
Appeal Decision

Site visit made on 11 February 2020

by S D Castle BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 May 2020

Appeal Ref: APP/M1710/W/19/3236873

Whitehall Nursery, Red Lane, Headley GU35 8SR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Alfie Haynes against the decision of East Hampshire District Council.
 - The application Ref 57041/003, dated 11 January 2019, was refused by notice dated 12 April 2019.
 - The development proposed is outline planning application for the erection of a two storey dwelling house, to establish in principle the proposed development involving the demolition of two existing buildings with extant planning permission for conversion to a residential use.
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Decision

1. The appeal is dismissed.

Main Issues

2. I consider the main issues to be (i) the suitability of the location having regard to policies restricting development in the countryside; (ii) the effect of the development on ecology, habitats and protected species, with particular reference to the designated Wealden Heaths Special Protection Area;

Reasons

Location

3. The appeal site is located on an existing nursery to the south of Red Lane, an unmade track that also serves a limited number of other rural developments. The site is located outside of any defined settlement boundary and is, therefore, a countryside location for planning policy purposes. Policy CP19 of the East Hampshire District Local Plan: Joint Core Strategy (2014) (the JCS) states that the only development allowed in the countryside will be that with a genuine and proven need for a countryside location, such as that necessary for farming, forestry, or other rural enterprises. Policy H14 of the East Hampshire District Local Plan: Second Review (2006)(LP) states that outside settlement boundaries, residential development will only be permitted where it is essential to house a full-time worker in agriculture, forestry or other enterprise who must live on the site rather than in a nearby settlement. The main thrust of these policies is consistent with paragraph 79 of the National Planning Policy Framework (the Framework) which requires that planning decisions avoid the development of isolated homes in the countryside unless, amongst other

things, there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside.

4. The appellant's submissions advise that it is intended to grow high yield produce such as herbs, vines and niche crops across the site. A brief agricultural statement provides only limited details of the functional requirements for living on the agricultural unit. It has not been clearly demonstrated, from the limited information before me, that an on-site dwelling is essential for security, crop watering and/or all the other day to day activities involved in running the proposed rural enterprise. No assessment of the ability to remotely manage such requirements has been provided. Furthermore, no assessment has been provided with regards to the availability of suitable dwellings in the local area.
5. As such, the location is not suitable for the proposed dwelling having regard to policies restricting development in the countryside. The development is, therefore, contrary to JCS Policy CP19 and LP Policy H11 which, taken together, require, amongst other things, development allowed in the countryside to have a genuine and proven need for a countryside location. The development would also be contrary to paragraphs 77 to 79 of the Framework which require, amongst other things, that housing is located where it will enhance or maintain the vitality of rural communities.

Ecology, Habitats & Protected Species

6. The proposed dwelling would be located approximately 1.3km north-west of the Wealden Heaths Phase II Special Protection Area (SPA). JCS Policy CP22 requires any proposal for new housing within 400m of the boundary of the SPA to include a Habitat's Regulations Assessment (HRA). The explanatory text to CP22 explains that the SPA is protected for its birdlife (para 7.21) and that housing proposals capable of affecting the SPA outside of the 400m boundary will be considered on a case-by case basis as to whether a project specific HRA is required (para 7.25).
7. The Council advises that Natural England require that any new development resulting in a net increase of new dwellings within a 400m to 5km buffer from the SPA to have an HRA. The Council asserts that the HRA is required to enable an HRA Screening/Appropriate Assessment (as necessary) to take place so that the impacts of additional recreational activity on the ecological integrity of the SPA, in terms of impact on rare bird populations, can be assessed. Given the appellant is proposing, however, the demolition of the two existing buildings that are currently being converted to 2 dwellings, it is unlikely that the proposals would result in an increase in recreational pressure on the SPA.
8. The second refusal reason refers only to the lack of sufficient information to allow the Local Planning Authority to assess the potential impact on the ecological integrity of the SPA. Nevertheless, my statutory duties with regards to the ecological, habitats and protected species impact of the proposals are not limited to that issue only. Section 40 of the Natural Environment and Rural Communities Act (2006) places a duty on all public bodies in England and Wales to have regard, in the exercise of their functions, to the purpose of conserving biodiversity. Furthermore, the Conservation of Habitats and Species Regulations 2017, Regulation 9(3) requires that 'a competent authority, in exercising any of their functions, must have regard to the requirements of the

Habitats Directive so far as they may be affected by the exercise of those functions.'

9. The existing 2 buildings that are being converted into 2 dwellings are in a materially different location to the proposed dwelling. The proposed dwelling and garden would be located immediately adjacent to a bank of mature trees and other boundary vegetation. Such features, particularly given the presence of nearby wooded areas, could reasonably be expected to provide valuable habitat for protected species. The proposals are not supported by an ecological assessment or tree survey. In the absence of any substantive ecological or habitats evidence, I cannot be certain that the proposals would not have an unacceptably adverse impact on ecology, habitats and biodiversity, or that any impacts on protected species could be adequately avoided or mitigated.
10. Circular 06/2005¹ states it '...is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision'. The Planning Practice Guidance (the Guidance) advises that an ecological survey will be necessary in advance of a planning application if the type and location of development are such that the impact on biodiversity may be significant and existing information is lacking or inadequate, and if there is a reasonable likelihood of a protected species being present and affected by development².
11. As such, whilst I am not persuaded by the Council's evidence that the proposal conflicts with JCS Policy CP22, in the absence of sufficient evidence to the contrary, the proposals would potentially cause unacceptable harm to ecology, habitats and biodiversity interests, including protected species. This would be contrary to JCS Policy CP21 which requires development to, amongst other things, enhance district wide biodiversity, protect features of local value for wildlife, and to protect protected species. For similar reasons, the proposal would not accord with the Framework, including paragraphs 170 and 174.

Other Considerations

12. I acknowledge that the appellant proposes that any permission includes a condition securing the demolition of the 2 existing buildings that are currently being converted to dwellings. Whilst the 2 buildings are outside of the application site, as defined by the redline on the location plan, their demolition could reasonably be secured by condition given the buildings are under the ownership of the appellant. The appellant also proposes to limit the overall floor space of the proposed dwelling to that of the combined floor space of the 2 existing buildings and this would limit any encroachment of built form within the open countryside. There would inevitably be visual and spatial differences between the appeal proposal and the 2 converted buildings. However, whilst all matters other than access will be assessed at the reserved matters stage, the Council has not objected to the landscape character or visual impact of the development and I have no reason to disagree.
13. At the time of my site visit, significant works towards converting the existing buildings to dwellings had already been made. I have had regard to the Court

¹ Circular 06/2005 Biodiversity and Geological Conservation

² Paragraph: 018 Reference ID: 8-018-20190721 Revision date: 21 07 2019

of Appeal judgement, in the case of *Mansell v Tonbridge and Malling Borough Council*³, and I have no substantive reason to doubt that the appellant intends to complete the conversion of the 2 buildings if the appeal is dismissed. As such, the conversion of the 2 existing buildings to dwellings under Class Q of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development)(England) Order 2015 is given significant weight as a fallback position. Indeed, the Council's objection to the development with regards to policies restricting residential development in the countryside is negated by the weight reasonably afforded to the fallback position and the appellant's proposal to demolish the two buildings currently being converted to dwellings.

14. The proposal would result in some economic benefits, including through its construction. I have no reason to doubt that it is the appellant's intention to live in the proposed dwelling and to develop the agricultural enterprise. As such, I also give some limited weight to the benefits the dwelling would provide in terms of supporting the rural economy.
15. I have had regard to the appellants' intention that the development should be a 'self-build' scheme. Whilst I have no substantive evidence before me that the Council has an identified need for such development, I am mindful that this is a form of development which is encouraged by the Framework and the Guidance. Nevertheless, the planning appeal is not accompanied by any clear safeguard that would ensure the dwelling would be completed as a self-build in the event that permission is granted. This significantly limits the weight I attach to this consideration.
16. Whilst the Framework promotes economic development, it sets this within the overarching objective of achieving sustainable development. I cannot be certain that the proposals would not have an unacceptably harmful effect on ecology, habitats, biodiversity and protected species contrary to Framework paragraphs 170 and 174. I give this environmental harm substantial weight and find, overall, the development would not comply with the overarching aims of the Framework and would not constitute sustainable development.

Conclusion

17. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that appeals be determined in accordance with the provisions of the development plan unless material considerations indicate otherwise. The identified conflicts with development plan policies carry significant weight and I find the proposal contrary to the development plan when taken as a whole. Overall, there are no material considerations, either individually or in combination, of sufficient weight to outweigh the identified conflict with the development plan, nor do they indicate that the proposal should be determined other than in accordance with the development plan.
18. For the reasons above, the appeal is dismissed.

S D Castle

INSPECTOR

³ *Mansell v Tonbridge and Malling Borough Council & others* [2017] EWCA Civ 1314.