



Appeal Decision

Site visit made on 5 January 2022

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 February 2022

Appeal Ref: APP/C1435/W/21/3273790

Springfield, Green Lane, Crowborough TN6 2BX

- 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 Penfold against the decision of Wealden District Council.
 - The application Ref WD/2019/1345/F, dated 19 June 2019, was refused by notice dated 11 December 2020.
 - The development proposed is 'demolition of existing dwelling, replacement of approved and implemented additional dwelling, and erection of 6 new semi-detached dwellings'.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr John Penfold against Wealden District Council, which is the subject of a separate decision.

Preliminary Matters

3. There is no planning obligation or other formal agreement before me which demonstrates financial contributions have been secured towards off-site Suitable Alternative Natural Green Space (SANGS) or the Council's Strategic Access Management and Monitoring (SAMM) in relation to the likely effect of the proposed development on the Ashdown Forest Special Protection Area (SPA). This matter was not referred to in the Council's decision notice, but as the competent authority I am obliged by the Conservation of Habitats and Species Regulations 2017 (as amended) ('the Habitats Regulations') to assess the effect of the proposed development on the SPA. I invited comments from the main parties in this regard.

Main Issues

4. Taking the above into account, the main issues are the effect of the proposed development on: i) the integrity of the SPA; ii) the character and appearance of the area; iii) the living conditions of neighbouring residents, with specific regard to outlook and privacy; and iv) a protected tree.

Reasons

The SPA

5. The SPA is a European Designated Site afforded protection under the Habitats Regulations. The qualifying feature of the SPA is its concentration of Dartford Warbler and European Nightjar and its conservation objectives are ensuring the

integrity of the site is maintained or restored so that it continues to support the population and distribution of those species. The proposed development is not connected with or necessary to site management for nature conservation.

6. The appeal site is located within the SPA's zone of influence, meaning that future residents of the proposed development would be likely to visit the SPA for recreational purposes, which would result in disturbance of its qualifying feature. The proposal is therefore likely to have a significant effect on the SPA, alone or in combination with other plans or projects and it is necessary for me to undertake an appropriate assessment (AA) in accordance with the Habitats Regulations if I am minded to grant planning permission.
7. The Council is satisfied the effect on the SPA would be mitigated by financial contributions towards off-site SANGS and SAMM. Appropriate financial contributions could be secured through a planning obligation¹, and the appellant has confirmed their commitment to making those financial contributions but has also advised no planning obligation exists because this matter was not referred to within the Council's decision notice. The appellant has suggested this matter could be dealt with by a condition or the Council's Community Infrastructure Levy (CIL) contributions in the event that planning permission is granted.
8. Notwithstanding the appellant's written confirmation that they have no intention of seeking a CIL exemption in respect of the proposal, any planning permission granted would run with the land and it would be open to the appellant or any other developer in the future to seek a CIL exemption on various grounds. Furthermore, I have not been provided with full details of the Council's CIL charging regime or the financial contributions towards SANGS and SAMM which would be necessary to mitigate the likely harm caused to the SPA. Appropriate financial contributions to mitigate the likely significant harm to the SPA cannot, therefore, be secured through CIL contributions in this instance.
9. I am not convinced that a condition requiring the appellant to enter into a planning obligation or other formal agreement could be drafted in accordance with the tests set out at Paragraph 56 of the Framework². The Planning Practice Guidance³ (PPG) advises that positively worded conditions requiring planning obligations or other agreements to be entered into are unlikely to be enforceable, and negatively worded conditions requiring the same are unlikely to be appropriate in the majority of cases. There is no clear evidence before me that the delivery of the proposed development would otherwise be at serious risk and no heads of terms or principal terms have been agreed by the main parties. For these reasons I am unable to attach a condition requiring the completion of a planning obligation or other formal agreement.
10. In the absence of a completed planning obligation appropriately securing the necessary financial contributions towards off-site SANGS and SAMM, for the reasons set out above, I conclude that the proposal would be likely to have an adverse effect on the integrity of the SPA. The Habitats Regulations require me to consider whether there are any alternative solutions, but appropriate mitigation measures have not been secured and I am not aware of any other solutions.

¹ In accordance with section 106 of the Town and Country Planning Act 1990 (as amended)

² National Planning Policy Framework (2021)

³ Paragraph: 010 Reference ID: 21a-010-20190723

11. I must also consider whether there are any imperative reasons of overriding public interest. A net increase of five dwellings, even where the Council cannot demonstrate a five-year supply of deliverable housing sites, is not sufficient to amount to such overriding public interest. Consequently, having regard to the Habitats Regulations, permission must not be granted. The proposal would therefore fail to avoid adversely affecting the integrity of the SPA, contrary to Policy WCS12 of the Wealden District Core Strategy Local Plan (2013) (CS).

Character and Appearance

12. The appeal site comprises a long plot occupied by a bungalow in a residential area which borders a wooded area to the east of Green Lane. The residential area is characterised by a mix of detached and semi-detached houses set within modestly sized plots, interspersed with trees and other established planting. There are examples of recent housing developments within former 'backland' plots immediately to the south of the appeal site which inform the prevailing character of the area, and in this context the large open rear garden of the appeal site is an uncharacteristic feature.
13. Land levels slope from west to east, and the proposed pairs of semi-detached houses would step down towards the rear of the appeal site. This would create three tiers within the appeal site, but that layout would not be completely alien in an area where other large houses have been built within former rear gardens at different levels. As pairs of semi-detached houses, the proposed dwellings would be larger than neighbouring detached houses, but not by significant margins. They would retain separation gaps with the appeal site's boundaries which would be similar to those seen in the surrounding area. The cul-de-sac arrangement of Bethany Close and Nassau Drive demonstrate the layout and density of housing proposed would integrate well with its surroundings.
14. In the context of surrounding houses of various sizes and designs, the proposed dwellings would add to the diverse streetscape without appearing unduly cramped, dominant or out of scale. This would be on account of the falling land levels and substantial width and depth of the appeal site, which would comfortably accommodate the necessary gardens, access, parking and other infrastructure alongside the proposed dwellings.
15. The proposal would therefore accord with saved Policy EN27 of the Wealden Local Plan (1998) (LP) and Spatial Planning Objective SPO13 of the CS. These encourage, amongst other things, the scale, site coverage and design of high-quality development to respect the character of adjoining development. Policy EN27 seeks to resist 'unacceptable backland' or 'tandem' forms of development, but as I have set out above, the proposed layout would reflect neighbouring forms of development and would not be unacceptable in this location.
16. The proposal would also accord with the advice set out in the Wealden Design Guide Supplementary Planning Document (SPD) and the Framework. The SPD advises that not all development needs to match the heights of existing adjacent buildings, but should relate appropriately to them, and new buildings should contribute to the continuity of urban form. The Framework encourages sustainable forms of development which should be well-designed, function well and make efficient use of land while being sympathetic to local character. For the reasons set out above, the proposal would achieve these aims.

Living Conditions

17. The Council's decision notice claims the proposal would harm the living conditions of the occupants of neighbouring properties, notably those of The Willow, Oakleigh and The Old Butcher's Shop⁴. No further details have been provided to explain how this conclusion has been reached, but I have had regard to the comments of interested parties.
18. The greatest impact of the proposed development would be felt by occupants of Oakleigh. Plot 1 would be positioned further back from the highway than Oakleigh and parts of the proposed dwelling would be close to the shared boundary. Most of the proposed development would be visible in views from the rear of Oakleigh, which would be a change from the current situation where views of the existing bungalow appear to be restricted. However, residents of Oakleigh would retain an acceptable outlook typical for its suburban location. The presence of Plot 1 close to the shared boundary, and the views of the proposal from Oakleigh would not cause any material harm to the living conditions of those neighbouring residents.
19. Plots 3 and 4 would be positioned alongside The Willow and would therefore have little impact on the occupants of that building, who would have views of Plots 5 and 6 to the rear and Plots 1 and 2 to the front. I saw the differences in land levels across the appeal site and the rear garden and wooded area of The Old Butcher's Shop, and it would be inevitable that Plots 3 – 6 would change neighbouring residents' outlook from that property too.
20. The proposed dwellings would be clearly seen in views from the rear of The Old Butcher's Shop due to the sloping land levels. There would be less of an impact on the outlook enjoyed by occupants of The Willow due to the positioning of the proposed development in relation to that dwelling, although views of the woodland to the rear would be reduced. As with the impact of the proposal on the occupants of Oakleigh, these changes to existing views would not result in any material harm to the living conditions of the occupants of The Old Butcher's Shop or The Willow.
21. There would be no side elevation windows proposed to Plots 1 – 4, but restricted views of neighbouring properties would be possible where future residents stand directly in front of upper floor bedroom and bathroom windows and look to the sides. The orientation and positioning of the proposed dwellings would ensure such situations would occur briefly and irregularly. The levels of overlooking would therefore be within acceptable limits due to the angles and distances involved.
22. Upper floor side elevation windows would be proposed on the northern and southern elevations of Plots 5 and 6, but these would serve bathrooms and although these would also be unlikely to result in any unacceptable levels of overlooking of neighbouring properties, a condition requiring these windows to be obscure glazed and of restricted opening would be reasonable to prevent any perceived overlooking.
23. Interested parties have suggested that the proposed development would create unacceptable levels of overlooking into other neighbouring properties. That would not be the case due to the orientation and positioning of the proposed

⁴ The comments of interested parties clarify that the Council has incorrectly referred to The Old Butcher's Shop as The Old Post Office within its officer report and decision notice

dwelling in relation to those neighbouring properties, resulting in no unacceptable levels of overlooking.

24. The proposed development would not therefore cause any harm to the living conditions of any occupants of neighbouring properties, in accordance with saved Policy EN27 of the LP. This requires, amongst other things, development to avoid creating unacceptable adverse impacts on the privacy and amenities of adjoining developments and the neighbourhood by reason of scale, height, and form.

Protected Tree

25. The Arboricultural Implications Assessment⁵ (AIA) refers to the main potential impact of the proposed development on an Oak ('T5') covered by a Tree Preservation Order⁶, located just inside the southern boundary of the appeal site. The AIA confirms T5 is a 'Category A' tree in good health with an estimated remaining lifespan of over 40 years. As a mature tree of significant size forming part of the boundary between houses in this residential area, T5 makes a significant positive contribution to the character and appearance of the area.
26. Both of the main parties have referred to an extant planning permission⁷ for a dwelling and garage close to T5 ('the Approved Scheme'). I have not been presented with the full details of that scheme, but the main parties' submissions confirm it comprises a fallback position for the appellant. The Council's officer report describes it as authorising a garage within close proximity to T5 and a dwelling in the same position as Plots 3 and 4, which is what Appendix 7 of the AIA shows. I also note an existing concrete base in close proximity to T5 which is shown to be removed and replaced by part of the garden of Plot 1 and a landscaped area on the proposed plans.
27. The AIA states that parts of the proposed footprint of Plots 3 and 4, the proposed parking area to Plots 3 and 4, and the rear patio to Plot 1 would fall within the Root Protection Area of T5. The AIA concludes that the proposal would have less of a potential impact on T5 in comparison to the Approved Scheme if the appropriate construction techniques would be applied. Plots 1 and 2 would be positioned further away from T5 than the existing bungalow and Plots 3 and 4 would be positioned in the same position as the dwelling forming part of the Approved Scheme. The proposed parking areas to Plots 3 and 4 would be situated much further away from T5 than the garage forming part of the Approved Scheme and would be constructed using a 'no dig' porous design. The patio to Plot 1 could also be constructed in a similar manner.
28. I note the comments of the Council's Tree & Landscape Officer⁸, but these do not acknowledge the Approved Scheme and the implications that development would have on T5 in comparison to the proposal. The Council's officer report explains that the proposal offers an improved relationship with T5 compared to the Approved Scheme, which is confirmed by the findings of the AIA and my reading of the plan at Appendix 7 of that document.

⁵ Revised Arboricultural Implications Assessment for Proposed 6 House Residential Redevelopment, ref: J56.43 by Broad Oak Tree Consultants Limited, dated 4 September 2019

⁶ Ref: 15/2003

⁷ Council planning permission reference: WD/2009/2316/F, confirmed as extant by certificate of lawfulness reference: WD/2015/2315/F

⁸ Email dated 2 August 2019

29. The Approved Scheme is a realistic fallback position, and in comparison to that scheme the proposal would not result in any additional harm to the long-term health or future protection of T5 in accordance with saved Policy EN27 of the LP and Spatial Planning Objective SPO13 of the CS, which require the design and landscaping of development to be of an appropriate high standard.

Other Matters

30. The Council has advised they are unable to demonstrate a five-year housing land supply. Where this is the case, Paragraph 11 of the Framework, which outlines a presumption in favour of sustainable development, is applicable. However, Paragraph 182 of the Framework advises the presumption in favour of sustainable development does not apply where a project is likely to have a significant effect on a habitats site⁹, unless an AA has concluded it will not adversely affect the integrity of that site. I have concluded in the first main issue that the proposal would be likely to have an adverse effect on the integrity of the SPA, and the presumption in favour of sustainable development does not therefore apply in this instance.

Conclusion

31. The proposed development would not result in any unacceptable harm to the character and appearance of the area, the living conditions of neighbouring residents, or a protected tree. However, it would be likely to have an adverse effect on the integrity of the SPA, and for the reasons given, I conclude that the appeal cannot succeed.

L Douglas

INSPECTOR

⁹ Annex 2 of the Framework provides the following definition of 'habitats sites': Any site which would be included within the definition at regulation 8 of the Conservation of Habitats and Species Regulations 2017 for the purpose of those regulations, including candidate Special Areas of Conservation, Sites of Community Importance, Special Areas of Conservation, Special Protection Areas and any relevant Marine Sites.