



Appeal Decision

Site visit made on 7 February 2022

by Guy Davies BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 February 2022

Appeal Ref: APP/C1435/W/21/3279623

Land adjacent to Merrifield, Aviemore Road, Crowborough TN6 1QX

- 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 P and Mrs D Watson against the decision of Wealden District Council.
 - The application Ref WD/2020/2430/F, dated 10 December 2020, was refused by notice dated 28 May 2021.
 - The development proposed is the construction of a dwelling with separate car port and access driveway.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A copy of a unilateral undertaking has been submitted with the appeal which secures a financial contribution towards the provision of suitable alternative green space and a strategic access management and monitoring strategy aimed at mitigating harm to the Ashdown Forest Special Protection Area and Special Area of Conservation; and an obligation for owners not to keep or permit to be kept any domesticated cat at the property. I comment further on this undertaking in my reasoning.
3. The main issue is the effect of the development on the Ashdown Forest Special Protection Area and Special Area of Conservation.

Reasons

4. Ashdown Forest is designated as a Special Protection Area because of its value as habitat for rare bird species, including the nightjar and Dartford warbler. It is also designated as a Special Area of Conservation because of its value as dry and wet lowland heath, which provides habitats for rare plants and animals, including great crested newts.
5. Where development has the potential to have a significant adverse effect on the ecological importance of Ashdown Forest, the Conservation of Habitats and Species Regulations 2017 require me to carry out an appropriate assessment of the potential threats.

Appropriate assessment

6. The Council and Natural England argue that the development could, when taken in combination with other development close to Ashdown Forest, have a significant adverse effect on the habitats and the rare species they support

through disturbance caused by increased visitor pressure. Such disturbance could come from walkers and their dogs inadvertently trampling flora and disturbing fauna, and associated activities such as lighting camp-fires, having picnics and littering. Adverse effects could also come from domestic cats predated ground nesting birds and other fauna.

7. To avoid adverse effects on Ashdown Forest, the Council has adopted Policy WCS12 in the Wealden District Core Strategy Local Plan 2013 (the 'Core Strategy') which creates an exclusion zone of 400m for net increases in dwellings around Ashdown Forest. Following a legal challenge parts of Policy WCS12 and its supporting text were quashed by court order, but not the part referring to the 400m exclusion zone. The intention was to define the zone in a Delivery and Site Allocations Plan, which was never progressed. However, the principle of the zone remains pertinent to this appeal. It is also referenced in the Ashdown Forest Special Protection Area Strategic Access Management and Monitoring Strategy.
8. The appellants point out that the appeal site lies towards the outer edge of the 400m exclusion zone, and that even the most direct walking route to Ashdown Forest is greater than 400m in length. While that may be the case, I do not interpret the policy as only relating to those dwellings which are within 400m walking distance of the Forest. Rather it defines a range of sites where future residents would be sufficiently near the Forest so as to be likely to use it on a regular basis for informal recreation. I accept that it is a somewhat crude measure in determining the threshold for the level of recreational pressure, but it does have the advantage of being definitive.
9. While the appellants argue that such a threshold should be applied with discretion, I see no exceptional or compelling circumstances that outweigh the approach adopted in Policy WCS12 in this case. I appreciate that for a single dwelling, such effect would be small but if residential development were allowed within the 400m exclusion zone, then the cumulative effect would be significant. The basis for applying an exclusion zone is therefore a reasonable approach to take in limiting visitor pressure on Ashdown Forest.
10. The appellants have offered a unilateral undertaking that would contribute towards mitigation measures aimed at reducing visitor pressure on Ashdown Forest. However, those measures are unlikely to be effective in this case because any suitable alternative natural green space would not be any nearer the appeal site than Ashdown Forest itself, and therefore would be unlikely to be used as an alternative destination for information recreation. The ease of access to the Forest would also tend to negate the approaches used in the strategic access management and monitoring strategy to reduce recreational use. Therefore, I place little weight on the undertaking in addressing the likely adverse effects on the ecological integrity of Ashdown Forest.
11. Natural England raises concern at the potential for cat predation on ground nesting birds in Ashdown Forest. The appellants have included a clause in the undertaking preventing future owners from owning cats. I consider that such a restriction would not be reasonable because it could not, in any practical way, be enforced by the Council. Cats are not required to be licensed and periodic inspection of the property, which itself would be an unduly onerous responsibility on the Council, would not necessarily detect such a pet. I therefore give this clause little weight.

12. However, the appellants have submitted a recent study¹ that found that the median maximum distance reached from home by cats was 141m in a suburban location and 148m in a peri-urban location, with a maximum range of 278m. While this does not guarantee the safety of ground nesting birds, it does offer evidence that a cat associated with the proposed development is unlikely to give rise to predation in this case, given that the site is some 368m from the nearest part of Ashdown Forest.
13. Natural England also raise concerns at other urbanising effects of development on Ashdown Forest, including but not limited to bonfires, dirt track biking and dumping of garden waste. While some or all of these effects, including cat predation, are unlikely to arise from the appeal proposal given its nature and position, that does not counteract the likely additional recreational pressure the development would create, and the consequent risk of harm to the ecological value of Ashdown Forest.

Other Matters

14. The Council acknowledges that it cannot demonstrate a 5 year housing land supply. In such circumstances, paragraph 11d) of the Framework says that planning permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed.
15. The protection of habitats sites, such as the Ashdown Forest Special Protection Area and Special Area of Conservation, is one such policy in the Framework and for the reasons given above it provides a clear reason for refusing the development proposed². The presumption in favour of sustainable development contained in paragraph 11d) is therefore not triggered in this instance.
16. Officers of the Council initially made a resolution to grant planning permission because it had not been realised how close the site was to Ashdown Forest. That resolution was changed following advice from Natural England. While I understand why the appellants were disappointed by the change in resolution, that is not a matter which carries weight in the appeal, it being based on the decision of the Council rather than any previous resolution.
17. The appellants have made a personal statement which explains their circumstances and that they are committed to a high level of energy efficiency and sustainability in the proposed dwelling. While those aims are laudable, the appeal has been determined on the main issue set out above, which carries greater weight.

Conclusion

18. I conclude that, given the proximity of the appeal site to the Ashdown Forest Special Protection Area and Special Area of Conservation, it is likely that the proposed development would give rise to additional recreational pressure on these designated areas, which would have an adverse effect on their ecological value. The development would therefore conflict with saved Policies EN1 and EN15 of the Wealden Local Plan 1998, and Policies WCS12 and WCS14 of the Core Strategy, which seek to safeguard designated nature conservation sites.

¹ Hanmer, Thomas and Fellowes: Urbanisation influences range size of the domestic cat (*Felis catus*): consequence for conservation, *Journal of Urban Ecology*, 2017

² National Planning Policy Framework, footnote 7

19. I recognise that there would be a modest benefit of adding one additional dwelling to the District's housing stock, and that the dwelling would be an exemplar of sustainable construction. However, these benefits do not outweigh the harm that would be caused to the ecological value of Ashdown Forest.
20. I conclude that development conflicts with the development plan when taken as a whole, and consequently the appeal should be dismissed.

Guy Davies

INSPECTOR

