



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/19/3223561

New Wood Farm, Top Road, Hooe, Battle, East Sussex TN33 9EY

- 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 Mr and Mrs Keith Axell against Wealden District Council.
 - The application Ref WD/2018/1439/F is dated 3 July 2018.
 - The development proposed is erection of detached farm building comprising farm workers living accommodation and secure storage.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellants operate an established cattle and sheep farming enterprise based at New Wood Farm and rent additional land. The proposal is for the erection of a single storey building to be located on a strip of gently sloping land between the appellants' dwelling and the forecourt to barns at the farm. The building would comprise a modest two bedroom dwelling of some 60 square metres and a similarly sized secure storage area alongside. It would be finished with a clay tiled roof to match the farmhouse with dark stained timber weatherboarding walls over a low brick plinth. A small parking area would be provided off the access track from Top Road.
3. The Council consider that the size and design of the building would not be harmful to the landscape in which New Wood Farm is located, that the access and parking arrangements would be acceptable and that there would be no adverse impact on the occupiers of other dwellings in the area. It considers the provision of the dwelling in this countryside location to support an identified need for a farm or agricultural worker to live at or close to the place of work. The Council accepts that the proposal would meet exception (a) at Paragraph 79 of the National Planning Policy Framework (the Framework) which otherwise discourages development of isolated homes in the countryside. I have no reason to disagree with these findings.
4. The planning application submission followed the receipt of encouragement in a pre-application reply (PE/2019/0020/E) that ancillary accommodation and secure storage for the farm would be acceptable in principle. Alignment with pre-application advice accords with encouragement in the Framework to seek such engagement and also weighs in favour of the proposal.

Main Issue

5. The main issue is the effect of the development in combination with other proposals on the Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation (SAC).

Reasons

6. The site is approximately 2.7km to the south of the village of Ninfield and is beyond its adopted development boundary. It is only about 900m from the centre of the small settlement of Hooe but this does not have a development boundary. Ashdown Forest is in the northern part of the District about 28km from the appeal site. It contains a large area of lowland heath and includes both European dry heath and North Atlantic wet heath. The designation reflects the importance of its habitats and species, which include vulnerable bird species. The conservation objectives of both the SPA and SAC aim to maintain the integrity of the designated sites and restoration as appropriate.
7. The Council's development plan relevant to the proposal comprises the saved policies of the Wealden Local Plan (1998) (WLP) and the Wealden District Council (incorporating part of the South Downs National Park) Core Strategy Local Plan (2013) (CSLP). The Council contends that the proposal would be contrary to Policies GD2 and DC17 of the WLP and Policy WCS6 of the CSLP in relation to being residential development outside of settlement boundaries which in combination with other unplanned development could affect the integrity of the Ashdown Forest SPA and SAC. The Council is producing a new plan, the Submission Local Plan (2019) (SLP) which is at an early stage; the initial sessions of the Examination in Public concluded in July 2019 and the Inspector's report is awaited.
8. In association with preparation of the SLP, the Council has undertaken a Habitats Regulation Assessment (HRA) in respect of impacts on Ashdown Forest. This indicates that new dwellings within 7km of the SPA will have visitor impact on the SPA; as the appeal site is considerably more than 7km from the SPA the Council accept that there is not likely to be a significant effect from recreational pressures. I have no reason to disagree with this conclusion. In relation to air quality, the HRA highlights that nitrogen deposition from vehicle emissions is demonstrated to cause ecological harm to the SAC through additional traffic on the roads through the SAC.
9. The proposed dwelling on the appeal site would generate new vehicular movements. The Council point out that the modelling for the SLP identifies potential for a proportion of such domestic trips to be distributed across roads within the SAC. It contends that in combination with other plans and projects the proposal would cause harm to the integrity and conservation objectives of the SAC. The SLP has been prepared on the basis that some housing development can proceed provided mitigation measures are put in place; it enables housing within designated settlements and core areas to draw upon a tariff scheme of mitigation. However, as the appeal site is within the countryside and there is no headroom within the mitigation strategy for windfall dwellings in the Hooe area, the Council conclude that the proposal would be contrary to Policies AF1, AF2 and WLP7 of the SLP and would in combination with other developments have an adverse effect on the integrity of the Ashdown Forest SAC in conflict with the Habitat Regulations 2017.

10. As the SLP is at an early stage and some of its policies are contested and may be subject to change, I afford only limited weight to its policies; this is in accordance with Paragraph 48 of the Framework on the weight to be afforded to emerging policies. However, the issues with which the policies are concerned are subject to European law, and therefore assume greater significance. Given the distance to Ashdown Forest from the appeal site, the proposal is most unlikely in isolation to have a significant effect on the integrity of the SAC. However, when considered in combination with other unplanned proposals across Wealden, it is plausible that it would do so.
11. 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, there could be a cumulative impact on the SAC. 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 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.
12. The proposal then needs to be subject to a Habitat Regulations Assessment (HRA). Furthermore, following the *People over Wind* case², it is no longer possible to take into account mitigation of impacts on a SAC at the screening stage. Proposals are required to have an Appropriate Assessment to ascertain if planning permission can be granted with or without mitigation. The plan level Appropriate Assessment that undergirds the SLP for development compliant with its provisions cannot be applied to individual proposals for development not planned for in the SLP.
13. Under these circumstances and having regard to the information currently available, it has not been possible to conclude that the proposal would not have a significant adverse effect on the integrity of the Ashdown Forest SAC through additional vehicle emissions when considered in combination with other unplanned development. The proposal would thereby be contrary to Policies SP01 and WCS12 of the CSLP which collectively seek to protect and enhance the countryside and ensure that development does not have an adverse effect on the Ashdown Forest SAC. The proposal would also not be compatible with Policies AF1, AF2 and WLP 7 of the SLP. It has not been demonstrated that in combination with other developments that the proposal would not have an adverse effect on the integrity of the Ashdown Forest SAC in conflict with the Habitat Regulations.
14. The appellant has claimed support for the proposal in the reasoning advanced in the allowed appeal decision at *Camerlot Stables*³. 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 individual proposal before him. I have also noted the findings in the three dismissed appeal decisions referred to by the Council that also considered this issue⁴.

¹ The Conservation of Habitats and Species Regulations 2017

² *People over Wind*, *Peter Sweetman v Coillte Teoranta*)

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

⁴ APP/C1435/W/18/3213892; APP/C1435/W/18/3219463 and APP/C1435/W/18/3215358

Other matters

15. The Council cannot currently demonstrate a five year housing land supply which ordinarily would trigger the presumption in favour of sustainable development at Paragraph 11 of the Framework. However, Paragraph 177 of the Framework confirms that this does not apply where the plan or project is likely to have a significant effect on a habitats 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.
16. There has not been an appropriate assessment to make such a conclusion in the appeal proposal, and so the tilted balance at Paragraph 11 is not engaged.

Conclusion

17. I acknowledge the appellants' frustration that the proposal has been deemed to be acceptable to the Council in respect of the majority of relevant planning considerations, that it accords with pre-application advice provided and that there is uncertainty on the future of the emerging SLP policies upon which the Council is relying and upon which its strategy for mitigation of SAC impacts is set. However, at the present time it has not been possible to conclude that the proposal would not have a significant adverse effect on the integrity of the Ashdown Forest SAC through additional vehicle emissions when considered in combination with other unplanned development. It cannot proceed in the absence of a positive outcome on a project based appropriate assessment.
18. For the reasons given and having regard to all other matters raised the appeal is dismissed.

Rory MacLeod

INSPECTOR