



---

## Appeal Decision

Site visit made on 13 June 2019

**by Timothy C King BA(Hons) MRTPI**

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

**Decision date: 01 October 2019**

---

**Appeal Ref: APP/C1435/W/19/3224994**

**Land adjacent to 33 Tollwood Park, Crowborough TN6 2XR**

- 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 Anthony Andrews against the decision of Wealden District Council.
  - The application Ref WD/2018/0337/F, dated 27 February 2018, was refused by notice dated 2 October 2018.
  - The development proposed is construction of an attached single dwelling.
- 

### Decision

1. The appeal is dismissed.

### Main Issue

2. The main issue is whether the proposal would be likely to have adverse effects on the integrity of the Ashdown Forest Special Area of Conservation (SAC) and Site of Special Scientific Interest (SSSI).

### Reasons

3. The proposal would involve an additional dwelling being erected onto an existing terrace of two-storey houses. The submitted drawings indicate that the new dwelling would be similar to those existing along the terrace in terms of size, layout, design and appearance.
4. Section 5 of the emerging replacement Wealdstone Local Plan (ELP) identifies that the heathland habitat of the SAC is at risk from atmospheric pollution due to, amongst other things, vehicle emissions from traffic on roads crossing or next to these areas.
5. Under the precautionary principle set out within the Conservation of Habitats and Species Regulations 2017 (CHSR) it is necessary to consider whether the appeal proposal is likely to have a significant effect on the internationally important features of the Ashdown Forest, alone or in combination with other plans or projects. The appeal scheme is likely to increase traffic on roads in proximity to the SAC. Although I accept that the vehicular movements would be limited, given that only one additional dwelling is proposed, even very small increases may have an impact on the SAC, in combination with other plans and projects.
6. Such an impact and breach of the CHSR is a clear material factor which weighs significantly against the proposal, yet no legal agreement or planning obligation has been drawn up to secure appropriate avoidance or mitigation measures in

this regard. This runs contrary to policy WCS12 of the Wealden Core Strategy (CS), paragraphs 174, 175 and 177 of the National Planning Policy Framework (the Framework) which seek to protect SACs, including requiring that adequate measures are put in place to avoid or mitigate any potential adverse effects on the ecological integrity of the habitats.

#### *Other considerations*

7. The appellant has drawn my attention to a planning permission granted by the Council in March 2019 for a new dwelling nearby (ref WD/2018/1119/F) where measures of mitigation in the form of financial contributions payable to the Council was secured by a s106 Agreement. The appellant suggests that this was a requirement of a planning condition imposed. However, the said condition's wording is concerned with submitting details of a scheme to secure further mitigation on vehicles crossing the Ashdown Forest SAC. The financial contribution is in fact separate to this and, secured by way of a legal agreement or obligation, involves the payment of tariff based sums relating to 'Suitable Alternative , Nature Green Spaces' (SANGS) and 'Strategic Access Management and Monitoring' (SAMMS).
8. The circumstances draw a clear distinction between the two planning applications. Besides, any attempt to require a payment of money through a planning condition is contrary to the government's Planning Practice Guidance which advises that a condition should not be used to require a payment of money or other consideration.
9. The Council, in its representations, comments that, it could only demonstrate a 2.62 years supply of housing land. Nonetheless, paragraph 177 of the Framework indicates that the presumption in favour of sustainable development in instances where housing policies are out-of-date does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects). I have not been presented with any compelling information to suggest otherwise.
10. I note other sites, referred to by the appellant, where planning permissions have apparently been granted. However, I have not been provided with full details of these schemes and, as such, the various individual planning merits and impacts involved. Neither do I have details of whether these permissions were subject to planning obligations relating to measures of mitigation, as described above.
11. I have also had regard to the representations from an interested party objecting to the proposal on matters such as the dwelling being considered at odds with local character, and that it would also adversely affect the living conditions of neighbouring occupiers. However, the Council did not raise objections in this regard and, from the findings at my site visit, I agree with its assessment.

#### **Conclusion**

12. In the absence of any suitable measures of mitigation I conclude that the proposal would have harmful effects on the integrity of the Ashdown Forest SAC and SSSI, contrary to the aims and requirements of CS policies WCS12 and WSC14, policies EN1, EN7 and EN15(1) of the Wealden Local Plan, ELP

policies WLP7, AF1 and EA1, and also relevant advice within paragraphs 174, 175 and 177 of the Framework.

13. For the above reasons, and having had regard to all matters raised, the appeal is dismissed.

*Timothy C King*

INSPECTOR