



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: 1 October 2019

Appeal Ref: APP/C1435/W/19/3220963

Land adjacent to 30 Sycamore Court, Uckfield, TN22 1TY

- 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 & Mrs A Harding against the decision of Wealden District Council.
 - The application Ref WD/2018/2340/F, dated 29 October 2018, was refused by notice dated 21 December 2018.
 - The development proposed is a new dwelling.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the proposal's likely 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 and associated garage being erected onto the side wall of No 30 Sycamore Court, a semi-detached dwelling. The submitted drawings indicate that the new dwelling would be virtually identical in form and design to No 30.
4. The appeal site lies outside the identified Uckfield town centre, but within the defined development boundary of Uckfield. It is also within the 7Km 'Zone of Influence' (ZOI) around the protected areas of Ashdown Forest.
5. 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. Within the ZOI there is strict restraint within current planning policies on new development which will increase such traffic movements and/or which will increase pressure on the use of the Forest for recreational purposes.
6. 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.

7. Such an impact and breach of the CHSR is a clear material factor which weighs significantly against the proposal. During the appeal process an un-signed and un-dated Unilateral Undertaking was produced by the appellants, the purpose of which would have been to secure appropriate avoidance or mitigation measures in this regard. However, it was not furthered as it is understood that the Council objected to this method of planning obligation preferring, instead, that a s106 agreement be drawn up with both main parties as signatories.
8. Subsequently, the Planning Inspectorate was notified that the appellants' agent had changed and the appellants requested that additional time be given for the new agent to review the case. An indication was received that the Council would be willing to assist in drawing up a s106 agreement but, despite this, no further contact was made.
9. In circumstances such as these the absence of any planning obligation 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

10. The appellants have drawn to my attention two previous appeal decisions. One relates to the appeal site itself and involved a proposed new dwelling. Although dismissed in August 2016 the Council chose not to contest its refusal reason relating to financial contributions for protected sites. I am not certain as to why this was the case but with the ELP now at an advanced stage, and currently under examination, its draft policies such as AF1 and AF2, directly concerned with measures of mitigation, carry greater weight.
11. The second appeal, in respect of a proposed 3-bed dwelling at 11 Views Wood Path, Uckfield, was allowed with planning permission subject to a Unilateral Undertaking providing contributions in mitigation. Whilst this might indicate inconsistency on the Council's part, given its stance on the current appeal, it did remain open for both main parties to negotiate on this matter. As it stands, there would be no vehicle to secure such measures and 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.
12. The Council, in its representations, comments that, it could only demonstrate a 2.62 years supply of housing land and the appellants mention that the proposal would make a small, but valuable contribution towards the Council's targets. Whilst this might be the case 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.

Conclusion

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

Timothy C King

INSPECTOR