



Appeal Decision

Site visit made on 15 November 2021

by J E Jolly BA (Hons) MA MSc CIH MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th November 2021

Appeal Ref: APP/C1435/W/21/3271303

Forest Hall, Dodds Bank, Nutley TN22 3LX

- 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 Ashdown Homes (Sussex) Ltd against the decision of Wealden District Council.
 - The application Ref WD/2020/1973/F dated 28 September 2020, was refused by notice dated 22 January 2021.
 - The development proposed is for the conversion of a redundant chapel to 1 new dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Government published a revised *National Planning Policy Framework* (the Framework) in July 2021. All references to the Framework in this decision relate to the updated document.

Main Issue

3. The main issue is the effect of the proposal on the Ashdown Forest Special Protection Area and Special Area of Conservation.

Reasons

4. The appeal site is located outside of any defined development boundary within the High Weald Area of Outstanding Natural Beauty (AONB). The site, and a number of residential dwellings to its rear, is accessed via a short track leading from Cackle Street and hosts a single-storey former chapel with a hall, kitchen, study room and toilet facilities. The chapel is set on a small, fenced garden type plot that lies within the exclusion zone of 400m surrounding the Ashdown Forest Special Protection Area (SPA) and also the Ashdown Special Area of Conservation (SAC). The SPA qualifies for protection due to supporting populations of breeding ground nesting birds, which are susceptible to predation and disturbance. The SAC qualifies for protection due to the presence of particular habitats, in this case the Northern Atlantic wet heaths and the European dry heaths, which are sensitive to the negative effects of nitrogen deposition and nutrients associated with motor vehicle emissions.
5. The proposal is to convert the chapel into a two-bedroom residential dwelling with parking.

6. The proposal would result in an increased and permanent population located in the exclusion zone of 400 metres of the SPA. As such, due to the immediate proximity to the protected area, the Council contend that the impacts of the proposal cannot be mitigated through financial contributions towards Suitable Alternative Natural Greenspace (SANG) and Strategic Access Management and Monitoring (SAMM), and that its contentions are supported by Natural England's latest advice, dated 11 January 2021.
7. Moreover, the proposal is not directly connected with, or necessary for, the management of the protected sites and, in combination with other projects across the area, could be likely to have a significant effect on the sites from the cumulative increased population nearby.
8. In these circumstances, the Conservation of Habitats and Species Regulations 2017 (the Regulations) require that an Appropriate Assessment is carried out.

SPA

9. The SPA designation relates to the protection of vulnerable bird species, and the principle threat in relation to these is increased recreational pressure arising from new residential development which might affect ground nesting birds or cause disturbance during their breeding season, particularly as a result of recreational visitors with dogs or the keeping of domestic cats.
10. While the appellant contends that the recreational activity associated with the former chapel would have been greater in comparison to that which would be generated by the proposal, I find to the contrary. The proposal would provide ample opportunity for wide-ranging recreational activity, including dog-walking. Indeed, the attractive location of the proposal would be very likely to encourage visitors and their dogs to the dwelling, who in combination with the occupiers would be able to walk at will through the SPA on a regular if not daily basis. Whereas the activities associated with the former chapel or other potential alternative uses, for example, a gallery, library or nursery, would be likely, for the most part at least, to be confined within the rooms and grounds of the building with its fenced wrap-around garden space. Moreover, I have no convincing evidence before me to persuade me that the use of the chapel or acceptable alternatives would include regular dog-walking or the keeping of pets. As such, with the proposal in mind, both visitors and the occupiers alike may choose to walk with free roaming dogs through the forest, which would not only increase the threat to protected ground nesting birds such as the Dartford Warbler and European Nightjar, but also flora and other fauna as a consequence of soiling and soil sterilisation related to normal canine activity.
11. Furthermore, I can find no reasonable mitigation for the keeping or 'range restriction' of domestic cats, including the imposition of a condition or covenant. Subsequently, a residential dwelling, where cat ownership is more likely in comparison to an uninhabited chapel, would represent a substantial and permanent predatory threat to ground nesting birds, small mammals, and other biodiversity in the SPA.
12. In addition, the potential is high for the trampling of plants, the disposal of rubbish including cigarettes, picnics, 'camp-fires' and other clutter associated with human recreational activity.

SAC

13. The Council estimate that the proposal would generate lower vehicular movements per day, for example, journeys related to commuting and other domestic type trips, in comparison to those associated with the former chapel and its congregation. As such, in combination with the rising use of electric vehicles, the levels of nitrogen deposition and nutrients harmful to the SAC would be likely to decrease over time, even when considered in combination with the activity associated with the nearby BMX track and scrap-yard.
14. Nonetheless, the fact remains that the use and leisure activities related to a residential dwelling, in comparison to the relatively static use of the chapel for worship as set out above, would be likely to increase the risk of plant trampling, as well as erosion of the vegetation as a consequence of, for example but not limited to, the introduction of garden type plants into this protected location.
15. A Unilateral Undertaking ('UU') was provided in the course of this appeal. However, regardless of the completeness of the document or appellants suggestion regarding use of financial contributions in Uckfield Country Park, given the close proximity of the proposal within 400m of the exclusion zone of the SPA/SAC, I find that any SANG and SAMM contributions would be ineffective in mitigating the adverse effects of the proposal on the SPA and SAC I have found above.
16. Consequently, the proposal would be contrary to Policy WCS12 of the Wealden District Council (incorporating part of the South Downs National Park) Core Strategy Local Plan 2013, and saved Policies EN1, EN7 and EN15 of the Wealden District Council Local Plan, 1998, which say, amongst other things, that the Council will prevent a net loss of biodiversity, and Paragraphs 179-182 of the Framework.

Planning Balance and Other Matters

17. The appeal site is located in the AONB and subject to a habitats directive. Therefore, mindful of Footnote 7, the presumption in favour of sustainable development set out in Paragraph 11 (d) of the Framework does not apply in this case. However, the appellant has brought to my attention a planning permission¹ within Ashdown Forest SPA/SAC in support of the case. I note that the scheme resulted in a technical net loss to the Council's housing land supply. As such, the appellant suggests that this 'deficit' can now be balanced against the proposal. However, the proposal before me is for a conversion of a chapel rather than a new replacement dwelling. As a result, I afford this little weight.
18. I note that the Parish Council has raised no objections to the proposal and that it would bring some minor economic benefits to the nearby settlement of Nutley, including the conversion and upkeep of a redundant building. The addition of one household to the nearby area would also be likely to offer a modicum of social and community benefits. I afford these benefits limited weight.

¹ WD/18/2021

19. Therefore, I conclude that the adverse impacts of the proposal I have found above, would not significantly and demonstrably outweigh the benefits, including the financial contributions set out in the appellants submitted 'UU' and the provision of a two-bedroomed dwelling.

Conclusions

20. Accordingly, taking a precautionary approach as required by Regulation 63 of the Regulations, and having considered all matters raised in support of the development, I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Hence, the development is in conflict with the adopted development plan when considered as a whole, and given the above would also conflict with Policies contained within the Framework, and as there are no other material considerations that indicate a decision other than in accordance with those Policies, I conclude that the appeal should be dismissed.

J E JOLLY

INSPECTOR