



Appeal Decision

Site visit made on 27 June 2022

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th July 2022

Appeal Ref: APP/C1435/W/21/3276178

Timberlee, Hartfield Road, Forest Row, RH18 5LZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Trustees Julian Schild Trust against the decision of Wealden District Council.
 - The application Ref WD/2020/1668/O, dated 20 August 2020, was refused by notice dated 14 January 2021.
 - The development proposed is erection of an infill dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of an infill dwelling at Timberlee, Hartfield Road, Forest Row, RH18 5LZ, in accordance with the terms of the application, Ref WD/2020/1668/O, dated 20 August 2020, subject to the conditions set out in the attached schedule.

Applications for costs

2. An application for costs was made by Trustees Julian Schild Trust against Wealden District Council. That application is the subject of a separate decision.

Preliminary Matters

3. The application was made in outline with approval being sought for access and scale. Matters relating to appearance, landscaping and layout have been reserved. I have been provided with plans that illustrate the access proposals and location of the dwelling within the site, as well as floor plans and elevations that show the appearance of the dwelling. However, as layout and appearance are reserved, I have treated the location of the dwelling, floor plans and elevations as illustrative only.
4. The description of the proposed development in the banner header above is taken from the planning application form albeit that I have removed other wording that does not relate to the act of development.
5. A revised version of the National Planning Policy Framework (the Framework) has been published since the planning application was determined by the Council. I have had regard to the revised Framework in reaching my decision.

Main Issue

6. The main issue in this case is the effect of the proposed development on the Ashdown Forest Special Protection Area (the SPA).

Reasons

7. The Council's sole reason for refusal relates to the potential impact of the development upon the SPA given that the site falls almost wholly within the exclusion zone of 400m of the SPA. This brings the proposal into conflict with Policy WCS12 of the Wealden Core Strategy (the Core Strategy) 2013 that seeks to avoid adverse effect on the integrity of the SPA from visitors of new development within the exclusion zone. In addition, the proposal has attracted third party objection for being development proposed within the SPA. However, the appellant contests that the site falls within the exclusion zone. The Council has reviewed this as part of the appeal process and found there to be a discrepancy as to how the exclusion zone is plotted on their GiS (mapping system).
8. Whilst Natural England hold the position that the site 'appears' to fall within the 400m exclusion zone, the Council confirms that the site falls just outside of it. It is clarified that the southern edge of the site is the 400m boundary and that the depth of the appeal site is outside of the exclusion zone. As a result, and as a matter of fact, the appeal site does not fall within the SPA exclusion zone. In light of this, the Council confirms that they will not be contesting the appeal and withdraw their sole reason for refusal.
9. An interested third party contends that it is immaterial whether part of the appeal site lies outside the buffer zone. It is put forward that if any part of the application site falls within the buffer zone, the proposal must be refused, and should be calculated by reference to curtilage. Even if the boundary abuts the exclusion zone the site is not within it and, as such, those matters that apply to the exclusion zone do not apply beyond the zone. I have been directed to guidance published by a different administering authority, but such guidance would not apply here and offers little weight in support of the third party's submission.
10. For this reason, the proposed development would not have a harmful effect upon the SPA. As the site does not fall within the SPA exclusion zone there would be no conflict with Policy WCS12 of the Core Strategy or the Framework.

Other Matters

11. Concerns have been raised by a number of third parties regarding the safety and suitability of the proposed access arrangements and in particular the insufficient visibility splays, implications for pedestrian safety and the lack of adequate parking.
12. The proposal would utilise the existing access to Timberlee. The Highway Authority have highlighted that the existing site access is unable to accommodate 2-way traffic flow. However, the Highway Authority have confirmed that they are satisfied that there is scope within the application site for the provision of an access with sufficient width to accommodate 2-way traffic. The width of the access and gate location can be controlled by suitably worded planning conditions (conditions 5, 6 and 7).
13. It is highlighted that there is poor visibility leaving the site and access is onto the busy Hartfield Road. Pedestrians would be required to cross the highway to access the footpath. Visibility splays can be upgraded to improve visibility. Improved visibility at the access would also assist pedestrians anticipate

oncoming traffic when crossing Hartfield Road, where the travel speed for vehicles is limited to 30 miles per hour in the vicinity of the site access. On road parking has been highlighted to cause problems, however, it is not clear how this might be a substantially greater problem as a result of the proposed development.

14. The proposal could provide for three parked vehicles within the site. Given the size of the site I see no substantive reason why parking and turning space could not be achieved within the site. Whilst not shown on the plans that support the application, layout is one of the matters reserved and can be controlled by the imposition of suitably worded planning conditions as advocated by the Highway Authority (conditions 2, 8 and 9). In addition, given the size of the resulting site relating to the existing property of Timberlee, I see no substantive reason why parking or access to that site might be problematic.
15. The appeal site would utilise an area of existing garden to the south of the main dwelling. There are trees and vegetation, along with an area of grass and hardstanding, within the appeal site. The site hosts dense vegetation along the road frontage. Widening the access would require cutting back of some vegetation. There is also an area of ancient woodland abutting the eastern boundary of the site. Third party concern has been raised to the impact upon these landscape feature and to garden wildlife habitat.
16. Landscaping and layout are matters reserved for future planning consideration, the details of which would be subject to planning conditions with a further assessment of their acceptability (conditions 2 and 13). At this outline stage, given the size of the site I see no substantive reason why a suitable layout and landscaping of the site and along the road frontage could not be achieved.
17. Natural England's standing advice for ancient woodland and veteran trees requires at least 15 metres between development to avoid root damage to trees. The location of the dwelling is for future consideration but given the size of the site I see no substantive reason why this could not be achieved. The garden of the dwelling would be within the buffer zone; however, the existing garden currently is also within this buffer zone. Notwithstanding this, the Council's Biodiversity and Arboricultural Officer advises that a suitable buffer zone should be provided to prevent direct and indirect impacts on the ancient woodland. This can be controlled by means of a future reserved matters submission to the Council and by imposing a suitably worked planning condition (conditions 2 and 12).
18. It has been highlighted that slow worms and grass snakes are present at an adjoining garden. Also, light pollution could cause harm to the habitat within the adjoining ancient woodland. A Preliminary Ecological Appraisal supported the planning application. The appeal site was assessed for habitats with respect to their potential to support protected species. This Appraisal concluded that the proposed development is considered unlikely to be adversely detrimental to any designated areas, protected species or habitat. However, it recommends ecological enhancements for the site that include considerations pertaining to appropriate lighting. These matters can be controlled by a suitably worded planning condition (condition 14). Construction pollutions from airborne dust, noise, light and ground pollution could impact the adjacent ancient woodland. However, on the evidence available to me I have no substantive reason that might lead me to conclude that such matters

would result in significant harm to habitat or ecology. The imposition of a condition (condition 4) that requires a construction environmental management plan during the construction period could control a number of these concerns.

19. Concern is expressed to the original house, Timberlee, being orphaned leaving it with no road frontage or presence and that the privacy for the existing occupiers may be compromised. Timberlee is set back some distance from Hartfield Road and the existing property is not readily visible from this highway given the set back and existing vegetation at the site. This situation would not substantively change as a result of the proposed development. With regard to privacy, there would be separation between respective development and appropriate landscaping, controlled by condition, could reduce any such harm arising to the existing occupiers.
20. A planning condition can control surface water drainage for the site's driveway onto the public highway. A condition has been requested by the Highway Authority to control this (condition 11). The appeal site would be situated within a low-lying part of the existing grounds of Timberlee. Some concern is expressed that the proposal may reduce drainage for the main property, Timberlee, as well as that of the proposed dwelling highlighting that the underlying geology to be predominantly clay soil. I note that the Council has not raised this as a concern and has requested that this matter be subject to planning condition (condition 11). I have no substantive reason before me that would indicate that drainage of the site would be insurmountable at this outline stage.
21. In reaching my decision, I have also considered the concern raised in respect of a large dwelling not meeting an identified housing need (affordable or social). I note that the Council did not raise concern in regard of this issue. Reference is also made to covenants that may pertain to land at Timberlee. However, these are civil matters that do not affect the planning merits of the proposal. These matters are not reasons to withhold planning permission in the absence of any significant planning harm.
22. Overall, these matters do not lead me to a different overall conclusion.

Conditions

23. The Council has submitted a list of suggested conditions to which the appellant has confirmed to be mostly in agreement. I have considered the conditions in the light of the Planning Practice Guidance (the Guidance). In some cases I have adjusted detailed wording of the conditions or merged conditions in the interests of clarity and to reflect the Guidance and to adhere to other adopted development plan policies.
24. Conditions 1 to 3 are standard for outline planning applications. The Council has sought to reduce the standard time limit for the commencement of development from 3 years to 1 year in order to expedite the delivery of housing. The appellant has asked for this be kept at the standard 3 years in order for renovations of the main house to be completed before starting on this development. I do not consider this to be an unreasonable request in this case, given one dwelling would make little difference to the Council's housing land supply and have retained the standard time limit for commencement within condition 3.

25. Condition 4 is necessary in the interests of protecting highway safety, neighbour occupiers living conditions and to minimise the environmental impact of the development during construction. Conditions 5, 6, 7, 8 and 9 are necessary to ensure satisfactory highway safety is achieved. Condition 10 supports sustainable travel. Condition 11 will ensure appropriate management of surface water and prevent increase in flood risk. Conditions 12 and 13 are required for those reasons set out in paragraphs 16 and 17 above. Condition 14 is necessary to ensure the protection and enhancement at the site of important species. Condition 15 promotes sustainable building design. Conditions 4, 5, 8 and 9 are fundamental to the acceptability of the proposal and therefore are necessary to be agreed before development takes place.
26. Condition 16 requires development to accord with the approved plans and documents. This is for avoidance of doubt and to reflect the Guidance.

Conclusion

27. For the reasons set out above, and subject to the conditions listed, this appeal should be allowed.

Nicola Davies

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Permission is granted subject to the subsequent approval by the Local Planning Authority of the detailed particulars of the appearance and layout of the building to which this permission relates, and the landscaping of the site, before any development is commenced, such matters being reserved from the permission.
- 2) Details of the appearance, layout and landscaping (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the Local Planning Authority before any development begins and the development shall be carried out as approved.
- 3) (a) Application for approval of the matters reserved for subsequent approval must be made to the Local Planning Authority no later than the expiration of three years beginning with the date of the grant of this outline permission; and (b) the development to which this permission relates must be begun no later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.
- 4) No development shall take place, including any works of site clearance, until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall be adhered to throughout the construction period. The CEMP shall include, but not be limited to:
 - i. An indicative programme for carrying out the works (including measures for traffic management).
 - ii. Measures to minimise noise (including vibration) generated by the construction process to include hours of work and the hours of deliveries.
 - iii. Details of any floodlighting, including location, height, type and direction of lights sources and the intensity of illumination.
 - iv. The parking of vehicles of site personnel, operatives and visitors.
 - v. Loading and unloading of plant and materials.
 - vi. Storage of plant and materials used in the constructing of the development.
 - vii. Measures to prevent the deposit of materials on the highway including, if necessary, wheel washing facilities.

- 5) Prior to commencement of the development details of the new access shall be submitted to and approved in writing by the Local Planning Authority and all works undertaken shall be executed and completed in accordance with the approved new access details prior to the occupation of the dwelling hereby permitted.
- 6) The access shall not be used until visibility splays of 2.4m by 43m are provided in both directions and vegetation within those splays shall be maintained at no more than 0.6m above carriageway level and thereafter maintained for the lifetime of the development.
- 7) Any gate shall be positioned at least 5.5m back from the edge of the highway (and open inwards) in order that a vehicle may wait clear of the highway whilst the gate is being operated.
- 8) Prior to the commencement of development details of the parking area shall be submitted to and approved in writing by the Local Planning Authority. The parking spaces shall measure at least 2.5m by 5m (add an extra 50cm where spaces abut walls). The parking area and parking spaces shall be implemented on site in full prior to the occupation of the dwelling hereby permitted. The parking area and parking spaces shall thereafter be retained for that use and shall not be used other than for the parking of vehicles associated with the dwelling hereby permitted.
- 9) Prior to the commencement of development details of the turning space for vehicles shall be submitted to and approved in writing by the Local Planning Authority. The turning area shall be implemented on site in full prior to the occupation of the dwelling hereby permitted. The turning area shall thereafter be retained for that use for the lifetime of the development and shall not be obstructed.
- 10) The development shall not be occupied until a cycle parking area has been provided and the cycle parking area shall thereafter be retained for that use for the lifetime of the development and shall not be used other than for the parking of cycles.
- 11) Prior to the first use of the access details of the proposed surface water drainage to prevent the discharge of surface water from the proposed site onto the public highway and, similarly, to prevent the discharge of surface water from the highway onto the site shall be submitted to the Local Planning Authority for written approval. The surface water drainage details as approved shall be implemented on site in full prior to the occupation of the dwelling and shall be retained for the lifetime of the development.

12) Pursuant to condition 2 of this permission, a suitable buffer zone should be provided to prevent direct and indirect impacts on the ancient woodland.

13) No trees and/or hedgerows on the site, unless dead or dangerous, shall be felled, reduced, pruned or destroyed without the consent in writing of the Local Planning Authority. Furthermore, the following work shall not be carried out within the approved protection zone of any tree or hedgerow, except with the consent of the Local Planning Authority:-

(i) Levels shall not be raised or lowered in relation to the existing ground level within the approved protection zone of the tree or hedgerow.

(ii) No roots shall be cut, trenches dug or soil removed within the approved protection zone of the tree or hedgerow.

(iii) No buildings, roads or other engineering operations shall be constructed or carried out within the approved protection zone of the tree or hedgerow.

(iv). No fires shall be lit within the approved protection zone or in a position where the flames could extend to within 5 metres of the foliage, branches or trunk of the tree or hedgerow as per the requirements of BS5837:2012

Trees in relation to design, demolition & construction - Recommendations.

(v) No vehicles shall be driven over the area within the approved protection zone of the tree or hedgerow.

(vi) No materials or equipment shall be stored within the approved protection zone of the tree or hedgerow as per the requirements of BS5837:2012 Trees in relation to design, demolition & construction - Recommendations.

14) Prior to preparation of ground levels for the construction of the development hereby approved, a scheme for the enhancement of the site for biodiversity purposes, in accordance with the recommendations on pages 29-34 of the submitted Preliminary Ecological Appraisal date stamped 27 August 2020 to include timescales for implementation and future management, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme of enhancements shall be implemented in accordance with the approved details and thereafter so retained for the lifetime of the development.

15) Before preparation of any groundworks or foundations for the development hereby approved, full details for the incorporation of water and energy efficiency measures, the promotion of renewable energy and sustainable construction within the development shall be submitted to and agreed in writing by the Local Planning Authority and the development shall be carried out in accordance with the approved details and thereafter so retained for the lifetime of the development.

- 16) This planning decision relates solely to the information contained within the application form, the following plan(s) in so far as they relate to those matters granted outline permission (access and scale) and (where appropriate) documents:

Ref. Date Stamped. STN4

Location Plan 21 August 2020

Site Plan 14 October 2020

Indicative Plans: E Rev A (Ground) 21 August 2020

Indicative Plans E Rev A (First) 21 August 2020

Indicative Plans 3 Rev A 21 August 2020

Indicative Plans 4 Rev A 21 August 2020

Transport Statement 21 August 2020

Arboricultural Report 18 September 2020

Preliminary Ecological Appraisal 27 August 2020

Topographical Survey: Layout 21 August 2020

Topographical Survey: 001 21 August 2020

Topographical Survey: 002 21 August 2020

Topographical Survey: 003 21 August 2020

End of Schedule