



Appeal Decisions

Site visit made on 6 January 2020

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 January 2020

Appeal A Ref: APP/C1435/C/19/3235688

Waverley House, Rosehill, Isfield, Uckfield TN22 5UH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Paul Rickson against an enforcement notice issued by Wealden District Council.
- The enforcement notice, numbered BJB/C/2019/0287/15D, was issued on 15 August 2019.
- The breach of planning control as alleged in the notice is the change of use of the garage and home office building, to a mixed use as a domestic garage and home office and as a commercial B1 office.
- The requirements of the notice are
 - (i) Stop using the building as a B1 office.
 - (ii) Remove all furniture, fixtures, fittings, machinery, tools, rubbish, debris and equipment associated with the said unauthorised commercial use of the building, from the Land.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of decision; Appeal A is dismissed and the enforcement notice is upheld.

Appeal B Ref: APP/C1435/W/19/3234953

Waverley House, Rosehill, Isfield, Uckfield TN22 5UH

- 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 Mr Paul Rickson (PGL Brickwork and Scaffolding Contractors LTD) against the decision of Wealden District Council.
- The application Ref WD/2019/0507/FR, dated 4 March 2019, was refused by notice dated 21 June 2019.
- The development proposed is the change of use of the garage and home office to single garage and office (Use Class B1).

Summary of decision; Appeal B is dismissed.

Decisions

Appeal A

1. The appeal is dismissed and the enforcement notice is upheld.

Appeal B

2. The appeal is dismissed.

Background and main issues

3. Planning permission was originally granted in 2015 for the construction of the appeal building as a garage and home office. The appellant's then sought planning permission to continue to use the building as a single garage and Class B1 office. This application was subsequently refused and is the subject of the s78 appeal (Appeal B). The Council then issued an enforcement notice on 15 August 2019 against the continued use of the building as a garage home office and commercial office (B1). The enforcement notice has been appealed on grounds (f) and (g) (Appeal A).
4. I have been referred to the emerging Wealdon Local Plan Draft Proposed Submission. I note that this plan has not yet been found sound. Therefore, I can only attach very limited weight to the policies of this plan.

Appeal B

5. I have had regard to the Council's reasons for issuing the notice and for refusing the regularising planning application. I note the Council's statement refers to the effect of the development on the Ashdown Forest Special Area of Conservation (AF SAC) and Lewes Downs Area of Special Character (LD SAC). The Council considered mitigation could be secured through the payment of the appropriate tariff in accordance with policy AF2, if they were minded to support the scheme. Therefore, this did not form part of their reasons for refusing the application or issuing the notice. However, from the evidence before me there is no such legal and binding agreement. Accordingly, whilst this did not form part of the reasons for refusing the planning application, or for issuing the enforcement notice, I consider that the impact of the development on the AF SAC and LD SAC is an important consideration in these appeals.
6. I therefore consider that the main issues are:
 - The effect of the development on highway safety;
 - The effect of the development on the living conditions of existing residents at Little Heath, Rose Hill;
 - The location of the development, having regard to the settlement boundary and accessibility; and
 - The effect of the development on the AF SAC and LD SAC.

Reasons

Location of the development

7. The site is a large detached property set in extensive grounds located in a countryside location outside any town or village development boundary. Policy GD2 of the adopted Wealdon Local Plan (1998) (the LP) sets out that development outside the settlement boundaries will be resisted, unless it is consistent with other policies of the development plan. Whilst of limited weight, this is echoed by the emerging policies WLP4, policy RAS5 and policy EC2, of the submission local Plan 2019. The garage was permitted to provide a garage

and home office facilities, to the occupiers of the main dwelling. The building is therefore located in a rural setting but is not considered to be an agricultural or rural building, for the purposes of applying development plan policy.

8. The office provides employment for eight full time members of staff, plus an additional three who work on a part time basis. At the time of my visit the building was being fully used for office purposes with work stations, across both floors and a meeting area on the ground floor. The site is located on, and accessed from, the A26, which is a very busy main road with a 50 MPH speed limit. There are no pedestrian footpaths along the highway at this point, with just a narrow verge and ditch. This, the speed and proximity of passing vehicles, including HGV's, makes walking along the road an extremely unattractive option.
9. Consequently, the remote location of the site and number of staff has resulted in a development that is overly reliant on the use of private vehicles for employees to get to and from work. This view seems to be supported by the nine office related vehicles that were parked on the frontage of the building at the time of my visit. There were an additional three vehicles parked closer to, and understood to be, connected to the residential use of the dwelling.
10. Whilst I acknowledge that providing employment opportunities in rural areas can be challenging, I have no evidence before me to demonstrate that the office in this particular location, is meeting a local business or community need.
11. I have found below that the development is not compliant with other policies in the local plan. Accordingly, for the above reasons I find that, having regard to accessibility and the Council's strategy for the location of new employment opportunities, the development does not accord with other local plan policies and therefore is not in a suitable location. Consequently, it would be contrary to saved policy GD2 of the LP. This policy restricts development outside development boundaries unless it is in accordance with other policies in the local plan.

Highway safety

12. The site takes its access directly from the A26. There is an automatic gate leading into the property with sufficient space for one or two vehicle to stop clear of the highway. It was clear from my site visit that the visibility is considerably restricted when leaving the site. I acknowledge that this is an existing access that serves the residential property. However, the commercial office has resulted in a significant increase in the number of vehicles entering and leaving the site with an increased likelihood for vehicles to slow and stop on the main carriageway. When assessing development, it should be ensured that safe and suitable access to the site can be achieved for all users. Paragraph 109 of the National Planning Policy Framework (the NPPF) goes on to advise that development should only be refused on highway grounds if there is an unacceptable impact on highway safety.
13. I have had regard to the comments from East Sussex County Council Highways and my own observations. For the above reasons, I find that the development increases the safety risk to those using the highway as a result of the poor visibility and an increased number of vehicles slowing and stopping on the carriageway. The development is therefore in conflict with Policies INF4 of the emerging LP and paragraph 109 of the NPPF. This policy seeks to ensure that

development provides safe access and egress and does not compromise the safety of road users.

Living conditions

14. The commercial office has significantly increased the number of individuals and vehicles using the site. I acknowledge that it is normal for the residential use itself to result in some activity and noise. However, the levels of noise and activity generated by the office is additional disturbance generated, over and above that resulting from the residential use. Moreover, it is likely to be different in nature with staff chatting, doors closing and general vehicle manoeuvring.
15. The additional door to the rear of the garage brings that activity slightly closer to the boundary with Little Heath. The boundary to Little Heath is well screened and a significant distance from the building. Nonetheless, this additional activity is likely to be noticeable especially at the beginning and end of the working day and during staff breaks when staff are using the metal staircase and door to the rear. The appellant does not consider that the space between the building and the boundary with Little Heath would be used by staff. However, there are no internal fences and it is reasonable to conclude that staff will need to take breaks outside the confines of the building leading to the potential for this area to be used.
16. I therefore find that the commercial office use has an unacceptable effect on the living conditions of the residents at Little Heath. It therefore conflicts with policies EN27 of the LP. This policy seeks to ensure that new development does not have an unacceptable adverse impact on the privacy and amenities of adjoining development by reason of, amongst other things, noise and traffic movements.

Ashdown Forest and Lewes Downs Special Areas of Conservation

17. Regulation 63(5) of the Conservation of Habitats and Species Regulations 2017 states, that the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of any European sites. The Ashdown Forest and Lewes Downs are both designated as special areas of conservation (LD SAC).
18. Ashdown Forest SAC contains one of the largest single continuous blocks of lowland heath in south-east England, with the larger proportion being wet heath. The site supports important collections of beetles, dragonflies, damselflies, butterflies and birds of European importance.
19. Lewes Downs SAC comprises semi-natural dry grasslands and scrubland facies: on calcareous substrates (Festuco Brometalia); dry grasslands and scrublands on chalk or limestone, both being important orchid sites.
20. Whilst the appeal site lies some distance from the Ashdown Forest and the Lewes Downs SACs. The proximity to these protected areas is such that it could, either alone or in combination with other projects, have a significant effect on those areas. However, as I have already identified, substantive harm in respect of the location of the development, highway safety and the living conditions of existing residents, such that the appeal should be dismissed, there is no need to consider this further.

Other matters

21. I have considered the conditions suggested by the appellant to overcome some of the Council's objections. However, I do not consider that conditions could be imposed that would satisfactorily overcome the serious objections to the development or lead me to a different conclusion.

Appeal A

Ground (f)

22. It is the appellant's case that the steps required by the notice are excessive. The purpose of the Council's notice is to remedy the breach of planning control. This is to be achieved by stopping the commercial activity and the removal of all equipment connected with that commercial use.
23. I recognise that there may be some overlap with the equipment required for a home office and a commercial office. However, I have not been provided with evidence to demonstrate exactly what equipment would be required for the home office to operate. Nonetheless, it was clear from my site visit that the scale of equipment, storage cabinets and desks, far exceed what would be reasonable for an ancillary home office. The requirements of the notice do not prevent the appellant from using the building as a garage and home office. They target the commercial activity and go no further than to require the removal of equipment associated with that commercial office use.
24. I therefore find that the steps required by the notice do not exceed the steps required to remedy the breach of planning control. For these reasons the appeal on ground (f) fails.

Ground (g)

25. The notice requires that the steps are carried out within six months. The appellant in his evidence has suggested a condition to allow the use to continue until 30 July 2020. It is further understood that the appellant is preparing alternative premises in Maresfield, which should be ready during May 2020.
26. Even allowing for some additional delays to this timescale, I find that the six months for compliance, provides a reasonable timescale to relocate the commercial activity to the new premises. Moreover, given the significant concerns I have about the safety of the access, I do not consider that the timescale should be extended in the interests of safety for those using the highway. The appeal on ground (g) therefore fails.

Conclusion

Appeal A

27. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice

Appeal B

28. For the reasons given above, the appeal is dismissed and planning permission is refused for the application deemed to have been made under section 177(5) of the 1990 Act as amended

Hilary Orr

INSPECTOR