
Appeal Decision

Site visit made on 9 September 2019

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd September 2019

Appeal Ref: APP/C1435/W/19/3220887

Lines Farm, Parrock Lane, Colemans Hatch

- 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 N Pendleton against the decision of Wealden District Council.
 - The application Ref WD/2018/1784/F, dated 10 August 2018, was refused by notice dated 7 December 2018.
 - The development proposed is described as 'change of use only from B1a to sui generis for holistic veterinary consultations. No increase in footprint, bulk or volume. No internal or external alterations.'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal was submitted with a 'Fee Account' setting out the appellant's costs associated with the submission of the planning application. It is not supported by any details or substantive arguments that amount to a formal application for an award of costs. Accordingly, I have not treated it as such. The site visit procedure was altered from an access required site visit to an unaccompanied visit because the appellant was not present at the prearranged time.

Main Issues

3. The main issues in this appeal are:
 - The effect on the Ashdown Forest Special Area of Conservation (SAC).
 - The effect of the proposed development on highway safety, with particular reference to parking and manoeuvring.

Reasons

The effect on the Ashdown Forest Special Area of Conservation (SAC)

4. The Ashdown Forest contains a large area of lowland heath and is designated a SAC. The qualifying features underpinning this designation are the presence of European dry heath, North Atlantic wet heath and great crested newts. The conservation objectives for the SAC can be summarised as ensuring the site contributes to achieving the favourable conservation status of its qualifying features by, amongst other things, maintaining or restoring qualifying habitats.

5. The appeal scheme would not be directly connected with, or necessary to, the management of the SAC. Therefore, it is necessary, in accordance with the Habitat Regulations¹, to consider whether the development would be likely to have a significant effect on the SAC alone, or in combination with other plans and projects. Most trips to the appeal site would be via motorised transport given its location away from any settlement. The nature of the appeal scheme, which would involve the treatment of pets, would also necessitate vehicular travel in most instances. These trips would need to pass across, or near to, the SAC given the position of the appeal site around 500m from its boundary.
6. The supplementary advice on conserving and restoring the SAC² explains that the heathland habitat of the Ashdown Forest is sensitive to changes in air quality. Exceedance of 'critical values' for air pollutants may modify its chemical substrate, accelerating or damaging plant growth, altering its vegetation structure and composition and causing the loss of typical heathland species. Accordingly, the appeal scheme could result in an impact pathway to the SAC if it results in an intensification in vehicular activity.
7. The appeal building is currently vacant but benefits from planning permission to be used as an office. The property was last used as an office in association with an internet distribution business. Representations from the operator of that business suggest that the business employed two members of staff and had two deliveries and one collection a day. This is supported by representations from neighbours. Substantive evidence is not before me to support the appellant's proposition that the previous business involved twenty vehicular movements a day. Notwithstanding this, the last use of the appeal site may not have had a level of activity typically associated with an office use, so a comparison is not particularly instructive in ascertaining whether the appeal scheme would result in a material increase in vehicular movements.
8. The appellant has not provided an analysis, perhaps in the form of a Transport Report, that considers the level of vehicular activity typically associated with office uses and that which could be attributed to the appeal scheme. Such an analysis would have been useful in establishing whether the appeal scheme would result in an intensification in vehicular movements.
9. Nevertheless, the use of the site for holistic veterinary consultations is likely to generate a higher level of comings and goings when compared to an office use. This is because members of the public would regularly be accessing the facility via timed consultations (in addition to staff and deliveries). The appellant has not demonstrated that the activity currently associated with the existing holistic veterinary consultation business, currently operated from the appellant's home, and the lawful use of the appeal site would, in combination, be comparable to the appeal scheme and thus have a neutral or better residual impact on traffic movements. This is significant, as the conclusion I draw is that the appeal scheme would likely result in an intensification of vehicular activity. These vehicle trips would be across, or in close proximity to, the Ashdown Forest.
10. The Council has referred to Section 5 of the emerging Wealdon Local Plan (eLP). This summarises up to date evidence can therefore be afforded notable

¹ Conservation of Habitats and Species Regulations 2017, which has transposed Article 6 of the EU Habitats Directive into UK law

² European Site Conservation objectives: Supplementary advice on conserving and restoring site features for the Ashdown Forest SAC (2019) – see Planning Practice Guide Paragraph: 002 Reference ID: 65-002-20190722

weight in the context of this appeal. It states that the heathland in the SAC is currently in a degraded condition. Annual monitoring studies from 2014 -2016 have shown that rates of nitrogen deposition in the SAC exceed the critical load and are comparatively high at points close to the roads. This indicates that the SAC habitats closest to roads are already being impacted by nitrogen deposition from vehicles. The Council's propositions are supported by up to date technical evidence in the form of bespoke studies, traffic modelling and air quality readings brought together in the Council's HRA for its eLP.

11. Natural England (NE) has provided comments in its capacity as the Statutory Nature Conservation Body. It questions whether the Council's traffic and air quality modelling is sensitive enough to consider the impacts of minor development. However, NE concede that it is not in a position of being able to provide technical advice on traffic modelling so are unable to advise further on this. Moreover, questioning the evidence is not the same as demonstrating it is inaccurate. NE has also referred to its consultation response to the eLP, but this relates to the development proposed in the eLP whereas the appeal scheme would be in addition to this.
12. The evidence before me on atmospheric pollution is contradictory and has been subject to lengthy debate as part of the Local Plan examination. It is unclear when the examining Inspector will report so it is incumbent on me to draw conclusions based on the evidence before me. The Council's evidence provides a cogent explanation as to why the proposal would result in an identifiable adverse effect on the SPA. When following a precautionary approach, the submissions from NE do not exclude the risk that a deterioration of the heathland can be linked, in part, to atmospheric pollution caused by traffic and that this would be made worse by the proposal.
13. The implication is that the impacts of the atmospheric pollution caused by the appeal scheme, in combination with other plans and projects cannot, when following a precautionary approach, be excluded as a likely significant effect on the SAC. Hence, an appropriate assessment, in accordance with Regulation 63 of the Habitat Regulations, is required to consider the implications of the proposal for the SAC in view of its conservation objectives.
14. The impacts from atmospheric pollution upon the qualifying heathland features of the SAC, which would occur if the appeal scheme were permitted, would, if left unmitigated, fail to maintain in a favourable condition the integrity of the SAC. For this reason, the proposal would fail to adhere to the conservation objectives outlined above. In such circumstances, the Habitat Regulations require that I may only give permission for the proposal only after having ascertained that it will not adversely affect the integrity of the European site. In so doing, I may give consideration to any conditions or other restrictions which could secure mitigation and so provide certainty that the proposal would not adversely affect the integrity of the site. However, the appellant has not advanced a scheme of mitigation.
15. In the absence of mitigation, the proposed development would adversely affect the integrity of the SAC. It has not been suggested that there are no alternative solutions to avoid or mitigate the impacts. The limited support the proposal would provide to the local economy from bringing a long-standing empty property into use would not provide imperative reasons of overriding public interest. Consequently, as directed by the Habitat Regulations,

permission must not be granted. A point echoed in Policies WCS12 and WCS14 of the Wealden District Council Core Strategy Local Plan 2013 (CS) and saved Policies EN1, EN7 and EN15(1) of the Wealden Local Plan 1998 (LP).

The effect of the proposed development on highway safety, with particular reference to parking and manoeuvring

16. There are no parking restrictions in respect of the extant office use, but as the proposal is for a new use it needs to be considered against the local parking standards produced by East Sussex County Council as the highway authority. These standards do not set out a discrete requirement for premises providing holistic veterinary consultations. The nearest equivalent is a veterinary practice, the standard for which is four parking spaces per consulting room. The appeal scheme would include two consulting rooms so the parking requirement would be eight parking spaces. Even if I accepted the appellant's proposition that the appeal site could accommodate five parking spaces, this would still be below the parking requirement set out in the parking standards.
17. However, the appeal site is located along a long private access drive which in turn is accessed from Parrock Lane, a narrow single-width lane flanked by steep banks. The lane presents minimal opportunities for on-street parking in the vicinity of the appeal site. Therefore, it is highly unlikely that staff or patrons of the appellant's business would park in Parrock Lane and thus prejudice highway safety. Inconsiderate parking may take place along the lane or in the immediate vicinity of the appeal property and this could result in inconvenience to users of the long driveway. However, it would not prejudice the safety of users of the public highway, which is around 250m to the south of the appeal site. Thus, a conflict with Policies TR3 and TR16 of the LP, Policies SPO13 and WCS14 of the CS and, as material consideration, draft Policy BED2 of the eLP, would not occur.

Other Matters

18. Various concerns have been raised by interested parties regarding noise and disturbance and ground water, which I have noted. However, given my findings above it has not been necessary to address these matters further as the appeal has failed. The application was supported by the local Councillor, but I have come to my own conclusions for the reasons given. The garden is currently overgrown, but it is not essential for the appeal scheme to be allowed for this to be remedied.

Conclusion

19. The proposed development would not prejudice highway safety, but this would be outweighed by the adverse effect that would occur to the integrity of the SAC. Therefore, the proposal would not accord with the development plan taken as a whole. There are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

Graham Chamberlain
INSPECTOR