
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/18/3214378

Potmans Lane, Lunsford Cross, Ninfield, East Sussex TN39 5JL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr B G Hepburn against the decision of Wealden District Council.
 - The application Ref WD/2017/0169/O, dated 23 January 2017, was refused by notice dated 30 August 2018.
 - The development proposed is frontage development of 4 detached dwellings.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal seeks outline planning permission with all matters (i.e. access, layout, appearance, landscaping and scale) reserved for subsequent approval. The application form does not specify a total floor area for the development. An illustrative drawing has been submitted showing how 4 detached houses could be arranged in a row to face Potmans Lane served by two shared access points. The plan indicates that the houses would have 4/5 bedrooms. I have determined the appeal on this basis.

Main Issues

3. The main issues are
 - (a) whether the site is a suitable location for the proposed development having regard to the development strategy for the area and accessibility to services and facilities, and
 - (b) the effect of the development alone and in combination with other developments across the District upon the Ashdown Forest Special Area of Conservation (SAC).

Reasons

4. The appeal relates to an agricultural field about 0.29 hectares in area that fronts the western side of Potmans Lane. The field is set back from Potmans Lane separated by a hawthorn hedge and a wide grass verge. The site is currently part of Messens Farm that extends to the north and west of the site. To the south of the site is another field with a frontage hedge; planning

permission has been granted for residential development on this site¹ but work had not yet commenced here at the time of my visit. To the south of this there are dwellings fronting the western side of Potmans Lane. There is a linear development strip of mainly detached dwellings on the eastern side of Potmans Lane extending from its junction with Bexhill Road (A269) to directly opposite the appeal site; to the north of this is open countryside. There is a footway on the eastern side of Potmans Lane up to the last dwelling, but no footway on its western side by the appeal site.

5. The appeal site is located at the periphery of Lunsford Cross which is a small residential settlement with no services of its own but with bus links to other settlements. The village of Ninfield is to the north-west and has a range of facilities and services. The nearest shops are at Sidley about 3km away to the south-east; this and the urban area of Bexhill, just beyond Sidley, are in the adjacent Rother District Council area. There is a footpath linking Lunsford Cross with Sidley but not with Ninfield. A bus service links Lunsford Cross to both settlements and with Bexhill and provides a limited day time service. It is therefore likely that occupiers of the proposed dwellings would be highly reliant on the use of private cars to access many everyday services.
6. The site is therefore in a relatively unsustainable location. Paragraph 78 of the National Planning Policy Framework (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*". As there are no local community services to enhance at Lunsford Cross, any economic benefits flowing from the proposal would probably be primarily for Sidley and Bexhill in view of service provision there. 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 close to other dwellings, but it would be beyond the present outer limit of the settlement and bound by fields to three sides.
7. The site is outside the adopted development boundaries for Ninfield as specified in saved policies in the Wealden Local Plan (1998) (WLP). Lunsford Cross does not have a development boundary and is not included in the settlement hierarchy of the adopted Wealden District Council Core Strategy Local Plan (2013) (CSLP) or in the Council's emerging plan, the Wealden Submission Local Plan (SLP) that commenced its Examination in Public in May 2019.
8. Nevertheless, there are several points weighing in favour of the proposal. Wealden cannot currently demonstrate a 5 year housing land supply. The Council's Monitoring Report published in December 2018 indicated a housing land supply of only 2.62 years. The provision of 4 houses would provide a social benefit in adding to housing supply and would make a modest contribution towards the Council's housing deficit. The restrictions in the settlement hierarchy in the emerging SLP should be afforded only limited weight as this draft plan is at an early stage. The proposal, in association with the approved development on the adjacent site to the south, would complete a line of residential development on the western side of Potmans Lane that would align with that on its eastern side. It would in this way be in keeping with the changing character of the area without unduly affecting open countryside.

¹ Outline planning permission (ref. WD/2015/1949/MAO) for residential development and reserved matters approval (ref. WD/2019/0566/MRM) for 13 detached and semi-detached houses.

9. However, if development of the adjacent site were not to proceed then the proposal would appear as a more isolated residential block. There are also other factors that weigh against the proposal. The site is not previously developed land. The proposal would involve development on open farmland and would be bound by open farmland. The proposal is not advanced on the basis of an essential need for rural workers, one of the exceptions at Paragraph 79 to the Framework. It would not include affordable housing to meet an identified local need, an issue raised at Paragraph 77 of the Framework. The illustrative plan indicates that the proposal would comprise only large detached houses.
10. Having regard to all relevant considerations, my findings are that the site is not a particularly suitable location for the proposed development. Having regard to the development strategy for the area and accessibility to services and facilities, the environmental shortcomings of the proposal arising from its relatively unsustainable location and reliance on private cars to access everyday services would outweigh the social benefit of providing 4 large homes. The peripheral and isolated location of the site in relation to Lunsford Cross would also be particularly noticeable if the proposed development on the adjacent site is not implemented.
11. The proposal would thereby conflict with Saved Policies GD2, EN1, EN8, EN27 and DC17 of the WLP and Policies SP07, SP08, SP013, WCS6 and WCS14 of the CSLP which amongst other matters require new development to be in sustainable locations and when in rural areas to be appropriate to the setting of the area. There would also be conflict with Paragraphs 77-79 of the Framework in relation to the siting of rural housing.
12. The policies in the emerging SLP are at an early stage, may be subject to change and therefore attract only limited weight. Nonetheless, they are a material consideration and a change in circumstances since the time when outline planning permission was granted for residential development on the adjacent site. There would thereby also be conflict with Policies WLP5, WLP7 and RAS1 of the SLP that have similar sustainability objectives to the adopted policies, directing planned and windfall development to preferred locations. However, these finding need to be weighed against other considerations in the overall planning balance.
13. The appellant has drawn to my attention the favourable comments made in the Council's report on the adjacent site regarding housing need outweighing its poor sustainability credentials and that the Council's housing land supply at that time at 3.98 years was not as severe as at present. However, the current appeal site would be in a more isolated position if the adjacent site is not developed, and the Council has since given weight to policies in the emerging SLP that do not favour development of the site.
14. The appellant has also referred to increasing use of home shopping and food delivery coupled with faster broadband speeds, greater opportunities to be able to work from home, and the expected increased use of electric vehicles that would reduce emissions. But these factors do not outweigh the thrust of national and local planning policies that seek to locate new housing in more sustainable locations.

Ashdown Forest SAC

15. Ashdown Forest is a Special Protection Area (SPA), a Special Area of Conservation (SAC) and also a Site of Special Scientific Interest (SSSI). It forms part of a complex of heathlands in southern England that support breeding bird populations of European importance, particularly two rare and vulnerable bird species, the Nightjar and the Dartford Warbler. The Ashdown Forest SAC contains one of the largest blocks of lowland heath in south-east England and provides suitable conditions for supporting several important species of flora and fauna.
16. The SAC is sensitive to the effects of pollution associated with vehicle movements, atmospheric pollution and nitrogen deposition leading to deterioration of the heathland. The Council contend that there would be a resultant increase in trips across Ashdown Forest from the proposal which in combination with other developments, unless mitigated, would cause a likely significant effect on the integrity of the SAC. It has proposed a tariff approach to mitigate a certain quantum of development, as set out in policies WLP7, AF1 and AF2 of the emerging SLP but claim that there is no windfall allowance available to the proposal as the windfall quantum for the parish has been used. The Council considers that this proposal is not compliant with emerging policy for housing distribution, which is based upon the Habitats Regulations Assessment (HRA) for the SLP.
17. As the appeal site is some 29km from Ashdown Forest it is most unlikely that when considered in isolation that the proposal would result in a material impact on the SAC through nitrogen deposition. 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 on the SAC. The precautionary principle set out in the Habitat Regulations² 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 distance to Ashdown Forest, it is not possible to conclude that in combination with other projects that additional traffic arising from the proposal would not adversely affect the integrity of the Ashdown Forest SAC.
18. The proposal would therefore not be compatible with Saved Policies EN1, and EN15 of the WLP and with Policies WCS12 and WCS14 of the CSLP. Although the relevant emerging policies in the SLP should be afforded only limited weight, as they relate to a potential conflict with the Habitat Regulations, they assume greater significance. There would also be conflict with Policies WLP7, AF1 and AF2 of the SLP. Framework.
19. The parties have referred to several appeal decisions in Wealden covering similar issues, most of which have been dismissed, but the appellant has drawn my attention to an appeal allowed in May 2019 at Upper Station Road, Heathfield³. This relates to a two-bedroom bungalow, a much smaller development in a different part of the District. I do not think that the same conclusions then made would necessarily apply to the current appeal proposal for 4 large houses.

² The Conservation of Habitats and Species Regulations 2017

³ WD/2018/1548/F and APP/C1435/W/19/3220102

20. Reference has also been made to Natural England's objections to the policies in the emerging SLP and comment that mitigation for air quality impacts on the Ashdown Forest SAC would not be required in relation to development envisaged in the SLP. 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, particularly one relating to a windfall development outside preferred locations for development set by the SLP.
21. The appellant has submitted a Unilateral Undertaking in the event that the appeal is to be allowed but first requires an Appropriate Assessment and suitable mitigation. However, given my findings on the two main issues it is not necessary to examine this.

Planning Balance

22. The Council has a poor recent track record on housing delivery and cannot currently demonstrate a five year supply of housing land. Whilst the Council are optimistic that with progression of the emerging SLP that they will be able to show in excess of a five year supply, the current shortfall is significant. In these circumstances, Paragraph 11 of the Framework states that the relevant adopted housing policies should be regarded as out of date and that a presumption in favour of sustainable development should apply. 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.
23. However, Paragraph 177 of the Framework states that "*The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitat site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site*". In this instance, it has not been possible to conclude that there would not be an in combination impact on the integrity of the Ashdown Forest SAC. The presumption in favour of sustainable development therefore does not apply.

Conclusion

24. The site is not a particularly suitable location for the proposed development having regard to the development strategy for the area and accessibility to services and facilities. It has not been ruled out that in combination with other developments that the proposal would not impact on the integrity of the Ashdown Forest SAC. For the reasons given and having regard to all other matters raised the appeal is therefore dismissed.

Rory MacLeod

INSPECTOR