



Appeal Decision

Site visit made on 20 August 2019

by Nick Palmer BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd September 2019

Appeal Ref: APP/C1435/W/19/3224337

Land at Oak House, Bagham Lane, Herstmonceux BN27 4NA

- 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 Mr Richard Brown of Telstar Ltd against Wealden District Council.
 - The application Ref WD/2017/2850/F, is dated 12 December 2017.
 - The development proposed is the erection of No. 2 dwellings, access, landscaping and other associated infrastructure.
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Decision

1. The appeal is dismissed, and planning permission is refused.

Preliminary Matters

2. The application originally proposed 4 dwellings, but this was subsequently amended to 2 dwellings and the site area was reduced. Amended plans were submitted to the Council showing two bungalows.
3. The Council states that had it determined the application it would have refused permission. The Council has stated what it considers the main issues to be, as follows:
 - i) the location of the site beyond the adopted and emerging development boundary;
 - ii) conservation and enhancement of the landscape and scenic beauty of the High Weald Area of Outstanding Natural Beauty (AONB); and
 - iii) in-combination impacts upon the Ashdown Forest, designated as Special Protection Area (SPA) and Special Area of Conservation (SAC).

Main Issues

4. On the basis of the Council's suggested issues and the matters addressed in its statement, I consider the main issues in the appeal to be:
 - i) whether the proposed development would accord with development plan policies and national policy for the location of housing development;
 - ii) the effect of the proposal on the character and appearance of the area, including consideration of its effect on the AONB;
 - iii) the accessibility of the proposed development to services and facilities by sustainable means; and

- iv) the implications for the Ashdown Forest SPA and SAC.

Reasons

Planning Policies

5. The site lies outside the development boundary of Herstmonceux as defined in the Local Plan¹ (LP) but adjoins the boundary. It forms part of the grounds of Oak House which is also outside the boundary. The site appeared on my visit to be a garden area while an adjacent area is fenced to form a paddock. There is a stable and outbuilding which are proposed to be removed. They are surrounded by trees and adjacent to the frontage of Bagham Lane. The site is within the countryside for planning policy purposes.
6. Saved Policies GD2 and DC17 of the LP resist development outside the development boundaries. Policy WCS6 of the Core Strategy² (CS) sets out the rural areas strategy. It identifies Herstmonceux as a Local Service Centre, where some housing development is to take place and where the development boundary is retained. The proposal would not accord with those policies.
7. The emerging Wealden Local Plan (eLP) has been submitted for examination. It is proposed to extend the development boundary to the south of the village, but the site is on the north side and will remain outside the development boundary. The proposal would not accord with these provisions of the eLP but limited weight can be given to this as the examination process has not been completed.
8. If the site forms part of the curtilage of the house, then it would be previously-developed land although the definition in the National Planning Policy Framework (the Framework) states that it should not be assumed that the whole of the curtilage should be developed. Draft Policy WLP 10 of the eLP allows for development of brownfield land adjoining development boundaries subject to consideration of various matters but that policy can only be given limited weight.
9. The proposal would not accord with development plan policies for the location of housing development. However, the Council cannot demonstrate a five-year supply of deliverable housing sites as required by the Framework. On this basis Policies GD2 and DC17 which are policies that are important for determining the application are out-of-date, and limited weight can be given to them.

Character and Appearance

10. The site falls within the 'South Slopes of the High Weald' County landscape Character Area. This is an intricate, small scale landscape with a strong pattern of hedgerows. It is a landscape of gentle valleys and slopes which falls towards the south. Herstmonceux is on a low-lying ridge at the southern edge of the AONB.
11. The boundary of the AONB coincides with the development boundary in this location. Because of the varied topography there are views from Bagham Lane, which is a public footpath route, towards the site. The Wealden Landscape and Settlement Character Assessment (LSCA) identifies the

¹ Wealden Local Plan (1998)

² Wealden Core Strategy Local Plan (2013)

landscape including the site as having high sensitivity and high landscape value. Distinctive characteristics include the mixture of small, medium and large-scale fields.

12. The site and the adjoining paddock are also identified in the LSCA as a remnant historic landscape. The site and paddock constitute a small-scale field next to the settlement edge which is shown on historic mapping. As such the trees and hedges around the field boundaries are important landscape features. While these would be retained, trees within the site and along the boundary between the site and the paddock would be removed. New trees would be planted but the overall effect of the development would be to change the historic character of the landscape.
13. As well as being visible from Bagham Lane, the site would be visible from Footpath 1b to the east. The site is at a high level relative to the land to the immediate north-east including the paddock and in this respect is quite prominent in the landscape. I saw that views from Bagham Lane are limited to some extent by a hedge alongside that route but there are gaps within the hedge. There are trees along the north-eastern paddock boundary, but the site is at a higher level. The proposed bungalows would be of limited height but given that trees would be removed from the site, it is likely that they would be visible. The development would be more visible in winter months when trees and hedges are not in leaf. New planting could eventually provide screening, but this would take time to mature.
14. In the LSCA the edge of the settlement is identified as a sensitive urban edge as it forms a clear boundary with the AONB. This boundary would be breached by the development, which would represent encroachment of the urban area into the countryside. The change in character would be particularly apparent from adjacent properties on Fairfield.
15. The Framework, in paragraph 172 states that great weight should be given to conserving and enhancing landscape and scenic beauty in AONB, which have the highest status of protection. The scale and extent of development in AONB should be limited. Permission should be refused for major development other than in exceptional circumstances and where it can be demonstrated that the development is in the public interest.
16. Whether or not a proposal is 'major development' is a matter for the decision maker. In the Town and Country Planning (Development Management Procedure) (England) Order 2015 such development is defined as 10 dwellings. In my view the proposed development would not constitute major development for the purposes of paragraph 172 of the Framework.
17. It would however have a significant effect on the AONB in terms of urban encroachment into a highly sensitive landscape. The historic significance of the field pattern would be adversely affected. For these reasons the natural beauty and character of the landscape would not be conserved or enhanced, and the proposal would not accord with Saved Policy EN6 of the LP which has this requirement. Neither would the proposal accord with Strategic Planning Objective SPO1 of the CS which states that the Council will protect the distinct landscapes of the District, particularly those that are nationally designated. The proposal would not accord with Saved Policy EN27 of the LP which requires proposals to promote local distinctiveness.

18. Because the proposal would result in clear harm to the landscape of the AONB and would not conserve landscape and scenic beauty, I give great weight to this harm. I conclude on this main issue that the proposal would unacceptably harm the character and appearance of the area.
19. The appellant has referred to other appeal decisions which concern developments outside settlements that are lower in the settlement hierarchy than Herstmonceux. Because the circumstances of individual proposals and sites vary, those examples do not alter my findings.

Accessibility

20. The site is about 300m from the village centre where there is a range of services and facilities, including a primary school, health centre, shops, a post office and public houses. There are bus services to Hailsham, Bexhill and other centres which have wider ranges of facilities. Although residents of the proposed dwellings would be dependent on the private car for transport to a large extent, the location of the site in a rural area will mean that opportunities for sustainable travel will be less than for urban areas. I find, for these reasons that the proposed development would have a reasonable degree of accessibility to services and facilities by sustainable means.

Implications for the Ashdown Forest SPA and SAC

21. The Ashdown Forest contains lowland heath including European dry heath and North Atlantic wet heath. The Ashdown Forest SPA and SAC are more than 7km from the site. The Council is satisfied that the site is a sufficient distance away from the SPA and SAC to ensure that there would be no harm from recreational disturbance.
22. The Council's Habitats Regulations Assessment (HRA) was undertaken in respect of the eLP. This shows that critical levels of ammonia and nitrogen have already been exceeded in the SAC. This is particularly the case in areas adjacent to roads. The HRA concludes that the level of growth proposed in the eLP and resultant traffic in the SAC is likely to make conditions worse, but that mitigation measures could be implemented to ensure that no adverse effect will result from development proposed in the eLP.
23. Draft Policy AF1 of the eLP requires provision of mitigation measures in connection with development identified in the Plan. A range of such measures are identified in draft Policy AF2 and financial contributions would be required to secure those measures. If a proposed development is not identified in the eLP, then an appropriate assessment under the Habitats Regulations³ would be required.
24. Natural England (NE) in its Regulation 19 response to the eLP states that it is satisfied that the plan will not adversely affect the integrity of the Ashdown Forest SAC from air quality impacts and that this conclusion can be reached without mitigation measures being needed. This is because of a long-established trend of declining background concentrations close to roads as a result of technological improvements in vehicles. This advice is consistent with advice given to neighbouring Authorities. NE has raised no objection to the proposed development.

³ The Conservation of Habitats and Species Regulations 2017

25. The Council relies on the findings of the HRA and the policies in the eLP. Because the development would not accord with the eLP the Council considers that it would not be covered by the mitigation measures set out in Policy AF2. However, an appropriate assessment could be carried out under the Habitats Regulations and any necessary mitigation measures could be secured by means of a planning condition or obligation. In any case, only limited weight can be given to policies AF1 and AF2 pending completion of the examination process and given the difference of opinion between the Council and NE.
26. If I was minded to allow the appeal I would be required under the Habitats Regulations to consider whether the proposal, either alone or in combination with other plans or projects, would be likely to have a significant effect on the SAC. I shall firstly consider whether there are other reasons that indicate that the development should be permitted.

Planning Balance

27. The Council can currently only demonstrate 2.62 years' supply of housing land. The shortfall is almost 4,000 dwellings but the Council anticipates that this will rapidly be addressed. However, the policies which are most important for determining the application are out-of-date and paragraph 11(d) of the Framework is engaged.
28. I have found harm to the AONB, but the scale of the development is not such that paragraph 172 of the Framework provides a clear reason for refusing the development proposed.
29. The proposal would be of benefit in helping to address the housing supply shortfall which is significant, and the dwellings would be accessible to local services and facilities. These factors weigh in favour of the development, but the contribution from two dwellings would be limited.
30. The proposal would also be of economic benefit in generating employment during construction with associated expenditure and future expenditure of the occupiers of the proposed dwellings. The Council would receive New Homes Bonus. Community Infrastructure Levy payments would be needed to address the infrastructure impacts of the proposal and would not amount to a benefit. However, for the reasons given, I attach overall moderate weight to the benefits of the proposal.
31. I have given great weight to the harm to the AONB. This significantly and demonstrably outweighs the moderate weight that I have given to the identified benefits. This indicates that the development should not be permitted and, on this basis, I shall not consider the requirements of the Habitats Regulations further.

Conclusion

32. For these reasons I conclude that the appeal should be dismissed, and planning permission refused.

Nick Palmer

INSPECTOR