



Appeal Decision

Hearing Held on 23 October 2019

Site visit made on 23 October 2019

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st October 2019

Appeal Ref: APP/C1435/W/18/3211460

Land to the East of Nightingales, Crowborough, East Sussex TN6 3RB

- 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 Rydon Homes Ltd against Wealden District Council.
 - The application Ref WD/2018/0148/F is dated 18 January 2018.
 - The development proposed is described as 'Redevelopment of site of existing recycling centre to build 6 x No dwellings consisting of 5 x 3-bedrooms houses and 1 x 4-bedroom house and associated development'.
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Decision

1. The appeal is allowed and planning permission is granted for the redevelopment of site of existing recycling centre to build 6 x No dwellings consisting of 5 x 3-bedrooms houses and 1 x 4-bedroom house and associated development at Land to the East of Nightingales, Crowborough, East Sussex TN6 3RB, in accordance with the terms of the application, Ref: WD/2018/0148/F, dated 18 January 2018, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. During the hearing both the appellant and the Council produced late evidence. It was not extensive or overly technical and was capable of being dealt with by the parties present. Accordingly, no party was significantly prejudiced when I accepted it. A planning obligation in the form of a unilateral undertaking was submitted at the hearing. The Council had had prior sight of this and was able to confirm that it was satisfied with its drafting.

Background and Main Issues

3. The Council failed to determine the planning application within the prescribed period and therefore the appellant exercised their right to submit this appeal. The Council has confirmed that, had it been in a position to do so, it would have refused the proposal due to concerns over the housing mix and the effect it would have on the Ashdown Forest Special Protection Area and Special Area of Conservation. Accordingly, the main issues in this appeal are: 1) Whether the proposed development would include an appropriate housing mix; and 2) The effect of the proposal on the Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation (SAC).

Reasons

Whether the proposed development would include an appropriate housing mix

4. Policy HG5 of the Wealden Local Plan 1998 (LP) states that within development boundaries the Council will seek a mix of dwelling types and sizes on new estate development. Regardless of whether the proposal can be considered estate development, the appeal site is not within a development boundary and therefore the proposal would not conflict with this policy. I have not been directed to any other extant development plan policy that deals with the mix of homes at development sites outside of settlement boundaries. Accordingly, the proposed housing mix is not at odds with the development plan.
5. However, as a material consideration, the National Planning Policy Framework states that the size, type and tenure of housing needed for different groups should be assessed and reflected in planning policies. To this end, the Wealden District Council Strategic Housing Market Assessment 2016 (SHMA) is of significance as evidence of the size, type and tenure of housing needed in the district. It explains that there is a variation in the size of the housing stock in the district with settlements in the north, including Crowborough, having a higher proportion of four- and five-bedroom homes and higher house prices.
6. The district also has an ageing population seeking to downsize, a substantial level of under occupation and a need for entry level housing. Given these trends the SHMA sets out an indicative size specific distribution for market housing that the Council should seek in order to rebalance the stock and address housing needs. This being 10% one-bedroom, 45% two-bedroom, 35% 3-bedroom, 15% 4-bedroom and 5% being five plus-bedroom.
7. Five of the homes proposed in the appeal scheme would have three bedrooms and the remaining home would have four. This would not adhere to the indicative mix in the SHMA. However, given the small size of the appeal scheme I share the view of the appellant that the mix should be approached with flexibility, as it would be difficult to achieve a mix that exactly met that suggested in the SHMA. In this respect, the four-bedroom home proposed can be justified with reference to the SHMA and the provision of some three-bedroom homes and a pair of semi-detached houses is also to be commended.
8. However, the proposal would not contribute towards the provision of one and two-bedroom properties, of which there is a high need in the north of the district. Nothing of substance has been submitted demonstrating it would be unviable to provide some one-and two-bedroom homes as part of the proposal. Detached three-bedroom homes may be more flexible and desirable than smaller properties but they are also likely to be more expensive, and thus unlikely to cater for certain markets, particularly those wishing to enter the housing market.
9. Given what the Framework states in Paragraphs 59-61, housing mix should not be considered a matter to be left to a developer to decide based on what they wish to provide. Such an approach is unlikely to address the housing needs identified in the SHMA, particularly for less profitable homes. The appeal scheme is evidence of the drawback of following such an approach, as it would not deliver one and two-bedroom homes.

10. A housing mix has been encapsulated in draft Policy HG9 of the emerging Wealden Local Plan (eLP). However, the mix in the policy is not the same as that in the SHMA and, notwithstanding this, the policy is subject to examination and there are unresolved objections as part of this. Thus, the policy could be amended in the future. As such, the conflict with draft Policy HG9 draws limited weight as a material consideration. Nevertheless, the scheme's failure to deliver a more balanced mix that includes smaller and lower value properties as per evidence in the SHMA is an adverse impact of the appeal scheme.

The effect of the proposal on the Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation (SAC).

11. The Conservation of Habitats and Species Regulations 2017 requires that where a plan or project is likely to result in a significant effect on a European site, and where the plan or project is not directly connected with or necessary to the management of the European site, as is the case here, a competent authority is required to make an Appropriate Assessment of the implications of that plan or project on the integrity of the European site in view of its conservation objectives. In so doing, an assessment is required as to whether the development proposed is likely to have a significant effect upon a European site, either individually or in combination with other plans and projects.

Assessment of likely significant effects on the SPA

12. The qualifying feature underpinning the SPA designation is the concentration of Dartford warbler and European nightjar. The conservation objectives for the SPA can be summarised as ensuring that the integrity of the site is maintained or restored as appropriate so that it continues to support the population and distribution of its qualifying features.
13. Natural England's (NE) supplementary advice on conserving and restoring site features for the Ashdown Forest SPA¹ identifies recreational disturbance as one of the principle threats to ground nesting birds. Evidence provided by the Council in its Habitat Regulation Assessment for the eLP, undisputed by the appellant, supports this by demonstrating that increased recreation can result in damage to the bird's habitat through trampling and erosion. Moreover, the presence of people can disturb ground nesting birds during their breeding season (Feb - Aug). Dog walking can be particularly problematic in this regard, especially if dogs are let off their lead.
14. The appeal scheme would facilitate a permanent increase in the number of people living within a short drive of the SPA. The Ashdown Forest is an attractive semi-natural area which is close to the appeal site. It is somewhere future residents of the homes proposed would likely wish to visit for recreation. Evidence in the form of visitor surveys, summarised in the Council's Ashdown Forest SPA Mitigation Zone Background Paper, demonstrates that residents living within 7km of the Ashdown Forest are likely to visit it. This would provide a pathway of effect for recreational disturbance.

Assessment of likely significant effects on the SAC

15. The qualifying features underpinning the SAC 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

¹ See Planning Practice Guide (PPG) Paragraph: 002 Reference ID: 65-002-20190722

favourable conservation status of its qualifying features by, amongst other things, maintaining or restoring qualifying habitats.

16. NE's supplementary advice on conserving and restoring the SAC, linked to the PPG, 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 contributes to an exceedance in critical values.
17. Section 5 of the Council's eLP and the appellant's analysis in its 'shadow Habitat Regulations Assessment' explains that the heathland habitat in the Ashdown Forest SAC is vulnerable to atmospheric pollution from several sources including vehicle emissions from motor vehicles. There is a potential impact pathway from increased traffic flows associated with new development on the roads which go through, or run adjacent to, the SAC. Many of the characteristic plants, mosses and lichens of heathland habitats are adapted to nutrient poor conditions and extra input of nitrogen can disadvantage these characteristic species in favour of others with a greater tolerance of higher nitrogen levels.
18. The appellant's Transport Assessment concludes that the existing activity at the appeal site, which I observed was extant, is likely to generate around 31 trips a day and the appeal scheme 28 trips. Accordingly, there would be a slight decrease in vehicle trips. I am content to rely on these findings, as no alternative figure is before me and the Highway Authority has not raised objections. However, this alone is not determinative in demonstrating no significant effect on the SAC, as it is also necessary to consider trip distribution. This is because residential trips could be more likely to pass through or close to the Ashdown Forest, such as commuters going to towns such as Crawley, which is on the far side of the heath.
19. The technical note prepared by RPS on behalf of the appellant assessed trip distribution and concludes that the number of trips across the Ashdown Forest would increase if the appeal scheme were permitted. However, it also finds that overall nitrogen emissions would decrease largely due to a drop in HGV movements. This would suggest that the effect on the SAC from permitting the appeal scheme would be a slight improvement in the extent of nitrogen deposition. The Council has not provided contradictory evidence to that of the appellant's and has chosen not to run the appeal scheme through its own modelling. The absence of evidence to counter the findings of RPS is significant.
20. The output from the appellant's trip and distribution analysis is only as good as the inputs. In this respect, reliance has been placed on TRICS data to establish existing movements from the appeal site. This is understandable as it is the land use that needs to be considered rather than the individual operator, who could be under using the site. The Highway Authority was content with this and so am I, particularly as the Council followed this approach in the past when considering a proposal to redevelop the site for offices.
21. It would be possible for the existing business currently operating from the appeal site to relocate somewhere else nearby and this could result in the existing trips it produces enduring. However, there is no evidence before me to

suggest this would happen or that the existing business performs an essential local service that would need to continue. Moreover, if the existing business was to relocate somewhere else locally, then its effect on the Ashdown Forest SAC could be considered on its own merits in the event planning permission was required for it to operate from the new site.

22. The implication of the foregoing is that the appeal scheme would not increase atmospheric pollution and nitrogen deposition and therefore it would not have a likely significant effect on the Ashdown Forest SAC. This is a conclusion supported by Natural England, albeit for different reasons. Given this finding, the financial contribution towards the Interim Air Quality Mitigation Strategy in the planning obligation is unnecessary and I have not taken it into account.

Findings in relation to adverse effects on the integrity of the SPA

23. Given the above analysis, an appropriate assessment, in accordance with Regulation 63 of the Habitats and Species Regulations 2017, is required to consider the implications of the proposal for the integrity of the SPA in view of the conservation objectives. In so doing the Habitats Regulations require that I may only give permission for the proposal after having ascertained that it will not adversely affect the integrity of the European site. I may consider 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.
24. Due to the small scale of the proposed development there is no scope to provide on-site mitigation for the impacts on the SPA. Thus, it is necessary to secure a financial contribution towards Suitable Alternative Natural Greenspace (SANG) and Strategic Access Management and Monitoring (SAMM) in line with the tariffs in the Council's Ashdown Forest Mitigation Zone Background Paper. This is an approach supported by Natural England (NE).
25. The contributions would be used to improve the visitor experience at the nearby strategic SANG in order to displace recreational trips away from the SPA. There is capacity at the strategic SANG to accommodate the recreational trips that would arise from the appeal scheme. The contribution towards SAMM would be used to monitor and limit recreational disturbance at the SPA.
26. The mitigation would help support an alternative recreational destination for residents of the appeal scheme and assist in managing the SPA in a favourable condition as a habitat for Dartford warbler and European nightjar. I therefore share the view of the Council, the appellant and NE that the mitigation would ensure the proposal would not adversely affect the integrity of the SPA, as its condition need not deteriorate as a result of the appeal scheme.
27. The contributions would be directly related to the impacts of the proposal on the SPA and necessary to make the development acceptable. Moreover, the contributions would be fairly and reasonably related in scale and kind to the development, as they follow the methodology for calculating them in the Council's strategy. Accordingly, the contributions towards SANG and SAMM are obligations that can be taken into account
28. In conclusion, subject to the mitigation discussed above and secured through the planning obligation, it is my view that the appeal scheme would not adversely affect the integrity of the SPA in view of the site's conservation objectives. Accordingly, the proposal would not be at odds with Policy WCS12

of the Wealden District Council's Core Strategy and saved Policies EN1, EN7 and EN15 of the Wealden Local Plan (1998).

Other Matters

29. The appeal site is located outside the development boundary of Crowborough and therefore the appeal scheme would be at odds with Policy GD2 of the LP. However, Policy WCS4 of the CS postdates the LP and has identified land South East of Crowborough as a direction of growth for around 160 homes. This is part of a spatial strategy that recognises the need to breach the settlement boundaries in order to deliver an adequate number of homes. The direction of growth includes the appeal site. Thus, the appeal scheme's location outside the settlement boundary would not be at odds with the spatial strategy in the development plan taken as a whole.

Planning Balance

30. The Council are currently unable to demonstrate a five-year housing land supply as required to by the Framework. The most recent annual monitoring report puts the supply at 2.62years, although the Council's most recent calculations suggest it could be higher at 3.67 years. In such circumstances, the Framework states that planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when considered against the policies in the Framework taken as a whole. In accordance with Paragraph 177 of the Framework, the presumption in favour of sustainable development can be applied because the proposal would not adversely affect the integrity of either the SPA or SAC.
31. For the reasons already given, the failure to provide one and two-bedroom homes would be an adverse impact of the appeal. However, it would be inaccurate to suggest the proposal would not be meeting some housing needs by providing three-bedroom homes and a four-bedroom house. Moreover, there is no development policy that requires one and two-bedroom homes. Accordingly, I afford this point moderate weight.
32. Benefits of the appeal scheme include the reuse of previously developed land to provide housing to help address, in a modest way, the notable supply deficit. This is a point of moderate weight given the extent of the deficit, even if I take the Council's more favourable figure. There would also be some unquantified support to the construction industry, but this is likely to be limited in extent and short lived. The local economy would also benefit more generally to a limited extent from the spend of future occupants. The proposal would also be an efficient use of land given the constraint of the SAC. Overall, I find that the moderate adverse impact of the appeal scheme would not significantly and demonstrably outweigh the cumulative benefits. This is a material consideration that indicates the proposal should be permitted.

Conditions

33. I have had regard to the advice in the Planning Practice Guide and the list of conditions suggested by the Council as amended at the hearing. It is necessary in the interests of safeguarding the character and appearance of the area to ensure that the development is undertaken in accordance with the approved drawings and that a scheme of landscaping (including tree protection), external lighting and samples of external materials, are approved.

34. In the interests of maintaining highway safety it is necessary to ensure the vehicular accesses are implemented, and done so with adequate visibility splays, and that vehicular and cycle parking is provided as well as areas for vehicles to turn.
35. To protect living conditions, it is necessary to manage construction hours, address the risk from land contamination and provide bin storage. To prevent any localised risk from flooding it is necessary for a surface water drainage scheme to be approved. To protect biodiversity, it is necessary to ensure the proposal is implemented in line with the recommendation set out in the biodiversity report submitted with the application.

Conclusion

36. For the reasons given, I conclude the appeal should be allowed.

Graham Chamberlain
INSPECTOR

APPEARANCES

FOR THE APPELLANT

P Mepham
Christopher Hough

Rydon Homes
Sigma Planning Services

FOR THE LOCAL PLANNING AUTHORITY

Doug Moss
M Taylor

Wealden District Council
Wealden District Council

DOCUMENTS SUBMITTED AT THE HEARING

- Doc 1 Copy of completed unilateral undertaking dated 23 October 2019
- Doc 2 Decision Notice relating to planning permission WD/2014/1564/O
- Doc 3 Undated letter from Ian Berry of Connells Estate Agents
- Doc 4 Sample of properties available for sale taken from Rightmove
- Doc 5 Core Strategy Policy WCS6
- Doc 6 Signed Statement of Common Ground
- Doc 7 Plans showing the location of Lewes Downs SAC
- Doc 8 Documentation relating to an application under s288 for juridical review -
Claim No: CO/1112/2019
- Doc 9 Evidence of title for the appeal site

DOCUMENTS SUBMITTED AFTER THE HEARING

- DOC 10 Wealden District Council Strategic Housing Market Assessment Final Report
August 2016
- DOC 11 Draft plans condition

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 shall be carried out in accordance with the following plans: 1010-FA-01, 1010-FA-02, 1010-FA-03, 1010-FA-10, 1010-FA-11, 1010-FA-12 1010-FA-13, 1010-FA-14, 1010-FA-15, 1010-FA-16, 1010-FA-17, 1010-FA-18 1010-FA-19 and 1010-FA-20
3. No preparation of ground levels for the development shall take place until details of surface water drainage, which shall follow the principles of sustainable drainage as far as practicable, have been submitted to and approved by the Local Planning Authority. The drainage shall be provided in accordance with the approved details before first occupation of the related dwelling.
4. During the demolition and construction phases of the development, no audible works shall take place other than within the hours Monday to Friday 0800 to 1800 hours, Saturday 0800 to 1300 and not at all on Sundays or Bank Holidays. All works including the control of dust, shall ensure compliance with guidance found in the following: British Standard (BS) 5228-1:2009 + A1:2014 - Code of practice for noise and vibration control on construction and open sites.
5. Prior to works below ground level an investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:
 - (i) a survey of the extent, scale and nature of contamination;
 - (ii) an assessment of the potential risks to:
 - human health;
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland, and service lines and pipes;
 - adjoining land;
 - groundwaters and surface waters;
 - ecological systems;
 - archaeological sites and ancient monuments.
 - (iii) an appraisal of remedial options and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

6. Prior to works below ground level a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property, and the natural and historical environment must be prepared and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. CL02
7. The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks' written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced and is subject to the approval in writing of the Local Planning Authority.

8. The development shall proceed strictly in accordance with parts 6 and 7 of the submitted Phase 1 Habitat Survey authored by James Blake Associates Ltd, dated 19 February 2018 and thereafter so retained.
9. Prior to preparation of ground levels for the construction of the development hereby approved, a scheme for the protection of retained trees shall be provided in accordance with the Arboricultural Implications Assessment authored by Broad Oak Tree Consultants Limited. The approved scheme shall be implemented in accordance with the approved details.
10. Prior to preparation of ground levels for the construction of the development hereby approved, a scheme of landscape proposals shall be submitted to and approved in writing by the Local Planning Authority, which shall include full plans and specifications for all hard and soft landscape works and indications of all existing trees and hedgerows on the land to be retained.

Soft landscape works shall include: planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes, types, forms and proposed numbers/densities, mostly comprising native species; an implementation programme; and a timescale.

All planting, seeding and/or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building(s) or the completion of the development, whichever is the sooner, and any trees, shrubs, hedges or plants which within a period of five years from the completion of development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation. All hard landscaping comprised in the approved details of landscaping shall be carried out before the completion or first occupation of the development, whichever is the sooner.

11. Details of refuse, recycling and garden waste storage facilities to serve the development shall be submitted to and approved in writing by the Local Planning Authority prior to works above ground level for the development hereby approved. The refuse, recycling and garden waste storage facilities shall be provided in accordance with the approved details prior to occupation and shall thereafter be retained as such.
12. Before construction above ground level of the development hereby approved, a schedule of external materials, indicating types, colours and finishes of bricks and tiles to be used in respect of the development, shall be submitted to and approved in writing by the Local Planning Authority, and the approved materials shall be used in the implementation of the development and thereafter so retained.
13. No development shall commence until the vehicular accesses serving the development have been constructed in accordance with the approved drawing (Ref: 1010-FA-02).
14. No part of the development shall be occupied until visibility splays of 43 metres by 2.4 metres have been provided at the proposed site vehicular access onto Nightingales in accordance with plans and details submitted to and approved in writing by the Local Planning Authority. Once provided the splays shall thereafter be maintained and kept free of all obstructions over a height of 600mm.
15. No part of the development shall be occupied until the car parking has been constructed and provided in accordance with the approved plans. The areas shall thereafter be retained for that use and shall not be used other than for the parking of motor vehicles.
16. No part of the development shall be occupied until covered and secure cycle parking spaces have been provided in accordance with plans and details submitted to and approved in writing by the Local Planning Authority. The areas shall thereafter be retained for that use and shall not be used other than for the parking of cycles.
17. No part of the development shall be occupied until the vehicle turning space has been constructed within the site in accordance with the approved plans. This space shall thereafter be retained at all times for this use and shall not be obstructed.
18. No floodlighting, security lighting or other external means of illumination of the site shall be provided, installed or operated in the development, except in accordance with a detailed scheme which shall provide for lighting that is low level, hooded and directional, and has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details and retained thereafter.