



Appeal Decision

Site visit made on 23 July 2019

by David Cliff BA Hons MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 October 2019

Appeal Ref: APP/C1435/W/19/3228738

Land adjacent to 4 Brewers Row, Church Street, Fletching TN22 3SJ

- 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 Mrs Fiona Kemp against the decision of Wealden District Council.
 - The application Ref WD/2018/2145/F, dated 8 October 2018, was refused by notice dated 24 January 2019.
 - The development proposed is 'Demolition of the existing industrial workshop buildings. Construction of a new, detached dwelling with new vehicular highway access, along with associated hard and soft landscaping works'.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of the existing industrial workshop buildings, construction of a new detached dwelling with new vehicular access, along with associated hard and soft landscaping works at land adjacent to 4 Brewers Row, Church Street, Fletching TN22 3SJ in accordance with the application Ref WD/2018/2145/F, dated 8 October 2018, and subject to the conditions set out in the attached schedule.

Main Issues

2. The main issues are:
 - i) Whether the proposed development accords with the Council's development strategy,
 - ii) The accessibility of the site for local services and facilities,
 - iii) The loss of employment floorspace, and
 - iv) The effects upon the integrity of the Ashdown Forest and Lewes Downs Special Areas of Conservation (SAC) and the Ashdown Forest Special Protection Area (SPA).

Reasons

Development strategy and the accessibility of the site

3. The appeal site is located outside of any development boundary identified within the Wealden Local Plan (1998) ('the Local Plan') and it is not within an area identified for development within the Wealden Core Strategy (2013) ('the Core Strategy'), including through policy WCS6. It would be contrary to saved policies GD2 and DC17 of the Local Plan which resist development outside of

the development boundaries unless in accordance with specific policies in the plan. The proposed dwelling would not be in accordance with specific policies of the Local Plan.

4. The proposal does not therefore accord with the Council's development strategy contrary to policies GD2 and DC17 of the Local Plan and is not supported by the rural area strategy set out in policy WCS6 of the Core Strategy.
5. Turning to the emerging Wealden Local Plan (Submission Document) 2019 'the emerging Local Plan', policy WLP7 makes an allowance of 26 dwellings in the Middle Super Output Area 007 West, but the appeal site is not within one of the Core Areas allocated for windfall developments.
6. Policy WLP10 of the emerging Local Plan supports development of suitable brownfield land subject to several criteria including that the site should be accessible by means of a public footpath to a sustainable settlement, a local or neighbourhood settlement. The site does not have footpath access to the adjacent settlement of Fletching.
7. Nevertheless, from the information before me it appears that the emerging Local Plan has still some time to go before adoption and there are outstanding objections to it. As such, I have only given limited weight to the policies contained within it and any conflict with them for the purposes of this appeal.

Accessibility

8. I consider that the site is within reasonable walking distance of the services and facilities within Fletching village. Whilst there is no footpath along the road from near the edge of the existing built-up area to the site, the road does not appear to be such a busy one that occupiers of the proposed house would be put off from making the fairly short journey to the village by foot or bicycle. The village contains a primary school, public house, shop/café (although this was closed at the time of my site visit), church, village hall, sports ground and recreation ground including playground. It could therefore meet at least some of the day to day requirements of residents. Although, the occupants would be likely to use a car for other journeys, paragraph 103 of the National Planning Policy Framework ('the Framework') makes clear that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. I do not consider the location of the site to weigh against the proposal in accessibility terms. Although there is a breach of policy WLP10 of the emerging Local Plan regarding brown field development, this conflict carries limited weight.
9. The Council has drawn attention to other appeal decisions on the matter of accessibility to local services. However, each case has to be considered on its merits and the accessibility of the site in this case appears to be better than in the other appeal examples provided.

Employment floor area

10. The proposal would be contrary to Policy EC1 of the emerging Local Plan as it would result in the loss of existing employment land with none of the caveats identified in EC1 applying. Nevertheless, as outlined above, the policies within the emerging Local Plan currently carry only limited weight. The Council does not suggest conflict with the current development plan on this issue. Given the

proximity to existing dwellings there would be likely to be some limitations to the extent of commercial use that would be possible on the site. This would not, however, rule out neighbourly business or commercial uses. Nevertheless, given the limited weight I have given to this emerging policy, this is not a matter that weighs significantly against this proposal.

Habitats Regulations

Ashdown Forest SAC and Lewes Downs SAC

11. The appellant's TRICS assessment estimates that 12 vehicle movements per day would be generated based on a similar business use of the site to that which most previously existed and 6 vehicle movements per day for the proposed residential use. This amounts to a doubling of trips for a business use in relation to the proposed residential use. Although there is no lawful development certificate for the site, the Council does not appear to challenge its existing use noting its objection to the loss of an employment use. Whilst it is not currently occupied, should a residential use not be permitted there is a reasonable likelihood that the site would return to a business use. The proposal would amount to a clear decrease in vehicle trip generation from the site in comparison to a business use.
12. It is possible that the routes taken by vehicles in association with a residential use may differ from those associated with a business use. However, the Council has not provided any detailed evidence with this appeal to support its argument in this case that the spatial distribution of vehicle trips would significantly vary between business and residential uses. Most particularly, there is no evidence before me that suggests that residential trips from the site would be more likely to pass through the Ashdown Forest SAC.
13. I have considered the location of the site in relation to the nearby towns which future occupants of the proposed dwelling would be likely to drive to for their day to day needs. Journeys to the nearby towns of Uckfield, Haywards Heath, Lewes and Burgess Hill, which provide a varied range of employment, leisure, shopping and education facilities, would not cross Ashdown Forest SAC. Some journeys may also take place to the north which may cross the SAC. However, given the proximity of these other destinations, the evidence does not suggest that the proposed development would result in an increase in trips across the Ashdown Forest in comparison to the re-commencement of the business use of the site. This is particularly so given that a reintroduction of a business use is predicted to generate a considerably greater number of journeys than the proposed residential use.
14. There is no convincing indication that vehicle trips movements from the previous commercial use of the site would have been transferred to another site. In the event that the commercial operation opened elsewhere, it is most likely to have moved to an existing available commercial site which itself would have previously generated vehicular trips, therefore there would be no overall increase.
15. Therefore, whilst taking account of the precautionary principle, there can be confidence that the proposal would not result in an increase, or contribute to an overall in-combination increase, in vehicle trips across the Ashdown Forest SAC. It would consequently not result in a likely significant effect on the integrity of the SAC with regard to nitrogen deposition.

16. The Council's reason for refusal and officer's report raised objection specifically to the impact on the Ashdown Forest SAC and not the Lewes Downs SAC. However, the Council's subsequent appeal submissions also raise the potential for adverse impacts upon the Lewes Downs SAC. Nevertheless, as above I have taken account of both the reduction in vehicle movements in comparison to a business use of the site and the proximity of the site to nearby towns away from the Lewes Downs SAC. Consequently, even if the spatial distribution of vehicle movements differs between uses, I am satisfied that the proposal would also not result in a likely significant adverse effect upon the integrity Lewes Downs SAC from increased nitrogen deposition.
17. Natural England (NE) has been consulted regarding the appeal proposal, including its effects upon the Ashdown Forest SAC and Lewes Downs SAC. It considers that no adverse effects would result from air quality impacts and that its conclusion can be reached without mitigation measures being necessary. Notwithstanding the specific issue of traffic generation from this site considered above, the Council disagrees with Natural England on whether the proposal would harm the integrity of the Ashdown Forest SAC and Lewes Downs SAC. I do not have the full details and evidence that is available to the current local plan examination. However, given my conclusions regarding traffic movements and their distribution relating to the site, it is not necessary to consider the detail of this disagreement as part of this appeal.
18. The Council has requested that I await the outcome of the latest stage of the Local Plan examination. However, it falls for me to consider this appeal on the basis of the evidence before me and it would not be reasonable to delay my decision for the Examining Inspector's report.
19. Both main parties have cited previous appeal decisions in support of their positions. The circumstances vary for each of these in comparison to the appeal proposal. In the case of the decision at The Marles, North Hall Lane¹, the Inspector found that the proposed dwelling would result in more vehicular movements than the existing barn. The circumstances in this case are materially different given the previous commercial use of the site.
20. For the reasons given above, I am satisfied that the proposal would not result in any likely significant effects upon the Ashdown Forest SAC or Lewes Downs SAC. The integrity of these European protected sites would therefore be protected. It is not therefore necessary for this proposal to rely on the SAC mitigation measures provided for in the appellant's obligation B.
21. I have given limited weight to policies AF1 and AF2 of the emerging Local Plan given the current stage of the examination and the currently unresolved objections. In any case, I find no conflict with the aim of these policies in ensuring that proposals do not adversely affect the integrity of both the Ashdown Forest and Lewes Downs SAC.

Ashdown Forest SPA

22. The site falls within the 7km zone of the Ashdown Forest SPA, within which adverse impacts upon the integrity of the SPA might result from additional recreational activity, including from roaming dogs, arising from the occupants of the proposed new dwelling. An Appropriate Assessment is therefore

¹ APP/C1435/W/18/3206268

- required. There is evidence that one of the principal threats to the European protected ground nesting Dartford Warbler and nightjar is the damaging effects of disturbance caused by recreation during their breeding period. This proposed dwelling could increase this disturbance, either alone or in combination with other plans or projects.
23. Natural England states that, subject to the appropriate financial contributions being secured, it is satisfied that the proposal would mitigate against the potential recreational impacts of the proposed development. The mitigation and avoidance measures sought by the Council are contributions towards the provision/maintenance of Suitable Alternative Natural Greenspace (SANG) and Strategic Access Management and Monitoring (SAMM).
24. The Council's SAMMM Tariff Guidance document (May 2018) provides details of mitigation measures in place for SAMMS as part of the Council's strategy to ensure that new development would not impact upon the integrity of the SPA. It includes details of how the delivery of the relevant measures, in coordination with other Local Authorities and with the support of Natural England.
25. Two alternative Undertakings A and B dated 14 October 2019 have been submitted by the appellant. These have undergone several amendments from the originally submitted versions in response to the comments of the Council, the last of which were submitted on 26 September 2019. Subject to my conclusions below regarding the applicability of either undertaking, I am satisfied that following the Council's comments and subsequent amendments made, the obligations would be effective and capable of being enforced.
26. Both undertakings provide for a SAMMS contribution of £1170 and a SANGS contribution of £5,000. The latter is to provide for the maintenance of SANGS. Whilst the obligation is the form of a unilateral undertaking rather than an agreement with the Council, I am satisfied from the evidence provided that the Council has the procedures and mechanisms in place to ensure the mitigation would be provided for. I am therefore satisfied that the proposed development, either alone or in combination with other plans or projects, would not harm the integrity of the Ashdown Forest SPA. The proposal would therefore accord with the biodiversity aims of policy WCS12 of the Core Strategy.
27. I consider that the provisions in Undertaking A are necessary, directly related to the development and fairly and reasonably related in scale and kind to the development. It is compliant with the Community Infrastructure Levy Regulations 2010 (as amended). The provision in Undertaking B regarding the SAC contribution, however, is not necessary to make the development acceptable. Undertaking A is therefore applicable in this case.

Other matters

28. The Council does not argue that the proposal would result in any harm to the character and appearance of the area and states that the proposal would see the removal of the existing unsightly industrial buildings leading to a visual enhancement of the locality. Taking this into account, I am satisfied that it would enhance, albeit to a small degree, the landscape and scenic beauty of the High Weald Area of Outstanding Natural Beauty (AONB). I therefore find no conflict with the design and landscape protection aims of saved policies EN8 and EN27 of the Wealden Local Plan 1998 or policy EA4 of the emerging Local Plan.

29. Given the proximity to other dwellings I am satisfied that the location of the site is not isolated in the context of paragraph 79 of the Framework. It is not therefore a site where the Framework states that new homes should be avoided. Given my conclusions on accessibility above, the proposal would also be located where it would contribute towards the vitality of the rural community including support for local services, albeit to a limited degree from one new dwelling. As the dwelling would not be isolated, I find no conflict with policy RAS2 of the emerging Local Plan.
30. Details of foul and surface water drainage would be subject to Conditions. Concerns regarding septic tank provision are not backed up with evidence and carry minimal weight.

Planning Balance

31. I have found that the proposal would conflict with policies GD2 and DC17 of the Local Plan. It would not also be supported by policy WCS6 of the Core Strategy. It would therefore be contrary to the development plan when considered as a whole. It would also conflict with policies WLP10 and EC1 of the emerging Local Plan and would not be supported by WLP7. However, these policies currently carry only limited weight.
32. The Council states that its most up to date figures show a housing land supply of 2.62 years. This represents a very substantial housing shortfall. Although the Council states that it will be in a position of having more than a five year supply of housing land when the emerging plan is adopted, this is not the current position and I do not have any certainty of when the plan will be adopted. Given the absence of a five year housing land supply, the policies which are most important for determining the application are out of date and the tilted balance is applicable through paragraph 11 of the Framework. The Council's current development strategy has not been able to provide for the required supply of housing land. The weight to be given to conflict with the above development plan policies in this regard is substantially reduced due to the Council's very significant shortfall in housing land supply.
33. The proposal would make a small contribution of a single dwelling towards the supply of housing which I have afforded modest weight. It would also make an albeit limited contribution towards the vitality of the rural community. Notwithstanding its refusal, the Council finds that the proposal would lead to a visual enhancement of the locality within the AONB. Paragraph 121 of the Framework also states that proposal should be supported which use employment land for homes in areas of high housing demand provided this would not undermine key economic sectors or sites and would be compatible with other policies in the Framework.
34. Whilst the weight of these benefits is rather limited due to the small scale of the proposal, the harm arising from the conflict with the development plan is also very limited in this case. When assessed against the policies in the Framework the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits.
35. Despite the conflict with the development plan, material considerations indicate in this case that planning permission should be granted for the proposal. The proposal would also therefore accord with policy WCS14 of the Core Strategy which seeks to secure sustainable development.

Conditions

36. A time limit condition is necessary to accord with the relevant legislation. An approved plan condition is needed for certainty on what has been improved. Foul and surface water drainage conditions are necessary in order to provide for an appropriate standard of development and to prevent surface water flooding implications. Bat protection measures are necessary to safeguard these protected species. A condition requiring tree protection is necessary to safeguard the visual appearance of the area. Details of external materials need to be approved to provide a good standard of design.
37. I have not imposed the Council's suggested condition for mitigation of vehicles crossing the Ashdown Forest given my findings that the proposal is not likely to have a significant effect upon the integrity of the SAC. The condition is therefore unnecessary. I have also not imposed the Council's suggested condition removing certain permitted development rights. The Framework advises that conditions should not be used to restrict permitted development rights unless there is clear justification to do so. The Council's reason for the suggested condition is in the interests of residential amenity. In this case, given the separation of the proposed dwelling to the nearest neighbouring property, I do not consider there is clear justification for such a condition.
38. Conditions 5 and 6 are pre-commencement conditions as any site works could impact upon the protected features. Conditions 3 and 4 are pre-commencement conditions as the details requiring approval might influence other site design matters.

Conclusion

39. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

David Cliff

INSPECTOR

Schedule of Conditions

1. The development to which this permission relates shall be begun not later than the expiration of three years beginning with the date on which this permission is granted.
2. The development hereby approved shall be carried out in accordance with the following plans: 2.01A, 2.02A, 2.03, 2.04 and 2.05A.
3. No development approved by this permission shall be commenced until full details of the proposed means of foul drainage disposal have been submitted to and approved in writing by the Local Planning Authority. The approved drainage works shall be completed prior to the occupation of the approved dwelling.
4. No development approved by this permission shall be commenced until full details of the proposed means of surface water disposal has been submitted to and approved in writing by the Local Planning Authority. The approved drainage works shall be completed prior to the occupation of the approved dwelling.
5. Prior to the commencement of the development hereby approved, details of appropriate mitigation measures and contingency plans for the protection of bats shall be submitted to and agreed in writing by the Local Planning Authority and the approved mitigation measures shall be implemented in accordance with the approved details.
6. Prior to the commencement of the development hereby approved, the tree protection measures (as shown in the Arboricultural report dated 22 November 2018) for the protection of those trees, shrubs and natural features not scheduled for removal, shall be erected at the site. The fencing, which shall comply with BS5837:2012 *Trees in relation to design, demolition and construction – Recommendations*, shall thereafter be retained until the completion of the development.
7. Prior to the construction of the dwelling hereby approved, a schedule of external materials to be used in the development shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with such approved materials.