



Appeal Decision

Site visit made on 17 December 2019

by D. Szymanski, BSc (Hons) MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd January 2020

Appeal Ref: APP/M3645/W/19/3233753

Land at corner of Pikes Lane and Crowhurst Village Road, Crowhurst, Tandridge, RH7 6LX

- 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 A Madhloom of Real Eden Ltd. against the decision of Tandridge District Council.
 - The application Ref: TA/2018/2300 dated 22 November 2018, was refused by notice dated 23 January 2019.
 - The development proposed is erection of two agricultural animal shelters on agricultural field with new access off Pikes Lane.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. During this appeal the appellant has requested the proposed new highway access and gate onto Pikes Lane is omitted from the proposals. The appellant has suggested an alternative access and supplied an extract of what is understood to be a land registry plan suggesting a right of access from an existing gate approximately 250m to the north of the appeal site off Crowhurst Village Road. The nature of the access rights is not clear from the information before me. Without a useable access the appeal site would be effectively land locked.
3. The suggested new access and route is significantly outside the original planning application area and the ownership of the land is not clear. The amended proposals represent a significant and material change. Determining the proposals on the basis of the amended access could deprive those who should have been consulted on the development, the opportunity of submitting comments.
4. The application plans before me that detail the proposed site layout, have not been modified and still show the provision of the proposed new highway access and gate off Pikes Lane. Therefore, I have dealt with the appeal on the basis of the scheme that is before me which was also the scheme upon which the Council's decision was made.
5. The Council's assessment report notes an array of fencing and gates on the site at that time, which may not be authorised, although these are not the subject of the application before me. I have also noted the Council's letter to the

appellant dated October 2018 (Ref: 2018.1158) highlighting the presence of an Article 4 Direction on the land (dated 20.03.02). At my site visit there appeared to be various wooden posts of around 1m in height at regular intervals on the appeal site. Whilst I noted the presence of the posts, as they do not form part of the proposal before me and their status is unclear, I have not regarded them as any form of approved development or fall-back position available to the appellant.

Background and Main Issue

6. The appeal site lies within the Green Belt. The single reason for refusal in the Council's decision notice relates to an absence of ecological information and the loss of habitat that would be likely to provide a habitat for protected and/or priority species. However, the Council has also stated in the light of information it has subsequently received, it believes the proposed development now constitutes 'inappropriate development', as the development would not be for agricultural purposes.
7. The information to which the Council refers appears to relate to a subsequent and different planning application at the appeal site (Ref: 2019/1078), and not the application subject of this appeal before me. Therefore, I have considered this appeal based upon the description from the original planning application form (set out in the banner heading above) on its own merits. In any event, the evidence submitted by the Council does not substantiate the claim that the building would not be for agriculture as set out in paragraph 145 of the National Planning Policy Framework (2019). Against this background I have no reason to conclude that the proposal would be inappropriate development within the Green Belt. As I am treating the development as agricultural, it would not be defined as inappropriate development.
8. In the light of the above, I consider the main issue to be the effect of the proposed development upon biodiversity.

Reasons

9. The appeal site comprises the southern part of a grass field adjacent (north of) Pikes Lane and (east of) Crowhurst Village Road, measuring approximately 110 metres (m) x 19m. It is bound by two tall thick mature hedgerows adjacent to the public highway. The new gate opening onto Pikes Lane would measure approximately 4.3m in width, with new posts and a galvanised metal tubular gate of approximately 1.1m high.
10. The proposed development would result in the loss of a section of deep mature hedgerow comprising tall hedgerow trees, shrubs, roots, leaf litter and brash. According to the Council's Biodiversity Checklist a hedgerow could be a suitable habitat for protected species, such as breeding birds and great crested newts. Based upon my site visit the section of hedgerow is of sufficient maturity, height and depth that it provides the potential for protected species to be present. The presence or otherwise of protected species, and the extent to which they may be affected by the proposed development, needs to be established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making a decision.
11. It is the appellant's responsibility to provide an assessment demonstrating the impact upon protected species. A copy of a biodiversity checklist has been

provided to me (although it is not clear to which application it relates), indicating that none of the listed habitats would be affected. This is not correct for the proposal subject of this appeal. There is no information accompanying the application or appeal that makes an adequate assessment of proposal in relation to biodiversity.

12. Therefore, based upon the evidence before me, insufficient information has been provided to adequately assess the potential impact on protected species. Furthermore, in order to meet planning policy requirements, where appropriate, an applicant or appellant is required to detail mitigation or compensation measures for the loss of such habitats, as well as any ecological benefits. This information has not been provided.
13. I note the appellant's reference to correspondence with the Council, suggesting the application should not have been refused planning permission, and this was a consequence of miscommunication. However, I see no substantive evidence that the Council has agreed the application should not have been refused for the reason set out in the decision notice.
14. For the reasons set out above, the proposed development would be contrary to Policy DP19 of the Tandridge Local Plan: Part 2 – Detailed Policies (2014) and Policy CSP 17 of the Tandridge District Core Strategy (2008). In combination and amongst other things, these require proposals should protect biodiversity and provide for the maintenance, enhancement, restoration of biodiversity, and that proposals which directly or indirectly affect protected or priority species will only be permitted where it can be demonstrated that the species involved will not be harmed, or appropriate mitigation measures can be put in place.

Other Matters

15. The appellant has suggested that the refusal of the application conflicts with pre-application advice from the Council. Whilst I note the content of the Council's advice, I have not been provided with the plans and details upon which that advice was given, and it appears it relates to a proposal that differs to the one before me (for example, the stock proof fencing). I also note the Council's confirmation on that letter that the advice is informal advice and not binding on the Council. I have determined the proposal before me on its planning merits.

Conclusion

16. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Dan Szymanski

INSPECTOR