



Appeal Decision

Site visit made on 11 January 2022

by David Prentis BA BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 February 2022

Appeal Ref: APP/C1435/W/21/3275659

Home Farm House, Buckham Hill, Uckfield TN22 5XY

- 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 John Wicks against the decision of Wealden District Council.
 - The application Ref WD/2020/1023/F, dated 27 May 2020, was refused by notice dated 9 December 2020.
 - The development proposed is the erection of a detached dwelling.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The plans contain a discrepancy in that the eaves height of the proposed building is shown at around 3.7m on the east and west elevations, and on the section, whereas it is shown as about 1m less on the north and south elevations. This appears to be a drafting error. I have determined the appeal on the basis that the section shows the intended eaves height. If the lower eaves height were adopted, headroom in the first floor rooms would be restricted and the windows in the west elevation could not be positioned as shown.
3. An interested party has commented that foundations have been laid which are closer to the boundary with Portland Cottage than is shown on the plans. I have determined the appeal on the basis of the plans that were considered by the Council.
4. The appellant's statement of case suggests that the size of the proposed plot could be amended by taking further land from the garden of Home Farm House. However, I have not been asked to consider any specific amendments to the plans that were considered by the Council and I have determined the appeal on the basis of those plans.
5. The appellant has asked me to consider an award of costs against the Council on the basis that it is hard to understand the logic behind the Council's decision. This is an allegation of unreasonable behaviour in relation to the substance of the case. However, as I have found in favour of the Council on the planning merits, it follows that its decision to refuse the application has been justified. The conditions for an award of costs have not been met and no award should be made.

Main issues

6. The main issues are:

- the extent to which the proposal would contribute to a sustainable pattern of development;
- the effect of the proposal on the character and appearance of the area;
- the effect of the proposal on the living conditions of nearby residents; and
- the effect of the proposal on the Ashdown Forest Special Protection Area (SPA).

Reasons

The extent to which the proposal would contribute to a sustainable pattern of development

7. The development plan includes the Wealden Core Strategy Local Plan 2013 (WCS) and the saved policies of the Wealden Local Plan 1998 (WLP). The WCS sets out a number of spatial planning objectives, including SP07 which seeks to reduce the need to travel by car by concentrating development where it can most closely relate to public transport opportunities. The rural strategy of the WCS includes a settlement classification which establishes the role and function of the various categories of settlement. Policy WCS6 identifies service centres, local service centres and neighbourhood centres within rural areas and sets out the scale of additional housing development to be allocated in each such settlement.
8. The WCS states that outside the towns and the rural settlements identified for growth, development is to be restricted primarily to that required to meet essential rural needs, to support rural diversification and the sustainability of the countryside, to promote tourism or to enhance the countryside.
9. The appeal site is part of the garden of Home Farm House, a detached property in a substantial plot on the western side of Buckham Hill. Home Farm House is adjoined to the south by a semi-detached pair of houses, Portland Cottage and Sifelle Cottage. There is open countryside to the north, west and east. The nearest settlement is Isfield, which in the terms of the WCS is an unclassified settlement. Although Isfield previously had a defined development boundary under the WLP, this was removed by the WCS. In any event, the appeal property is not within Isfield. It is around 3km to the north, in a predominantly rural area within which there is some sporadic development along Buckham Hill.
10. Isfield Parish Council commented that there are no buses, footpaths or shops nearby. This is consistent with what I saw on my visit. The site is on a relatively fast stretch of rural road, with no footways. Neither walking nor cycling are likely to be attractive options. I consider that future occupants of the proposed dwelling would be highly dependent on the private car for trips outside the home.
11. The Council has drawn attention to appeal decisions where Inspectors have taken account of the spatial strategy and/or the need to reduce travel by car.

Whilst my conclusion is broadly consistent with those decisions, each case must be determined on the particular circumstances that apply. I have reached my conclusion on the facts of this case.

12. I conclude that the proposal would not contribute to a sustainable pattern of development. It would not support the rural strategy of the WCS, or the objectives set out in SP07, and would be in conflict with Policy WCS6. It would conflict with WLP Policies GD2 and DC17 which seek to restrict housing outside development boundaries, unless supported by other policies of the plan. No such policies have been identified in this case. It would also conflict with WLP Policy EN1 which seeks to pursue sustainable development.

Effect on the character and appearance of the area

13. The appeal site comprises part of the garden of Home Farm House. A rectangular plot would be formed, adjacent to the boundary with Portland Cottage. In 2016 planning permission was granted for a double garage and workshop, with a store above, and a new vehicular access. I saw that the access had been formed. The proposed house would have a rectangular plan form with a pitched roof and gables facing east (towards the road) and west (to the rear). The appellant states that the house has been designed to be similar to the approved garage.
14. The site lies within a tract of relatively open countryside, which is typical of the agricultural landscape of the Low Weald. Buckham Hill has the character of a rural road, bounded by verges and hedges. Although there is scattered housing along the road, this is a loose pattern of development without any coherent building groups or built frontages. Views of Home Farm House are partially screened by hedges and vegetation within the plot and there is a substantial undeveloped gap between Home Farm House and Portland Cottage.
15. Although the proposed house would be set back from the road, it would be clearly visible in views from Buckham Hill, including in views across the side garden of Portland Cottage. The proposal would introduce built form into that gap, consolidating the existing loose pattern of development and eroding the rural character of the area. I note that the approved garage would also intrude into this undeveloped gap. However, it would be a less bulky structure due to the lower eaves height and would thus have less visual impact.
16. The south elevation of the proposed dwelling would be close to the boundary with Portland Cottage. Other than a single rooflight, there would be no fenestration on this side so the proposal would present a blank and featureless elevation. This would appear as a somewhat stark feature, out of keeping with the vernacular domestic architecture seen in the locality. This siting would also be uncharacteristic because other houses nearby are typically well-contained within their respective plots. It would have a greater visual impact than the approved garage because the eaves height would be higher.
17. I conclude that the proposal would be harmful to the character and appearance of the area. It would conflict with WLP Policy EN8, which seeks to protect the character of the landscape of the Low Weald, and with Policy EN27 which promotes a high standard of design.

Effect on the living conditions of nearby residents

18. The adjoining dwelling is Portland Cottage. The only opening in the south elevation of the proposed house would be a rooflight serving a small WC/shower room. The height of the window is such that overlooking would be limited. In any event, the window would be over 20m from the neighbouring house. There would be potential views from first floor windows in the east and west elevations over parts of the adjoining garden. However, these views would be at an oblique angle and would affect relatively small parts of the plot which are well away from the dwelling. I consider that any impacts on privacy at Portland Cottage would be too minor to be significant in planning terms.
19. I have already commented that the south elevation of the proposed house, which would be close to the boundary, would appear as a stark feature. To my mind this is essentially a matter of character and appearance, which I have taken into account above, rather than living conditions. The proposed building would be too far away from Portland Cottage to create an unduly enclosing or overbearing impact.
20. Any impacts at Sifelle Cottage, which is further away, would be less than those experienced at Portland Cottage. I conclude that the proposal would not be harmful to the living conditions of nearby residents. Insofar as Policy EN27 seeks to avoid adverse impacts on the privacy and amenity of adjoining developments, there would be no conflict. However, the proposal would still conflict with Policy EN27 as a whole for the reasons given above.

Effect on the Ashdown Forest SPA

21. The qualifying features of the SPA include populations of Dartford warbler and European nightjar. These are ground nesting species and Natural England's advice is that recreational pressure is one of the main threats to such species. Evidence in the form of visitor surveys has shown that residents within 7km of the SPA are likely to visit it. As the appeal site is within that distance, there is potential for the appeal scheme to harm the integrity of the SPA, either alone or in combination with other plans and projects.
22. In accordance with the Conservation of Habitats and Species Regulations 2017 (as amended), I would not be able to grant planning permission without first carrying out an Appropriate Assessment to consider the effect of the proposal on the integrity of the SPA, having regard to its conservation objectives. The Council has put in place a mechanism for small schemes, such as this, to mitigate their impacts on the SPA through contributions to Suitable Alternative Natural Greenspace (SANG) and Strategic Access Management and Monitoring (SAMM). Such contributions would be guided by the tariffs set out in the Council's Ashdown Forest Mitigation Zone Background Paper.
23. Although the appellant has stated a willingness to make contributions to SANG and SAMM, there is no planning obligation before me to secure the contributions. I have considered whether or not the contributions could be secured by way of a planning condition. However, Planning Practice Guidance states that conditions cannot be used to secure payment of money. Moreover, conditions that require a planning obligation to be made before development

commences should only be used in exceptional circumstances¹. There are no exceptional circumstances in this case.

24. The appellant argues that the Council's approach to the Ashdown Forest Exclusion Zone was criticised by the Inspector considering the draft Wealden Plan. The Council has explained that reference to specific mitigation for proposals within the 7km zone was removed from WCS Policy WCS12 following legal challenges. However, none of that changes the interest features or the conservation objectives for the SPA, or the potential for recreational disturbance that could harm the integrity of the SPA. The evidence before me indicates that there would be a risk of harm to the integrity of the SPA and that no mitigation measures have been secured. It follows that an Appropriate Assessment could not conclude that there would be no harm to the integrity of the SPA.
25. I conclude that there would be an unacceptable risk of harm to the integrity of the Ashdown Forest SPA. This would be contrary to Policy WCS12 which seeks to avoid such harm. It would also conflict with WLP Policy EN15 which seeks to safeguard designated nature conservation sites².

Other matters

26. I note that the Secretary of State has directed that this proposal is not Environmental Impact Assessment development for the purposes of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017³. However, that direction does not affect any duties under the Conservation of Habitats and Species Regulations 2017. It does not alter my conclusion in relation to the Ashdown Forest SPA.
27. The Council has considered the potential effects on the Ashdown Forest Special Area of Conservation (SAC), the qualifying features of which include heathland habitats that are sensitive to changes in air quality. NE has advised that the overall level of growth anticipated in Wealden would not adversely affect the integrity of the SAC through changes in air quality. This conclusion does not depend on mitigation being provided by individual developments. The Council has concluded that the appeal proposal would not adversely affect the SAC, either alone or in combination with other plans and projects. I agree with that conclusion.
28. The Council's Conservation Officer has considered heritage assets in the locality and concluded that there are none that are close enough to be harmed by development in their settings. I agree.
29. The proposed plot would be smaller than the substantial plots on either side. Even so, in my view it would provide adequate amenity space to meet the needs of future occupiers.
30. Interested parties have raised concerns about highway safety. However, the proposed access already exists and could be used for the approved garage.

¹ Reference ID 21a-010-20190723

² The Council's third reason for refusal also refers to Policies EN1 and EN7. I consider that EN1 is more relevant to the first main issue. EN7 deals with the landscape character of Ashdown Forest and does not appear to be relevant.

³ Letter from The Planning Inspectorate dated 28 January 2022

31. The Council acknowledges that it cannot currently demonstrate the five year supply of housing sites required by the National Planning Policy Framework (the Framework). The shortfall in supply is a factor weighing in support of the appeal. On the other hand, the addition of a single dwelling would make a very modest contribution to supply.

Conclusion

32. For the reasons given above, I conclude that the proposal would be contrary to the development plan.
33. The Framework states that the presumption in favour of sustainable development does not apply where a project is likely to have a significant effect on a habitats site, either alone or in combination with other plans and projects. This would include effects on the Ashdown Forest SPA. The proposal would contribute to housing land supply, which is a factor weighing in support of the appeal. However, this would not be sufficient to outweigh the conflict with the development plan that I have identified. No other considerations have been identified that indicate a decision other than in accordance with the plan. The appeal should therefore be dismissed.

David Prentis

Inspector