



Appeal Decision

Site visit made on 12 November 2019

by David Reed BSc DipTP DMS MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 17th December 2019

Appeal Ref: APP/C1435/W/19/3228331

Old Polegate Station, Station Road, Polegate BN26 6EH

- 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 Shawn Kelf, Geko Developments Ltd against Wealden District Council.
 - The application, Ref WD/2018/1563/MAJ, is dated 18 July 2018.
 - The development proposed is the erection of a 3.5 storey building to accommodate a convenience store at lower ground level and 23 no. residential units above with associated parking (amended scheme to that approved under WD/2017/1253/MFA) (part retrospective application).
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Decision

1. The appeal is allowed and permission is granted for the erection of a 3.5 storey building to accommodate a convenience store at lower ground level and 23 no. residential units above with associated parking (amended scheme to that approved under WD/2017/1253/MFA) (part retrospective application) at Old Polegate Station, Station Road, Polegate BN26 6EH, in accordance with the terms of the application, Ref WD/2018/1563/MAJ, dated 18 July 2018, subject to the attached schedule of conditions.

Background

2. Until recently the appeal site was occupied by a two storey building used as a bar and restaurant known as The Old Polegate Station. This ceased to trade in about May 2016. On 30 March 2017 planning permission was granted for the demolition of the building and the erection of a 3½ storey building to contain a convenience store at lower ground level and 22 residential units above under reference WD/2016/2201/MAJ. Subsequently, two conditions were slightly amended and a new permission was issued on 22 August 2017 under reference WD/2017/1253/MFA.
3. Originally the retail space was to be occupied by Southern Co-operative as a convenience store but they did not proceed and a different retail requirement led to the minor redesign of the scheme. This involved a smaller retail store, a lower number of parking spaces, the replacement of the undercroft parking area at the rear of the development with an extra residential unit and a second bedroom for a one bedroom flat. Planning permission for this revised scheme was sought in July 2018 but this application has remained undetermined and is now the subject of the current appeal.

4. In the meantime an application for a series of non-material amendments to the extant permission was approved on 11 December 2018 which included all the changes including the enclosure of the undercroft parking area but not its use as an additional dwelling (presumably as that would not be a non-material amendment). The appellant advises that this is the scheme as now built. On the date of the site visit the retail store and flats were occupied and in use.
5. The additional residential unit would occupy the space within the now enclosed undercroft parking area which is empty and unused at present. The unit would neither enlarge the footprint or building envelope of the approved scheme nor materially change the rear elevation or raise any residential amenity concerns. With the other elements of the appeal proposal now approved as non-material amendments, the current proposal is in effect to amend the approved scheme to include one further two-bedroom dwelling. If permission is not forthcoming, the space would presumably remain empty or another use found for it.

Main Issue

6. The Council has confirmed that it has no objections to the proposal in relation to design and appearance, residential amenity, drainage, parking or highway safety. The sole issue of concern is whether the proposal, in combination with other plans and projects, would have an adverse effect on the integrity of the Ashdown Forest Special Area of Conservation/Special Protection Area (SAC/SPA) or the Lewes Downs SAC.

Reasons

7. The appeal site lies within the built-up area of Polegate but nevertheless there are potential pathways of impact with both Ashdown Forest SAC/SPA and Lewes Downs SAC. In relation to Ashdown Forest, one of the largest areas of lowland heath in South East England, impacts may arise due to disturbance from recreational activities due to additional residents in the area and air pollution from additional traffic movements through the forest. In the case of the Lewes Downs, an area of semi-natural calcareous grassland and scrubland, impacts may arise from air pollution from additional traffic along nearby roads.
8. Dealing first with recreational pressure, surveys of visitors to Ashdown Forest demonstrate that visitor numbers and frequency of visits decline with distance and that the largest proportion and the most regular visitors originate from the nearest towns and villages. In fact, nearly all regular visitors originate from within 7 km of the forest, and on this evidence it has been agreed by Natural England that only additional housing within this zone of influence needs to provide mitigation in the form of strategic access management and monitoring and the provision of suitable alternative natural greenspace. Since the appeal site in Polegate is well over 15 km away, additional visits from residents of the extra residential unit would be rare, so likely significant effects on Ashdown Forest SPA as a result of increased recreational pressure can be ruled out.
9. In relation to traffic movements through Ashdown Forest and near the Lewes Downs, although the appeal site is situated many miles away from both, the scheme could potentially generate some journeys which may affect the two sites in terms of air pollution. However, it is the *net* impact that is relevant, as account must be taken of the traffic generation arising from the originally approved scheme and the previous use of the site as a bar and restaurant.

10. East Sussex County Council as highway authority advised in connection with the original application that the then scheme would generate about 173 trips per day on the highway network compared to the previous pub/restaurant use which generated in the region of 400 trips per day. However these trips were distributed, given the significant reduction of about 227 trips per day, the Council were satisfied that no significant effects were likely on either the Ashdown Forest or Lewes Downs SAC sites in relation to traffic generated air pollution as a result of the scheme.
11. The appellant has interpolated the highway authority's trip rates to calculate that the scheme as now proposed would generate 9-10 less trips per day than the originally approved scheme, a total of about 163 per day. This combines an increase of about 3-4 trips per day from the additional residential unit and a reduction of about 13 trips per day due to the smaller retail unit. The Council does not dispute this calculation which would involve an even greater reduction of about 237 trips per day compared to the 400 trips per day generated by the previous use of the site. However, the Council now argue that the scheme would actually increase traffic movements and thus have an adverse effect on the integrity of Ashdown Forest and the Lewes Downs, and furthermore no mitigation is possible so permission should be refused.
12. This objection is based on the traffic modelling that has been carried out since the original application for the habitats regulation assessment of the emerging Wealden Local Plan. The Ashdown Forest Transport Model developed for this purpose assumes that residential dwellings are the trip generators and that the trips are distributed according to travel to work patterns. The extra dwelling proposed would therefore generate additional journey to work movements, a small proportion of which would pass through or close to Ashdown Forest and the Lewes Downs, and thus in combination with other plans and projects would contribute to detrimental air pollution effects on the habitats concerned.
13. However, this ignores the reduction in vehicle movements from the site as a whole compared to its previous use as a pub/restaurant. The small proportion of the 3-4 trips per day arising from the new dwelling passing through or close to the two SAC sites would be more than outweighed by the proportion of the approx. 237 trips per day overall reduction. Compared to the original scheme the increase of 3-4 trips per day would also be outweighed by the reduction in movements resulting from the smaller retail unit of 13 trips per day.
14. The Council rely on the methodology of the transport model which works on travel to work patterns and assumes that other uses (including pub/restaurant and retail uses) only redistribute the modelled trips that are already on the network. However, this assumption made for traffic modelling purposes is simply not credible when it comes to some individual schemes. The Council now accept that certain uses (agriculture, equestrian, open space) are unlikely to generate traffic that would have a significant effect on SAC habitats, but this does not apply to pub/restaurant and retail uses. If new floorspace for such uses generates additional traffic that requires assessment¹, any loss of such floorspace that reduces vehicle movements is a benefit that should be taken into account when assessing schemes.
15. The Council have drawn attention to numerous recent appeal decisions to support their case. However, these all involve a net increase in the number of

¹ Emerging Wealden Local Plan Policy TC3 requires assessment of such uses to comply with the relevant Policy AF1

dwelling on the site, and thus a net increase in vehicle movements. In one case² reliance was placed on 'ported trip credits' from extinguished sites elsewhere but no planning obligation would ensure these credits would endure. In another³ involving five new dwellings on a parking area the movements were seen as new because the adjacent public house had been converted to residential some time previously and that use was therefore extinguished. In the current case detailed traffic figures are provided and these demonstrate a significant reduction in vehicle flows is part and parcel of the scheme.

16. Given the unusual circumstances of this particular case the proposal would result in a significant reduction in vehicle flows, both when assessed against the originally approved scheme and even more so compared to the previous use of the site. It is therefore most unlikely that any increase in traffic through or near the Ashdown Forest or Lewes Downs SAC sites would result and consequently likely significant effects on the two sites as a result of traffic generated air pollution can be ruled out.
17. For these reasons an appropriate assessment under the habitat regulations⁴ is not required and it can be concluded that the proposal, in combination with other plans and projects, would not have an adverse effect on the integrity of the Ashdown Forest SAC/SPA or the Lewes Downs SAC. For the same reasons the proposal would not conflict with existing and emerging development plan policies which seek to protect the Ashdown Forest and Lewes Downs SAC/SPA sites from harm.

Conditions

18. The Council suggested three conditions should the appeal be allowed but the starting point should be the conditions attached to the earlier permission WD/2017/1253/MFA. However, most of the development has already been constructed under that permission and consequently many conditions need not be re-imposed. The standard implementation time limit is required together with those conditions that limit the use of the development or provide ongoing controls which are necessary to ensure an acceptable scheme. The reasons for each of these are set out under permission WD/2017/1253/MFA. The Council sought a condition requiring a scheme to further mitigate vehicle movements but as the proposal would itself deliver a reduction in movements such a requirement is not justified.

Conclusion

19. Since the proposal, in combination with other plans and projects, would not have an adverse effect on the integrity of the Ashdown Forest SAC/SPA or the Lewes Downs SAC, the appeal should be allowed.

David Reed

INSPECTOR

² APP/C1435/W/18/3215480

³ APP/C1435/W/19/3223713

⁴ The Conservation of Habitats and Species Regulations 2017

Schedule of Conditions

1. The development to which this permission relates shall be begun not later than three years from the date of this decision.
2. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that order with or without modification), the lower ground floor unit hereby approved shall only be used for purposes within Class A1 and no other use as defined within Schedule 2, Part 3, Classes C, D, G and J shall be carried out on the site.
3. All planting, seeding and/or turfing comprised in the approved details of landscaping under permission WD/2017/1253/MFA shall be carried out in the first planting and seeding seasons following the occupation of the building(s) or the completion of the development, whichever is the sooner, and any trees, shrubs, hedges or plants which within a period of five years from the completion of development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation. All hard landscaping comprised in the approved details of landscaping shall be carried out before the completion or first occupation of the development, whichever is the sooner.
4. No floodlighting, security lighting or other external means of illumination of the site shall be provided, installed or operated in the development, except in accordance with a detailed scheme which shall provide for security lighting to undercroft parking areas and external site lighting that is low level, hooded and directional, and has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details and retained thereafter. A scheme for the minimisation of the effect of light glare on the residential flats within the development and other nearby properties shall be submitted and approved in writing by the Local Planning Authority. The works in the approved scheme shall be completed before any lighting equipment to which this approval relates is operated and shall be maintained during such operation for the life of the development.
5. The premises shall not be open for customers outside of the hours 0700 - 2200 Mondays - Sundays.
6. No deliveries, unloading or loading of goods to the proposed retail store shall take place within the site except between the hours of 07.00-19.00hrs Monday to Saturdays and 10.00-19.00 on Sundays and at no times on Bank Holidays.
7. Before any internal or external fixed plant or machinery associated with the development is used, a scheme to mitigate disturbance to other occupiers of the building from conducted noise and vibration arising from its operation, shall be submitted to and approved in writing by the Local Planning Authority. All works that form part of the approved scheme shall be completed before use of the plant or machinery and retained during use of the plant or machinery for the duration of the development.

8. Deliveries to the convenience store shall accord with the details contained in the Delivery Management Plan dated 20 February 2017. All reversing movements of HGV vehicles within the site shall be overseen by a member of staff.
9. Before first use/occupation of the development hereby approved, the car parking spaces and turning areas for vehicles shown on the approved plans shall be provided and thereafter shall be retained for such purposes to the satisfaction of the Local Planning Authority.
10. Cycle storage shall be provided in accordance with East Sussex County Council's adopted standards and the approved details shall be implemented before the first occupation of the relevant part of the development to which they relate and retained thereafter.
11. The approved Travel Plan under permission WD/2017/1253/MFA shall be implemented in all respects following the commencement of the operation of the use hereby approved.