



Appeal Decision

Site visit made on 11 August 2020

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 August 2020

Appeal Ref: APP/C1435/C/10/3243252

Land at Minepit Wood, Dern Lane, Waldron, Heathfield TN21 0PN

- 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 Mrs Amanda Norman against an enforcement notice issued by Wealden District Council.
 - The enforcement notice, numbered WD/2019/0987/FR, was issued on 15 November 2019.
 - The breach of planning control as alleged in the notice is the erection of a single storey dwellinghouse ("the dwellinghouse") in the approximate position shown coloured green on the attached plan.
 - The requirements of the notice are:
 - (i) Demolish, dismantle and remove the dwellinghouse from the land.
 - (ii) Break up and remove any concrete slab and footings upon which the dwellinghouse is sited from the land.
 - (iii) Disconnect and remove from the land all services and utilities provided to the dwellinghouse, including the septic tank installed to service the dwellinghouse.
 - (iv) Demolish, dismantle, break up and remove all hard standing and decking areas, all boundary fencing, garden furniture and external fixtures and fittings surrounding the dwelling house from the land.
 - (v) Remove all personal effects, furniture, fixtures and fittings and all other domestic paraphernalia from the land.
 - (vi) Remove from the land all materials, rubble, rubbish, debris, tools and equipment arising from compliance with the above requirements.
 - The period for compliance with the requirements is nine months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is varied by the deletion of the final sentence of paragraph 4(iii) of the notice which states 'and Policies AF1, AF2, WLP4, EA4, RAS2, BED1, BED2, NE4 and HE1 of the Wealden Submission Local Plan 2019'.
2. Subject to the variation the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural matter

3. The Council have confirmed that the Wealdon Submission Local Plan, cannot be taken forward for adoption and is to be withdrawn. They have confirmed therefore that they wish the final sentence of paragraph 4(iii) of the enforcement notice to be dis-regarded for the purposes of determining this appeal, which I have done. I shall therefore vary paragraph 4(iii) of the notice to reflect this change of policy position.
4. I also note that policies EN27, TR3 and TR16 of the Wealdon Local Plan (1998) do not appear to be relevant to the reasons why the Council issued the enforcement notice.

Ground (a) - the deemed application

Main Issues

5. I have had regard to the Council's reasons for issuing the notice and consider that the main issues are:
 - The location of the development;
 - The effect of the development on ancient woodland; and
 - The effect of the development on the Ashdown Forest Special Area of Conservation (SAC) and the Lewes Downs Special Area of Conservation (SAC).

Reasons

Location of development

6. The site is located in a predominantly rural location, where there is only sporadic residential development. The site lies to the west of the farm and is accessed from an unmade track, that leads to a yard area with converted former poultry sheds and an existing caravan.
7. The appeal building is sited to the rear of one of the converted buildings. It is separated from the main yard by timber fencing, with an area of patio beyond. The dwelling is generally timber clad, although the rear is clad in profile metal sheet. It has a porch extension to the east elevation. The building is set into the surrounding woodland.
8. The main farm comprises livestock and a 'wild campsite', with associated facilities, that was first granted planning permission in 2011 and later approved for 25 tent pitches in April 2020 (WD/2011/035/FR).
9. Policy GD2 of the Wealdon Local Plan (1998) (the LP) sets out the development criteria for the area. It makes it clear that development outside the development boundaries will be resisted, unless it is in accordance with specific policies of the plan. It goes on to give examples of the circumstances where certain forms of development may be allowed, including housing.
10. Policy DC2 sets out in more detail the circumstances where dwellings will be allowed outside the settlement boundaries, including for those employed in agriculture and forestry, and exceptionally, in another enterprise, where a countryside location is necessary and where it can be demonstrated that certain criteria are met.

11. It is not in dispute that the site lies outside the settlement boundary and is isolated from any local settlement providing day to day facilities and services. However, it is the appellant's case that this does not, in itself, make the development unacceptable.
12. From the evidence provided, the nearest settlement is Waldon, some 3.2 km away. Horam lies some 4 km to the east, with East Hoathly approximately 5.5 km to the west. Waldron provides a very limited range of facilities and services, although Horam and East Hoathly provides a more comprehensive variety. From my site visit it was clear that the surrounding roads, including those leading to Waldron, generally do not have pedestrian footpaths, are very narrow and are unlit. This would make walking and cycling especially in the winter months or after dark, a less attractive alternative to the private car.
13. Accordingly, in the context of this rural location, where I accept that accessibility is not normally as good as that of urban areas, I do not consider that the development provides a viable alternative to the use of private cars for residents.
14. Having found that the location of the dwelling is unacceptable in terms of its location, it is necessary to consider the aspect of the appellant's case that asserts that, the dwelling satisfies an essential need to live on site, to deal with identified security and other incidents associated with the campsite, commercial units and the farm business.
15. It is clear from the evidence, that the enterprise has the benefit of an existing dwelling, which is understood to be subject of an agricultural occupancy condition, although the full wording of the condition is not provided. There is also a residential caravan that was more recently approved through a certificate of lawfulness application Ref WD/2019/0174.
16. I have had regard to the financial information provided by the Trading Account document that has been submitted as part of this appeal. From this it is clear that the wild camping, forms an important part of the farms business, contributing to its success.
17. The siting of the campsite within the countryside is understandable, as is the need for supervision of those using the site. It is also recognised that, the provision of a dwelling in close proximity to the business, is convenient to the occupier, and its presence may help to deter criminal activities such as theft from the nearby commercial units. However, with regard to the supervision of the campsite, it has not been demonstrated why this needs to be provided through the provision of a new dwelling, and why the existing residential units cannot provide sufficient supervision of the campsite, during times of peak demand.
18. Similarly, I have no evidence to explain the nature of the equipment or goods, that need to be protected, or why an appropriate level of security could not be provided by the existing residential units, nearby dwellings or in other ways.
19. Drawing the above points together, I find that the appeal site is therefore, not in a suitable location for new housing, given its location outside any established built up boundary. Moreover, there is insufficient evidence to demonstrate that there is an essential functional need for an additional dwelling in this location. Consequently, it is contrary to saved policies DC2, GD2 of the LP and WCS14

of the Wealdon and District (Incorporating part of the South Downs National Park) Core Strategy Local Plan (February 2013) (the CS) These policies in combination confirm that outside development boundaries development will be resisted, unless there is a clearly established existing functional need.

Ancient woodland

21. Paragraph 175 of the National Planning Policy Framework, makes it clear that development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists. Examples of exceptional reasons might include, infrastructure projects (including nationally significant infrastructure projects, orders under the Transport and Works Act and hybrid bills), where the public benefit would clearly outweigh the loss or deterioration of habitat. I have no evidence of any such exceptional circumstances.
22. The dwelling has been located within Ralph/Summersbrook Wood, an area of ancient woodland and a local wildlife site. I have had regard to the report supplied by English Woodlands, which acknowledges that the soil on this part of the woodland, may have been degraded over the years and thus the existence of the dwelling may not have had an impact on the woodland cover. Nonetheless, prior to the development taking place, it would have been possible to take steps to improve the quality of the soil in this area and thus enhance the woodland.
23. Whilst the damage to the area of woodland covered by the development, may be limited, I give significant weight to this damage. The physical existence of the dwelling, patio and fencing, together with the usual domestic paraphernalia associated with residential occupation, results in the permanent loss of this part of the ancient woodland. Moreover, there is no evidence before me to explain why it has been constructed in this location. I do not consider that the existence of a Woodland Management Plan, on a different part of the site, provides adequate mitigation for this loss of ancient semi-natural woodland.
24. For the above reasons, I find that the development has resulted in direct loss of ancient semi-natural woodland and the development is therefore contrary to policy EN8 of the LP, and policies WCS 12 of the CS, which seeks to conserve the landscape and ensure the retention of woods, boundary trees and hedges.
25. As set out above, I have found that the dwelling is not in a suitable location for new residential development, and has caused significant harm to the ancient woodland. Accordingly, the benefits of providing one dwelling, is significantly and demonstrably outweighed by the harm I have identified.

Special Protection Areas

26. The Habitat Regulations 2017, require an assessment to be undertaken as to whether a proposal would be likely to have a significant effect on the interest features of a protected site. The Ashdown Forest Special Area of Conservation and the Lewes Downs Special Area of Conservation are such protected sites. The development provides a net increase in occupancy and therefore has the potential to cause harm to these areas.

27. However, as I have already identified significant harm to the ancient woodland and the unacceptable location of the development, such that the appeal should be dismissed, there is no need to consider this further.

Ground (f)

28. In appealing ground (f) the appellant needs to demonstrate that the requirements of the notice exceed what is required to remedy the breach of planning control, or injury to amenity, depending on the purpose of the notice.
29. In essence it is the appellant's case that the removal of the building is unnecessary, and it could be used as supervisory accommodation during the camping season from April to October. Between these months it could be used as an office and storage.
30. From the wording of the notice, the Council are seeking to remedy the breach of planning control, in respect of the dwelling, by restoring the land to its condition before the breach took place. It is therefore necessary to consider whether these requirements exceed what is necessary.
31. The development subject of this appeal is that of a new dwelling and it needs to be considered in this context. It will be seen above that I have already found that the existence of the dwelling, has caused significant harm to the ancient woodland. Consequently, I do not consider that the retention of the building for any of the suggested purposes, would overcome that harm. The appeal on ground (f) therefore fails.

Conclusion

32. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Hilary Orr

INSPECTOR