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## 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**

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**Appeal Ref: APP/C1435/W/19/3220569**

**Land adjacent to Recreation Ground, Framfield Road, Blackboys, Uckfield, East Sussex TN22 5LR**

- 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 outline planning permission.
  - The appeal is made by Mr Joshua Feldman against Wealden District Council.
  - The application Ref WD/2018/1701/O is dated 3 August 2018.
  - The development proposed is the erection of 7 No. Dwellings, Access, Landscaping and Other Infrastructure. Dwelling Mix Comprising 6 No. Semi Detached Properties up to 106 M2 and 1. No Detached Property.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by Mr Joshua Feldman against Wealden District Council. This application is the subject of a separate Decision.

### Preliminary Matters

3. The planning application was made in outline with all matters reserved. I have dealt with the appeal on this basis, treating the site layout plan and potential site access showing visibility splays as illustrative only.
4. The development plan for the area comprises the saved policies of the Wealden Local Plan (adopted in 1998 and saved in 2007) (WLP) and the Wealden District Council Core Strategy Local Plan (2013) (CSLP). The Council has also referred to policies within an emerging development plan submitted for examination, the Submission Local Plan (2019) (SLP). Paragraph 48 of the National Planning Policy Framework (the Framework) states that weight may be given to relevant policies in emerging plans according to (a) the stage of preparation of the emerging plan, (b) the extent to which there are unresolved objections to the relevant policies and (c) the degree of consistency of the relevant policies with the Framework.
5. An appeal against the refusal of planning permission for an identical development to the current proposal at this site was dismissed in July 2018<sup>1</sup>. This decision is a material consideration in the determination of the current appeal.

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<sup>1</sup> Ref WD/2017/0942/O and Appeal Ref: APP/C1435/W/17/3189368

## Main Issues

6. Whilst the appeal follows non-determination of the application, the Council have indicated their concerns on which they wish to contest the appeal. Having regard also to the previous appeal decision, the main issues therefore are:
  - (a) Whether the site would be an appropriate location for new residential development in terms of access to services and facilities; and
  - (b) The effect of the proposed development, in combination with other developments, upon the habitat and biodiversity at the Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation (SAC).

## Reasons

### Accessibility

7. The appeal site comprises an open field bound by hedgerows and trees. Its northern boundary abuts the B2102 from which vehicular access would be gained. There is a public right of way footpath to the west of the site whilst to the south and east is a recreation ground and associated pavilion. The site is located towards the western periphery of Blackboys. There is scattered housing in the immediate vicinity of the site.
8. The CSLP identifies Blackboys as an unclassified settlement without a development boundary. It is regarded as an unsustainable settlement within the settlement hierarchy having few services and facilities. Blackboys has a primary school and a village hall but is predominantly residential. There is a bus service that provides reasonably frequent day time access to Uckfield and Heathfield, the nearest settlements where there are greater ranges of services. Whilst it is possible to cycle to these settlements, the busy nature of the B2102 would not make this an attractive proposition, and the lack of any dedicated cycle provision would be a discouragement during darker hours and winter months. It is therefore likely that occupiers of the proposed houses would be reliant on the use of private cars for access to many services and facilities.
9. The Inspector on the previous appeal noted the need to take into account Framework policies that not only seek to reduce the need to travel and to maximise modes of sustainable travel but also those relating to development in rural areas. She concluded, *"I find that although the location would not have as high a level of accessibility as sought by the Framework and development plan policies there is reasonable accessibility that would prevent full reliance upon private car. I conclude that the proposed development would be an appropriate location for new residential development in terms of accessibility to services and facilities"*. As such, she found no material conflict with Policies EN1 and EN2 of the WLP, or Policies SPO1, SPO7 and SPO8 of the CSLP and the Framework that seek, amongst other matters, to reduce the need for travel by car and concentrate development close to public transport opportunities.
10. As this is a recent appeal decision relating to the same site and there have been no material changes in the plans or site circumstances drawn to my attention, I afford substantial weight to these findings.
11. Subsequent to the appeal decision, the Council has progressed the emerging SLP. This was submitted for examination in January 2019 with hearings beginning in May 2019. Policy WLP7 of the SLP indicates that 20 dwellings will

be delivered within the Blackboys Core Area and that these will be windfall dwellings as no allocations are provided for. The appeal site is about 50m to the west of the designated Core Area for Blackboys as defined in the SLP. The Council considers there to be conflict with Policy RAS1 of the SLP in that the site is outside of the defined Core Area and that the size of the houses is likely to be in excess of the 1 and 2 bedroom dwellings favoured by the policy to encourage organic growth in and adjacent to the Core Area. Although the proposal is in outline form, the illustrative drawing indicates a row of larger dwellings served by a bespoke access.

12. Another relevant consideration is that the Council cannot currently demonstrate a five year housing land supply. The submissions show that at 30 June 2017, the Council could only demonstrate a land supply of 2.65 years and that this fell to 2.62 years in December 2018. Whilst the Council is optimistic that this position can be turned around in association with the SLP, there remains uncertainty on deliverability and timescales. As such, I afford considerable weight to the need to provide additional homes in Wealden. When so much of the District is covered by Areas of Outstanding Natural Beauty, it is appropriate to look to sites such as this with less than optimum accessibility and sustainability credentials to meet housing need. This finding outweighs any harm arising from conflict with Policies GD2 and DC17 of the WLP that seek to restrict new housing to within settlement boundaries defined in 1998, policies that pre-date the Framework and can be regarded as out of date.
13. My understanding is that there has been considerable objection to several policies in the emerging SLP including in relation to housing strategy and delivery. Moreover, whilst the site is outside of the Core Area, it is nonetheless close to it, close to other housing in Blackboys and close to the bus stops providing links to other settlements. As such I afford only limited weight to the appeal proposal's conflict with the SLP. Moreover, the conflict does not outweigh the findings in the previous appeal decision at the site or the need to address the Council's current deficiency on housing land supply. Details on the size and mix of the dwellings could be left to the reserved matters stage. My conclusion on the first issue is that the site would be an appropriate location for new residential development in terms of access to services and facilities.

#### *Ashdown Forest*

14. Ashdown Forest contains large areas of lowland heath, an important habitat in its own right and for vulnerable bird species. The conservation objectives of both the SPA and SAC aim to ensure that its integrity is maintained or restored as appropriate. As the appeal site is located outside of a 7km zone of influence set by the Council in relation to recreational pressures on Ashdown Forest, it considers that there would not be an adverse impact on the SPA. However, in relation to air quality, the Council believes that nitrogen deposition from vehicle emissions would cause ecological harm to the SAC through additional traffic movements.
15. This differs from the findings in the previous appeal at the site. The Inspector considered that the proposal had the potential to increase disturbance through increasing recreational pressures upon the Ashdown Forest SPA and concluded that there was not sufficient certainty that mitigation for these impacts would come forward. However, in relation to air quality impacts, she considered that

- other developments in the area would release sufficient headroom relating to vehicle trip credits to offset vehicle trips generated by the proposal.
16. The emerging SLP has a strategy for a limited amount of growth; it provides for a tariff-based mitigation system for nitrogen deposition together with other site specific mitigation measures under Policies AF1 and AF2. The charging schedule is accessible for policy compliant rural development as set out in Policy WLP7. As the site is outside of any settlement boundary or Core Area in the SLP, the Council contend that the quantum of growth afforded under Policy WLP7, in relation to policy compliant dwellings, has been allocated to other development. As such, it reasons that the proposal as a non-policy compliant development cannot draw on the mitigation available in Policy AF1.
  17. Once completed the proposal would generate vehicle movements relating to the domestic occupation of the site. As the appeal site is a considerable distance from Ashdown Forest, it is most unlikely when considered in isolation that these vehicle trips would result in a material impact on the SAC. However, 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, it is plausible that there could be a cumulative impact on the SAC.
  18. The precautionary principle set out in the Habitat Regulations advises 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 distance, it has not been demonstrated that in combination with other projects that additional traffic arising from the proposal would not adversely affect the integrity of the SAC. Modelling for the SLP identifies that there is potential for a proportion of domestic trips to be distributed across the roads within the SAC and that in combination with other plans and projects this would cause harm to the integrity and conservation objectives of the SAC.
  19. The appellant points out there is agreement between Natural England and the Council that 4,012 dwellings on provisionally allocated sites, and 2,516 windfalls (including 20 dwellings expressly intended for Blackboys and 48 dwellings in the wider Middle Super Output Area) can be delivered without an adverse impact on the integrity of the Ashdown Forest SAC either alone or in combination with other plans or projects. The appellant contends that permission could be granted to the appeal proposal without the need for mitigation or with mitigation using the Council's standard planning condition and accounting for the proposal as part of the designated growth for Blackboys.
  20. The appellant refers to two comments from Natural England, the statutory body responsible for advising on the natural environment, to support this stance. Firstly, Natural England has objected to the emerging SLP at its Examination in Public. It contends that growth identified in the SLP would not result in an adverse effect on the integrity of the Ashdown Forest SAC from air quality impacts. Natural England's advice is that this conclusion can be reached without mitigation measures being needed under the specific requirements of the Habitats Regulations. This is due to a long-established trend of declining background concentrations close to roads mainly as a result of technological improvements in vehicles, even allowing for additional growth in Local Plans.

21. However, advice provided by Natural England in relation to an emerging plan should not be relied upon for the purpose of assessment of an individual planning proposal. This is particularly the case for a windfall development outside preferred locations for development set by the SLP having regard to the in combination impacts on the SAC that could arise from developments in similar non-designated locations.
22. The second comment from Natural England is contained within a letter to the Planning Inspectorate dated 2 August 2019 in respect of other contemporary appeals raising similar issues. This states, *"It is Natural England's advice that small windfall developments coming forward outside of identified WDC growth areas would be of such a scale (even in combination) that there would be no appreciable difference in the air quality modelling. Therefore Natural England's position that there would be no adverse effect on the integrity of the designated sites would be unchanged"*.
23. However, in the letter Natural England also note that the Council's air quality model for the SLP is based upon development within discrete designated areas and that windfall development outside of these areas would require further traffic modelling and air quality modelling in order to inform an appropriate assessment. Natural England confirm that they are not in a position to provide technical advice on traffic modelling. They ponder whether it would be prudent to wait for the Inspector's report on the SLP and her consideration of how air quality matters have been approached by the Council prior to making decisions on related appeals.
24. There remains uncertainty on traffic modelling for the in combination impact of development outside of designated growth areas and on the eventual status of the SLP policies that the Council have relied upon. Notwithstanding the early stage of the SLP, the objections to its emerging policies and the light weight that therefore should be afforded to them under Paragraph 48 of the Framework, the policies relevant to this issue are nonetheless material considerations; as they also relate to a potential conflict with the Habitat Regulations<sup>2</sup>, any conflict with the SLP assumes greater significance. Protection of habitat sites is a matter consistent with the aims of the Framework. There is also uncertainty on when the Inspector's report on the initial stage of the Examination in Public on the SLP will be published; meanwhile appeal casework should be progressed on the information presently available.
25. The appellant has claimed support for the proposal in the reasoning advanced in the allowed appeal decision at Camerlot Stables<sup>3</sup>. However, that decision was quashed following a High Court challenge by the Council in relation to inadequate explanation on how Natural England's position on the SLP informed the Inspector's conclusion on the need for an appropriate assessment of the proposal before him. The appellant has referred to two other appeal decisions in Wealden that support the case for additional housing on land outside of settlement boundaries<sup>4</sup>; but these pre-date the emergence of the SLP and its strategy for safeguarding the integrity of the Ashdown Forest SAC. I have also noted the findings in the three dismissed appeal decisions referred to by the Council that also considered impacts on Ashdown Forest<sup>5</sup>.

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<sup>2</sup> The Conservation of Habitats and Species Regulations 2017

<sup>3</sup> APP/C1435/W/18/3197286 – Land at Camerlot Stables, Camerlot Road, Upper Dicker

<sup>4</sup> APP/C1435/W/17/3178137 and APP/C1435/W/18/3179061

<sup>5</sup> APP/C1435/W/18/3213892; APP/C1435/W/18/3219463 and APP/C1435/W/18/3215358

26. My findings on the second main issue are firstly that there would not be an adverse impact on the integrity of the Ashdown Forest SPA in relation to recreational pressures. However, it has not been demonstrated that there would not be an adverse effect from vehicle emissions on the integrity of the Ashdown Forest SAC arising from the impact of the proposal in combination with other unplanned developments in Wealden. There remains doubt that the proposal could satisfactorily proceed without mitigation for such impacts.
27. The proposal cannot benefit from the Appropriate Assessment underpinning the SLP in relation to planned development. It would require its own Appropriate Assessment if the appeal were to be allowed to confirm either that such mitigation would not be necessary or to indicate the nature of appropriate mitigation. It would not therefore be acceptable to adopt the appellant's suggestion that permission be granted to the appeal proposal without the need for mitigation or alternatively with mitigation using the Council's standard planning condition and accounting for the proposal as part of the designated growth for Blackboys.

*Other matters*

28. 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 of the Framework indicate that this presumption does not apply where there are clear reasons for refusing the development proposed in relation to conflict with Policies in the Framework relating to habitat sites such as the Ashdown Forest SAC.
29. Several local residents have raised concerns about other aspects of the proposal, but in view of my findings on the main issues there is no need for me to address these in this decision.

**Conclusion**

30. The appeal site would be an appropriate location for new residential development in terms of access to services and facilities. The proposal would not have an adverse effect on the integrity of the Ashdown Forest SPA in relation to recreational impacts from visitors. However, it has not been demonstrated that in combination with other developments, that the proposal would not adversely impact upon the habitat and biodiversity at the Ashdown Forest SAC. For the reasons given and having regard to all other matters raised the appeal is dismissed.

*Rory MacLeod*

INSPECTOR