
Appeal Decision

Site visit made on 5 September 2019

by Rory MacLeod BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 December 2019

Appeal Ref: APP/C1435/W/19/3228019

Redundant land at the former Cosmic Kennels, Lakeside Farm, Hailsham Road, Maynards Green, East Sussex TN21 0DJ

- 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 R V Young Ltd against the decision of Wealden District Council.
 - The application Ref WD/2018/2381/F, dated 5 November 2018, was refused by notice dated 24 January 2019.
 - The development proposed is erection of four detached dwellings with associated access and parking.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - (a) whether the site would be an appropriate location for new residential development in terms of access to services and facilities;
 - (b) the effect of the proposals on the rural character and an Area of Outstanding Natural Beauty (AONB), and
 - (c) the effect of the proposed development, in combination with other developments, upon the habitat and biodiversity at the Ashdown Forest and Lewes Downs Special Areas of Conservation (SAC).

Reasons

Location

3. The appeal site comprises a sloping open grass field bound by woodland or tree belts to its eastern, northern and western sides. Abutting the eastern boundary is the Cuckoo Trail, a long-distance footpath. Beyond the tree belt to the west is a former greyhound racing track, now used for dressage. To the south, on lower ground, are Lakeview House, a large detached dwelling, and Lakeside Cottages, residential conversions of former kennel buildings. The appeal site has previously been used in association with the former kennels. Access to the field is from the southern side via a narrow and twisting track that links to the B2203. Maynards Green is a small settlement to the south of this junction. The appeal site is in a rural area to the edge of sporadic development on the outskirts of Maynards Green that is part of the High Weald AONB.

4. The development plan for Wealden comprises the saved policies of the Wealden Local Plan (1998) (WLP) and the policies of the Core Strategy Local Plan (2013) (CSLP). The Council is preparing a new plan, the Submission Local Plan (SLP), that commenced its examination in public earlier in 2019. In view of the SLP's early stage of preparation and that its policies may be subject to change, it can only currently benefit from limited weight in the assessment of planning proposals.
5. The Council cannot currently demonstrate a five year housing land supply. As at December 2018 the Council's published figure was only 2.62 years indicating a significant shortfall. Paragraph 11 of the National Planning Policy Framework (the Framework) states that in these circumstances the Council's housing policies should be considered out of date. This constrains the weight that can be applied to Policies GD2 and DC17 of the WLP and Policy WCS6 of the CS that seek to direct the location of new development including housing.
6. Maynards Green does not currently have a development boundary in the adopted development plan but the emerging SLP proposes a core area for the settlement. Policy RAS1 of the SLP identifies a settlement capacity of 20 for Maynards Green, directs new housing to within or adjacent to its core area and indicates that small dwellings of up to 2 bedrooms are required. The appeal proposal for 4 substantial dwellings on the periphery of Maynards Green would not draw support from Policy RAS1. For planning policy purposes, the site falls outside of any development boundary and is in a rural location.
7. Paragraph 79 of the Framework states that planning decisions should avoid the development of isolated homes in the countryside. The proposal would not be isolated in that it would be near other dwellings and to the dressage site, but it would be beyond the present outer limit of Maynards Green. Paragraph 77 of the Framework states that in rural areas planning decisions should support housing developments that reflect local needs. The proposal does not provide a mix of dwellings as encouraged by policy HG9 of the SLP and there is no evidence before me that the substantial dwellings proposed reflect a local need.
8. Paragraph 78 of the Framework states "*To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities*". Maynards Green has few services. There is a pub and a school. Buses provide links to the larger settlements of Heathfield and Horam. The route from the site to Maynards Green is not pedestrian friendly being narrow, twisting and steep in places. With the ample parking provision proposed it is likely that occupiers of the dwellings would be reliant on private cars to access most day to day services and that larger centres beyond Maynards Green would benefit from their custom. The CSLP and SLP have both directed additional housing to Heathfield and Horam in much more sustainable locations than the appeal site.
9. Although Paragraph 103 of the Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, my findings are that the proposal would be counter to the thrust of locational policies in the Framework and in the WLP, CSLP and SLP inasmuch as they are compatible with the Framework. The appellant asserts that trip generation associated with the former kennel use would exceed that of the combined 6 converted dwellings approved in 2014 and the 4 now proposed. However, conversion schemes in rural areas are subject to different policy

considerations to new build proposals. The site would not be a particularly sustainable location for new residential development. However, this finding needs to be weighed against the housing shortfall in Wealden in the overall planning balance.

Rural Character and AONB

10. The proposed houses would all be large, each having 5 or 6 bedrooms. They would be of individual design and arranged in a gentle curve across the site, each with a large detached double garage and garden store within its front garden. Two ponds and supplementary landscape measures would be provided at the front of the site close to the access.
11. The appellant has submitted a Landscape and Visual Impact Assessment (LVIA). This judges that at national, county and district levels, the landscape sensitivity to be "high" (due to national designation), the magnitude of impact to be "low" and therefore the landscape effect is judged to be of "minor significance". The LVIA concludes that as the site is largely enclosed there would be no middle or long distance views of the site and that the visual impact from public viewpoints would be either "no change", "negligible adverse" or "not significant". Notwithstanding these findings, the proposed houses and garages would be clearly seen from Lakeview House and Lakeside Cottages and would be glimpsed at close quarters from the public footpath to the east.
12. Whereas the nearest dwellings to the site are either historic or relate to a cluster of converted buildings, the proposal would be a new build development beyond the last of these sporadic buildings extending into open countryside. Whilst the individual design and naming of the houses would reflect agricultural themes and local vernacular, their layout would be more akin to a suburban cul-de-sac. The design of the development would be pleasant but would not pass the test of "*exceptional quality*" as an exception to the presumption against isolated homes in the countryside set at Paragraph 79 of the Framework, in that it would not "*significantly enhance its immediate setting and be sensitive to the defining characteristics of the local area*".
13. Paragraph 172 of the Framework states "*Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to these issues*". It continues, "*The scale and extent of development within these designated areas should be limited*". Although the proposal is for only 4 houses, the substantial size of the houses and garages and their spread across the site would not result in a "*limited*" development.
14. The scale and siting of the proposal would have an adverse effect on the rural character of the area and would not conserve or enhance the landscape and scenic beauty of the AONB. The proposal would thereby conflict with Saved Policies EN6 and EN27 of the WLP, Policy EA5 of the SLP and with Paragraph 172 of the Framework.

Special Areas of Conservation

15. The Council consider that the additional vehicle movements generated by the occupation of the proposed dwellings in combination with those arising from other unplanned development in the District would result in increased nitrogen

deposition that would impact on the integrity of the Ashdown Forest and Lewes Downs Special Areas of Conservation (SAC) where there are protected habitats sensitive to such impacts. Policies WLP7, AF1 and AF2 of the emerging SLP propose a tariff-based approach to mitigate a certain quantum of development in the District planned within the SLP. But the Council contends that the proposal would not be eligible for this as mitigation is only available to developments in accordance with the locational policies in the SLP.

16. The appeal site is a considerable distance from both Ashdown Forest to the north-west and Lewes Downs to the south-east (within neighbouring Lewes District), about 30 minutes driving time to both according to the appellant. It is most unlikely when considered in isolation that the proposal would result in a material impact on these SAC. However, it has not been demonstrated that in combination with other windfall developments in non-designated areas within Wealden that have not been accounted for in planned mitigation within the emerging SLP that there would not be a cumulative impact. The precautionary principle set out in the Habitat Regulations¹ is that development, either alone or in combination with other plans or projects, should only be permitted if it can be concluded that it will not affect the integrity of a SAC. Notwithstanding the separation distances, it is not possible from the evidence before me to conclude that in combination with other projects that additional traffic arising from the proposal would not adversely affect the integrity of these SAC.
17. Whilst the relevant emerging policies in the SLP should be afforded only limited weight, they are nonetheless material considerations; and as they relate to a potential conflict with the Habitat Regulations, any conflict assumes greater significance. The proposal would conflict with Policies WLP7, AF1 and AF2 of the SLP and would also not be compatible with Policies WCS12 and WCS14 of the CSLP in relation to this issue.
18. In the event that the appeal is to be allowed, the appellant has submitted a Unilateral Undertaking to provide mitigation in accordance with the SLP but given my findings on the other main issues it is not necessary to examine this.
19. The appellant has also drawn my attention to Natural England's objections to policies in the emerging SLP and their contention that development envisaged by the SLP would not adversely affect the integrity of the SAC from air quality impacts; furthermore, that mitigation for these impacts on the SAC would not be needed under the specific requirements of the Habitat Regulations. However, Natural England's comments in relation to an emerging plan should not be relied upon for the purpose of assessment of an individual planning proposal, particularly one relating to a windfall development outside preferred locations for development set by the SLP.

Planning balance

20. As the Council cannot demonstrate a five year housing land supply, Paragraph 11 of the Framework confirms that the relevant adopted housing policies should be regarded as out of date and that a presumption in favour of sustainable development should apply. However, footnote 6 to Paragraph 11 and Paragraph 177 indicate that this presumption does not apply where there are clear reasons for refusing the development proposed in relation to conflict with specified Policies in the Framework. These include those relating to an

¹ The Conservation of Habitats and Species Regulations 2017

AONB and to habitat sites such as SAC. The presumption in favour of sustainable development does not therefore apply.

Conclusion

21. The site would not be an appropriate location for new residential development in terms of access to services and facilities. The proposal would have an adverse effect on the rural character of the area and on an AONB. It has not been demonstrated that the proposal, when considered in combination with other development, would not have an adverse effect on the integrity of the Ashdown Forest and Lewes Downs SAC.
22. For the reasons given and having regard to all other matters raised, including the representations in favour of the proposal, the appeal is dismissed.

Rory MacLeod

INSPECTOR