



Appeal Decision

Site visit made on 13 June 2019

by Timothy C King BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 March 2020

Appeal Ref: APP/C1435/W/18/3216526

Land adjacent to Church of St Alban, Ely Grange Drive, Frant TN3 9DX

- 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 & Mrs Keith Sheffield against the decision of Wealden District Council.
 - The application Ref WD/2017/2891/F, dated 19 December 2017, was refused by notice dated 30 August 2018.
 - The development proposed is construction of new dwelling and garage.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of a new dwelling and garage, on land adjacent to Church of St Alban, Ely Grange Drive, Frant TN3 9DX, in accordance with the terms of the application Ref WD/2017/2891/F, dated 19 December 2017, subject to the conditions set out in the attached Schedule.

Preliminary Matters

2. On 19 February 2020, following the Inspector's recent report on the examination of Wealden District Council's replacement Local Plan, the Council formally withdrew the Plan. In assessing the current appeal proposal and reaching its decision the Council had taken the draft policies of this then emerging plan into account. For the purposes of this appeal the policies which were contained in the now withdrawn Plan are no longer, therefore, a consideration.
3. In addition to the Plan itself associated documents, which included the Council's Air Quality Mitigation Strategy as part of the replacement Local Plan, have similarly been withdrawn. However, despite the Inspector considering that the Council's approach as to the effect of new residential development on the Ashdown Forest Special Area of Conservation (SAC) lacked credible evidence, I understand that Council has not withdrawn its objection to the proposal on this particular matter.

Main Issues

4. The main issues in this appeal, therefore, are:
 - 1) Whether the site is an appropriate location for residential development; and
 - 2) the proposal's likely effects on the integrity of the Ashdown Forest Special Area of Conservation (SAC).

Reasons

Location

5. The site is situated on the periphery of Frant, a village classed as a Local Service Centre. The adopted development plan, comprising the Wealden Local Plan (WLP), adopted in 1998 and the Core Strategy (CS), adopted in 2013, shows no designated development boundary around the village. Within the settlement hierarchy, it is classed as a Local Service Centre.
6. Policy GD2 of the Wealden Local Plan (LP), adopted in 1998, says that outside the development boundaries new development will be resisted unless in accordance with other LP policies, and policy DC17 serves also to preclude residential development outside these boundaries.
7. Frant is not under-provided for, as it has a primary school, a local shop, a post office, a village hall and public houses. The Council refers to Crowborough as the nearest settlement in Wealden District, providing a range of retail, employment, and leisure facilities. However, the town of Tunbridge Wells is closer, despite being outside the District. There are bus services from the village along Frant Road (A267) to Tunbridge Wells and its many shopping and leisure facilities. The quickest bus route takes approximately 10 mins to Tunbridge Wells Railway Station, with a local clinic en route. Also, the nearest secondary school is just over 3 miles away.
8. The Council acknowledges that the site is poorly maintained and unkempt, which I can confirm from my site visit observations. The Council's case report goes on to say that a sensitively designed dwelling which draws inspiration from high quality local buildings and utilises materials from the vernacular would enhance the character and appearance of the area. This is especially important given that the site borders the Frant Conservation Area, the proximity to the statutorily listed Church of St Alban and also the listed gates and piers to Ely Grange. The Council has not identified any adverse impact in this respect.
9. The site also lies on the edge of the High Weald Area of Outstanding Natural Beauty (AONB), which have the highest level of protection. However, the Council, in its representations, considers that the proposal would not impact on the scenic and natural beauty of the AONB.
10. There is also a substantial residential development on the opposite side of the road and, given these various factors, I agree with the Council's approach in these regards.
11. The Council says that uncontrolled growth would frustrate the drive to achieve sustainable development, as is promoted by the National Planning Policy Framework (the Framework). This might be the case but, although the proposal is in conflict with LP policies GD2 and DC17, such a zonal restriction, without exception, is somewhat at odds with the less prescriptive guidance in the Framework on such matters.
12. This does not mean, of course, that similar proposals outside the development boundaries elsewhere would be automatically acceptable in planning terms. Each case is assessed on its own merits and impacts and the individual factors involved.

13. From the appeal papers provided it would appear that pre-application discussions relating to the proposal took place over a lengthy period of time, but these were eventually curtailed due to the draft policies and growth strategy in the emerging Local Plan. As a result the Council indicates that its approach to the proposal had changed and the planning application would be recommended for refusal. In light of the Plan's subsequent withdrawal the situation has changed, once again.
14. Notwithstanding the local services mentioned I acknowledge that the development would likely give rise to an increase in vehicular movements, but in the general context this would be negligible and should be balanced with the existing traffic travelling to and from Frant, and its immediate surroundings.
15. I find, therefore, that although the District will have more sustainable locations, Tunbridge Wells is reasonably close by and, given the particular circumstances involved, I am not convinced that this is an unacceptable location for the proposal. The objectives of WLP policy EN1 and CS policies SPO7 and WCS14 would not be materially conflicted by the proposed development. This is especially true given the more contemporary advice in the Framework. I also note that CS policy SPO8 seeks to promote natural growth within villages to support residents' needs and it seems, from the material I have been provided with, that Frant could accommodate some growth.
16. The Council, in its first reason for refusal, also cites WLP policies EN6 and EN27 and CS policies SPO1 and SPO13, but the applicability of these policies is tenuous at best with mention of good design and impact on the AONB, matters which the Council says are not grounds for refusal. Similarly, although various paragraphs within the Framework are cited within the decision notice, only paragraph 110 is really applicable in this instance. In this instance, the circumstances, along with the evidence advanced by the parties suggest on balance that the appeal should be allowed and planning permission granted.
17. On this main issue I conclude that, although the location falls outside the identified development boundaries, the Council's hierarchical settlement strategy would not be significantly compromised by the proposal. Accordingly, it would not be in material conflict with the objectives of WLP policy EN1, GD2 and DC17, CS policies SPO7 and WCS14, nor paragraph 110 of the Framework. I am therefore satisfied that the appeal site would be an appropriate location for residential development.

Ashdown Forest

18. Ashdown Forest contains large areas of lowland heath, and is an important habitat in its own right. Protection of habitat sites is a matter consistent with the aims of the Framework.
19. Under the precautionary principle set out within the Conservation of Habitats and Species Regulations 2017 (CHSR) it is necessary to consider whether the appeal proposal is likely to have a significant effect on the internationally important features of the Ashdown Forest, alone or in combination with other plans or projects.
20. The conservation objectives of the SAC aim to ensure that its integrity is maintained or restored as appropriate. As the appeal site is located outside of a 7km zone of influence set by the Council in relation to recreational pressures

on this designated site the Council considers that there would not be an adverse impact on the Ashdown Forest Special Protection Area (SPA) from recreational pressures as a result of incoming residents. However, in refusing planning permission, the Council believes that nitrogen deposition from vehicle emissions would cause ecological harm to the SAC through additional traffic movements.

21. In concluding that the submitted Plan could not be taken forward to adoption, one of the Inspector's main concerns related to the lack of constructive engagement with Natural England, the statutory nature conservation body. The Inspector disagreed with the Council's use of a particular emissions model, on which to model future emissions and to assess the impact on the SAC. This has generally been used by the Council in its assessment of new housing development, and the Inspector took issue with this approach in that it is at odds with the evidential background and against the advice of Natural England. It also likely over-estimated future vehicle pollutant emissions.
22. Indeed, upon consultation, Natural England commented that small windfall developments coming forward outside of the growth areas identified in the now withdrawn Local Plan would be of such a scale, even in combination, that there would be no appreciable difference in the air quality modelling. As such, Natural England's advice is that there would be no adverse effect on the integrity of the designated sites from such.
23. The Inspector concluded that the Council's approach to the matter of emissions was not justified on any reasonable assessment of the evidence, and its position, in scientific terms, was lacking in credibility. Accordingly, although I note the Council's reference in its representations to extensive detailed ecological, air quality and transport assessment, this supported the submitted replacement Local Plan. Moreover, the difficulties highlighted with the Council's strategy in this regard, and the Plan's ultimate withdrawal, clearly represents a significant material change in circumstances. Given such a change I also attach little weight to the previous decisions cited by the Council.
24. I find, therefore, that the weight to be afforded to the Council's evidence regarding this main issue is markedly reduced. Taking all factors into account, and due to the uncertainty having arisen on this matter, I am not convinced from the details before me, that the proposed single dwelling would, either alone, or in combination with other plans or projects, have a significant effect on the integrity of the SAC. Accordingly, I find, in this instance, that the Council's assertion that an Appropriate Assessment is required has not been well founded.
25. On this main issue I conclude that, in the absence of compelling information to the contrary, the proposal would not be harmful to the integrity of the Ashdown Forest SAC, and there would be no material conflict with the requirements of CS policies WCS12 and WCS14, LP policies EN1, EN7 and EN15(1), or relevant advice within paragraphs 176 and 177 of the Framework.

Other considerations

26. The Council accepts that it is currently unable to demonstrate a five year supply of deliverable housing sites, as is required under paragraph 73 of the Framework. The most recent estimate by the Council, now documented in its Annual Monitoring Report for 2018/2019, stands at 3.67 years. Further, in

terms of the government's Housing Delivery Test, the recent 2019 measurements show that the delivery of housing within Wealden District was some 83% of the Council's housing requirement over the previous three years.

27. Paragraph 11 of the Framework confirms that in instances where a five year housing land supply cannot be demonstrated the relevant adopted housing policies should be regarded as out of date and that a presumption in favour of sustainable development should apply. Although paragraph 177 of the Framework indicates that the presumption in favour of sustainable development in instances where housing policies are out-of-date does not apply where the plan or project is likely to have a significant effect on a habitats site, in light of my findings in this particular instance this restriction does not here apply.
28. The proposal has given rise to a number of representations in writing from interested parties. The correspondence shows both significant support and opposition to the development. Letters in support largely make reference to the poor state of the site whilst those objecting cite various concerns, some of which I have already covered. Other grounds are discussed below.
29. There is no reason why the proposed development cannot be built out to a high standard of design and satisfactorily landscaped. It is capable of integration and would not be intrusive to the village. Given also the development close by, it is somewhat inaccurate to describe the site as open countryside whilst any loss of views currently enjoyed by residents of Home Farm Court, opposite, is not a ground for refusal of significant materiality. Any such views are not protected, and any obstruction arising would be minimal given the wider contextual setting. I have not been provided with any compelling evidence to suggest that the proposal would be harmful to wildlife, nor prejudicial to highway safety. The fact that the site might be currently used for parking purposes is not a convincing ground for refusal. Also, I have not been alerted to any information to suggest the existence of any Neighbourhood Plan for Frant.

Conclusion and Conditions

30. I have found that the proposed development would be acceptable in all respects. No significant harm would be caused in the event and, for the above reasons, and having had regard to all matters raised, the appeal succeeds.
31. In terms of conditions I have considered those suggested by the Council and have also taken into account advice within the Planning Practice Guidance. Some require that details be submitted to the Council for written approval prior to the commencement of development but are necessary as, in certain areas, insufficient detailing has so far been provided.
32. In addition to the standard time limitation of three years conditions relating to landscaping, arboricultural protection and bio-diversity enhancement are necessary to ensure the safeguarding and enhancement of the natural environment. The Council has indicated that this is an Archaeological Notification Area and, accordingly, a condition is imposed requiring that a suitable scheme of archaeological investigation is implemented. A condition prohibiting any uncontrolled installation of floodlighting is required in order to safeguard wildlife and also to protect the immediate part of the AONB beyond.

33. In the interests of a satisfactory appearance and form of development a condition is imposed requiring that samples of external materials shall be submitted to and approved by the Council.
34. A condition is attached requiring that details as to the proposed vehicular access, visibility splays and turning space are submitted for approval in order to safeguard highway safety. A condition is also imposed to ensure that heavy construction traffic is routed away from the Ashdown Forest SPA. Conditions relating to both surface-water and foul drainage are necessary in order to serve the needs of the residential development. Finally, in the interests of certainty, a condition is imposed requiring that the development be carried out in accordance with the approved plans.

Timothy C King

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this permission.
- 2) The development hereby approved shall be carried out in accordance with the following plans: Drawings Nos LPOX, X01 (Rev E), 04 (Rev E), SS01 (Rev A), and SP02 (Rev E).
- 3) No development shall commence until samples of the materials to be used in the construction of the external surfaces of the dwelling hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved samples.
- 4) No development shall commence until details of surface water drainage, which shall follow the principles of sustainable drainage as far as practicable, have been submitted to and approved by the Local Planning Authority. The drainage shall be provided in accordance with the approved details before first occupation of the related dwelling.
- 5) No development shall commence until full details of the proposed means of foul drainage disposal have been submitted to and approved in writing by the Local Planning Authority. The approved drainage works shall be completed prior to the completion or occupation of any dwelling on site, whichever is the sooner.
- 6) No development shall commence until a scheme of hard and soft landscaping has been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out in accordance with the approved details. These details shall include proposed boundary treatments, proposed finished levels and contours, hard surface finishes, including details of retaining walls, steps, railings, walls, gates, fences or other supporting structures, car parking layouts, other vehicle and pedestrian access and circulation areas and structures (e.g. refuse and other storage units). The information shall also include indications of all existing trees and hedgerows on the land, including those to be retained, together with measures for their protection which shall comply in full with BS5837:2012 Trees in relation to design, demolition & construction. The scheme shall also include details as to the subsequent maintenance of any trees, shrubs and hedges retained on the site and any proposed to be planted as part of the approved landscaping scheme. Soft landscape details shall include planting plans, written specifications, and schedules of plants - noting species (which should be indigenous), planting sizes and proposed density. Development shall be carried out in accordance with the approved scheme.
- 7) No development shall commence until a scheme for the enhancement of the site for biodiversity purposes, in accordance with the submitted ecological report, to include timescales for implementation and future management, has been submitted to and approved in writing by the Local Planning Authority. The approved scheme of enhancements shall be implemented in accordance with the approved details and thereafter retained.
- 8) No development shall commence until the developer has secured the implementation of a programme of archaeological work, in accordance with a

Written Scheme of Archaeological Investigation which shall have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved scheme.

- 9) The means of vehicular access into the site, including the road width, kerb radii, visibility splays, parking and turning shall be completed in accordance with details submitted and approved before first occupation of the dwelling hereby permitted.
- 10) The dwelling hereby approved shall not be occupied until a scheme, demonstrating that freight traffic resulting from the development and its construction will not impact on the Ashdown Forest SPA through routing arrangements, has been submitted to the Local Planning Authority and approved in writing. The details shall include phasing and timing of all works to secure the mitigation. Development shall be carried out in accordance with the approved scheme.
- 11) 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 lighting that is low level, hooded and directional, and has firstly been submitted to and approved in writing by the local planning authority.