefit to air quality, the development proposed would not be contrary to Policy GD2 of the Wealden Local Plan (1998) (WLP) which seeks to resist development outside of defined development boundaries.

Planning Balance

23. The Council does not dispute that it is not able to demonstrate that it has a five-year supply of housing land and that on that basis paragraph 11 d) of the Framework states that the most important policies for determining the application are out of date and there should be a presumption in favour of development. On that basis I am required to consider whether the development proposed would be sustainable development as set out in paragraph 7 of the Framework with particular reference to its economic, social and environmental credentials.
24. With respect to the economic benefits of the development proposed, these would be limited to the employment during the construction phase and the future occupiers making use of the local services and facilities. As a result, I attach only limited weight to this benefit.
25. The development proposed would result in social benefits, including making a modest contribution to the Council's housing targets, which the appellant states is 2.65 years' supply of housing and would make a financial contribution to offsite affordable housing. Given the relatively small-scale nature of the development proposed and taking into account the extent of the 5 year supply shortfall, I consider that moderate weight should be attached to this benefit.
26. With regards to environmental benefits, the development proposed would result in a net benefit to air quality and the level of nitrogen deposition and its effect on the SAC, due to the reduced vehicle movements. It would make use of previously developed land and would not affect any surrounding land or involve the loss of any agricultural land or land having ecological value.

⁴ Saved Policy DC17 and GD2 Wealden Local Plan (1998) (WLP)

Further, the appellants willingness to make a contribution towards mitigation measures due to the increased recreational use of the SPA, would promote conservation interests. I attach modest weight to these benefits.

27. However, even if I were to conclude that the Council is not able to demonstrate a five-year supply of housing land and therefore its policies are out of date, the adverse impacts of permitting the development would significantly and demonstrably outweigh the benefits when assessed against the Framework as a whole. As the development proposed would result in significant harm to the AONB, to which I attach significant weight, footnote 6 of paragraph 11 d) applies and therefore the tilted balance in favour of development is not engaged.

Other Matters

28. I have taken into account the wide range of issues raised by third parties which include the loss of local employment, drainage concerns, increased pressure on local community facilities and impact on property values. However, none of these other matters raised, materially add to my conclusion.

Conclusion

29. For the reasons set out above, the appeal is dismissed.

Paul Wookey

INSPECTOR