



Appeal Decision

Site visit made on 3 June 2019

by Tim Crouch DipUD MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: Friday, 29 November 2019

Appeal Ref: APP/C1435/W/19/3223713

Former Golden Cross Inn car park, Deanland Road, Golden Cross, Chiddingfold BN27 4AW

- 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 Osborn Leisure LLP against the decision of Wealden District Council.
 - The application Ref WD/2018/0407/F, dated 15 February 2018, was refused by notice dated 2 January 2019.
 - The development proposed is erection of terrace of five two storey dwellings with parking and amenity space.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Although different to that on the application form, I have used the address as set out in the Council's decision notice and the subsequent appeal form as this accurately describes the location.
3. During the course of the appeal, the High Court quashed an appeal decision¹ which was referred to in the appellant's submission. This related to the need for an appropriate assessment and relationship with Natural England advice. The main parties were given the opportunity to add additional material relating to this.
4. Whilst set out in the Council's reason for refusal, it has now confirmed that the Pevensey Levels Special Area of Conservation (SAC) has no longer been identified as sensitive to additional vehicle movements within the emerging Wealden Local Plan (eLP).
5. The eLP has been submitted for Examination in Public. However, this has not been concluded and there remain a number of unresolved objections including in relation to housing and environmental designations relevant to this appeal. Therefore, I have not given weight to its policies within this decision.

Main Issues

6. The main issues are;

¹ Appeal reference APP/C1435/W/18/3197286

- whether the principle of residential development is acceptable having regard to local planning policy, and
- the in combination effects of the proposal on the Ashdown Forest designated Special Area of Conservation (SAC), and Lewes Downs SAC.

Reasons

Principle of Residential Development

7. The site is the car park for the adjacent former public house. It now provides parking for the residents of the apartments into which the building was converted. It lies on a staggered crossroads, adjacent to the A22 and amongst a variety of uses centred on the junction, including a petrol station, antiques shop, motorhomes sales and servicing centre and a holiday park. Further to the west lies a block of similarly designed new build properties allowed at appeal² in December 2017.
8. The site lies outside a settlement boundary as defined the Wealden Local Plan (1998) (LP) and is defined within the settlement hierarchy of the Wealden Core Strategy Local Plan (2013) (CS) as an unclassified settlement, not subject to new housing delivery. It therefore lies within the countryside where restrictive policies apply unless it is essential for agriculture or forestry, or justification is has been made for a rural location. The proposal does not comply with this. Therefore, the principle of residential development is not acceptable having regard to local planning policy due to its conflict with saved policies EN1, GD2 and DC17 of the LP, WCS6 of the CS and the National Planning Policy Framework (2019) (the Framework). These, taken together and amongst other objectives, preclude development outside identified settlement boundaries and identify a hierarchy of settlements suitable for additional housing.
9. This position was also recognised in the decision for the nearby appeal where the Inspector considered the area to have a limited range of facilities and services, that residents would have limited choice of sustainable modes of transport and that employment opportunities are relatively limited. This was attributed substantial weight. No substantial new evidence has been presented to challenge this view, which is accepted by the appellant, and I have not found a reason to disagree.
10. However, the proposal is presented on the basis of wider national planning considerations, to which I shall return to in the planning balance.

Ashdown Forest and Lewes Downs SACs

11. The site has been identified as being located within travelling distance of the Ashdown Forest SAC and Lewes Downs SAC. The SACs are protected for reasons including providing habitat that regularly supports nationally important ground nesting bird populations.
12. Both sites have prioritised issues affecting the designations due to air pollution. This is as a result of the impact of atmospheric nitrogen deposition which can change the composition of the nutrients within the soil, affecting habitat quality. This is related to traffic movements within the vicinity of the designations.

² Appeal reference APP/C1435/W/17/3180696

13. Whilst the appeal site is a former car park for the adjacent public house, and I am directed by the appellant that movements attributed from it are contained within evidence baseline data for work on the emerging Local Plan in 2014, that use is now extinguished and the car park is used to accommodate vehicles associated with the change of use of the pub to residential. Given the precautionary principle when considering matters of international ecological designations, I am more persuaded in this case by the Council's position that the movements as part of this proposal should be considered new movements, the effect of which would not be offset by its previous use.
14. I recognise that there is some distance to the SACs and that new development, local centres and other housing proposals are likely to draw movements in other directions or introduce a greater likelihood of effects on the SACs. However, as recognised by the appellant, there is uncertainty over destinations of trips originating from the proposal and which could include the SACs. This requires demonstration rather than a 'common sense' approach.
15. Whilst there is some uncertainty over the progress of the Local Plan, and so limited weight may be applied to policies, allocations and proposed mitigation, the evidence behind it is becoming more established and it is very likely that the area will be subject to housing growth of some form during this period. I am also aware that there are differing positions between Natural England and the Council as to whether mitigation is required to ensure no likely significant effects on Ashdown Forest SAC for the eLP. However, this is currently unresolved, and I do not have the full information supplied.
16. Therefore, as the proposal is not directly connected with, or necessary to site management for nature conservation, without an objective demonstration, with supporting evidence, that there will be no adverse effects on the integrity of the European sites, in combination with other plans and projects, the precautionary principle should be applied, and adverse effects must be assumed.
17. Given the increase in population and likely vehicle movements, this is may contribute to air pollution and the associated effect of the change in composition of the nutrients of the soil at both SACs.
18. The appellant has submitted Unilateral Undertaking (UU) to make a financial contribution towards mitigation for 'Air Quality and Nitrogen Mitigation' in the event that I consider it necessary. However, the UU as drafted does not currently legally bind the Council, define the mitigation or guarantee delivery of mitigation prior to development.
19. Therefore, it is not possible to conclude that there will not be likely significant effects on the Ashdown Forest, designated SAC or Lewes Downs SAC from the proposal in combination with other plans and projects. Therefore as there are no alternative solutions presented that would have a lesser effect, or avoid an adverse effect, on the integrity of the site and the proposal might adversely affect a priority habitat and species, the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) states that permission may not be granted unless there are imperative reasons of overriding public interest. Given the scale of the proposal I do not consider that it would represent an imperative reason of overriding public interest over and above that of the internationally important ecological designations.

20. Therefore, evidence before me indicates that there is potential for habitat degradation within the SACs through air pollution associated with the proposed development, which has the potential to affect the integrity of the SACs. The proposal would therefore be contrary to Policy WCS12 of the CS which seeks to ensure development does not have an adverse effect on the integrity of the Ashdown Forest Special Protection Area of Conservation.

Planning Balance

21. The Council has confirmed that it does not currently have a 5 year supply of housing as required by the Framework. Therefore, the appellant contends that the 'tilted balance' of paragraph 11(d)ii of the Framework is invoked so that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
22. However, the tilted balance is not applied where policies that protect areas of particular importance, such as SACs, provide a clear reason for refusal, as set out in paragraph 11(d)i of the Framework. Paragraph 177 of the Framework also states that the presumption in favour of sustainable development does not apply when the proposal is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects) without an appropriate assessment concluding that the project will not adversely affect the integrity of the habitats site, which is not the case in this decision.
23. Therefore, given my findings on the second main issue and the importance of nature conservation within the Framework, I do not consider that the titled balance applies in this case. This also makes the proposal contrary to Policy WCS14 of the CS which seeks the presumption in favour of 'sustainable development' unless specific policies in the Framework indicate that development should be restricted.
24. I recognise that the proposal would involve the reuse of brownfield land and would make a positive contribution to housing supply. I give this moderate weight. However, whilst there is a bus route, the area has limited facilities and services, which I give substantial weight. I am also unable to conclude that the proposal would not harm the integrity of European designations, which I find overriding in this case.

Conclusion

25. For the reasons given above, I conclude that the appeal should be dismissed.

Tim Crouch

INSPECTOR