



Appeal Decision

Site visit made on 1 February 2023

by Hannah Guest BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 March 2023

Appeal Ref: APP/C1435/W/22/3294414

Wingdale, Fielden Road, Crowborough TN6 1TP

- 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 & Mrs Crane against the decision of Wealden District Council.
 - The application Ref WD/2020/2123/F, dated 19 October 2020, was refused by notice dated 27 October 2021.
 - The development proposed is a new residential dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - The effect of the proposal on the character and appearance of the area, including protected and unprotected trees;
 - Whether the proposal would provide satisfactory living conditions for future occupants, with specific regard to outlook, privacy and the amount and utility of the proposed garden space; and
 - The effect of the proposal on European protected species.

Reasons

Character and appearance

3. Most of the houses are located on the east side of Fielden Road with woodland and open fields opposite. The land slopes from east to west meaning the houses are set above the highway. Plots are generous and front gardens tend to be large and landscaped, with soft boundary treatments and areas of grass in addition to hardstanding for parking. This gives the area a very verdant yet spacious character.
4. The appeal site is on a part of Fielden Road that is more wooded than other sections, opposite an area of woodland. The mature trees on the edges of the site make a positive and important contribution to the character of the area.
5. While the proposed dwelling would be positioned to the front of the existing house, Wingdale, forming a tandem arrangement, I saw on my visit that there are other properties on Fielden Road, close to the appeal site, that have a similar arrangement. Furthermore, the proposed dwelling would be set a similar distance from the road as the neighbouring properties Kim, Keepers and

Scharlings. Thus, the position of the proposed dwelling would be in keeping with the other properties in the immediate area. Given this, although the proposal would result in a tandem form of development, it would not be unacceptable and would comply with Policy EN27 of the Wealden Local Plan 1998 (Local Plan) in this regard.

6. The width of the proposed dwelling would fill most of the width of the site meaning it would be positioned very close to the existing trees. However, many of the properties on Fielden Road have wide frontages that fill a good proportion of their plots and given the narrow trunks and high canopies of most of the surrounding trees, the proposed dwelling would not appear cramped in this regard. Rather it would appear to be set within the trees in a similar way to the surrounding properties. There would be approximately 10 metres between the proposed dwelling and its rear boundary, which would consist mainly of a steep bank that rises to Wingdale behind. However, this would not be evident from the road, as most of Wingdale would be screened by the proposed dwelling, which would sit directly in front of it. Therefore, the proposed dwelling itself would not appear cramped on the site.
7. Nevertheless, the proposed garage would be positioned in front of the dwelling, close to the front of the plot, which is not in keeping with the large, landscaped front gardens along Fielden Road. Although relatively modest in scale, an outbuilding in this location would appear prominent and incongruous in the street scene. It would make the proposal, as a whole, appear more constrained on the site, which would indicate an over-development of the site. Thus, the proposal would harm the spacious and verdant character of the area.
8. It has been put to me by the appellant that the Arboricultural Survey (March 2021) undertaken by PJC Consultancy, which was submitted as part of the application, confirms that the proposal will not harm any trees. To the contrary, the recommendations of the survey at paragraph 4.1.1 state that an arboricultural impact assessment should be provided to accompany the planning application. Also, at paragraph 4.1.3, it states that where trees are retained on a development site or where third-party trees have the potential to be affected by construction activities, an arboricultural method statement accompanied by a dimensioned tree protection plan should also be produced. However, none of these documents are before me.
9. While it is unclear from the submitted plans whether the proposal would require the removal of any of the existing trees on the site, taking account of the Tree Constraints Plan, No: PJC/5772/21/A, the Proposed Block Plan, No: 4 Rev D and the Tree Preservation Order (Crowborough) No.16, 1999, it is clear that the proposal and the associated construction activities would affect some of the existing trees, most of which should be considered for retention and some which are protected. However, despite some trees being protected, there is no substantive evidence before me demonstrating that the proposal would not result in the loss of or harm to the long-term viability of these trees, which make an important and positive contribution to the character of the area.
10. I recognise that there are many trees in the surrounding area, some positioned close to existing houses. However, given the resulting proximity of the proposed dwelling to the existing trees in this case, there would also be a significant risk that the proposal would result in future pressure to prune or remove trees, despite some being protected, due to leaf litter and potential

damage to the dwelling. Accordingly, in absence of evidence to the contrary, the proposal would be likely to result in significant harm to or loss of protected and unprotected trees.

11. Given this, and for the reasons above, the proposal would harm the character and appearance of the area. While the pattern of development would not conflict with Policy EN27 of the Local Plan, the proposal, as a whole, would conflict with Policy EN27 of the Local Plan, as well as Policies EN1 and EN12 of the Local Plan, the aims of spatial planning objective SPO13 and Policy WCS14 of the Wealden Core Strategy 2013 and the Wealden Design Guide Supplementary Planning Document (2008) (SPD). These seek, amongst other things, to permit development that respects the character of adjoining development and, where appropriate, promotes local distinctiveness, as well as development that improves environmental conditions in the area and retains and enhances the contribution of trees to the landscape character of the district. The proposal would also conflict with the aims of paragraphs 130 and 131 of the National Planning Policy Framework (the Framework) to ensure that developments are sympathetic to local character, including the surrounding built environment and landscape setting, and that existing trees are retained wherever possible.
12. Paragraph 127 of the Framework relates to plan-making and therefore is not relevant in this case.

Living conditions

13. Wingdale would be positioned above the proposed dwelling, therefore some overlooking, particularly of the space to the rear of the proposed dwelling, would be possible. However, given the steep slope of the land it would be unlikely that future occupants would use this space regularly as garden space. Also, as the proposed dwelling would be set well below Wingdale, there would not be any views into its ground floor rear windows and any views, if at all possible, through the velux windows in the roof, would be severely limited and would not harm the living conditions of future occupants. Wingdale is a modest single storey house with a low profile. It is also set back from the rear boundary of the appeal site. Therefore, it would not be overbearing on the proposed dwelling nor affect the outlook for future occupants.
14. In terms of garden space, the amount of usable space would be limited. As mentioned above, the steep slope of the land means that it would be unlikely that the space to the rear of the proposed dwelling would be used regularly as garden space, although it may be suitable for some domestic activities such as clothes drying. While the proposed garage and driveway would take up some space, there would also be some garden space to the front of the dwelling. This space would include the existing trees, however, most have narrow trunks and high canopies and therefore would not restrict the garden space to a degree that would render it unusable. Although large parts of the front garden would likely be shaded throughout the day, there would also be areas of sunlight. Moreover, given the wooded character of the area, a largely shaded plot would be similar to some neighbouring properties and would not come as a surprise to future occupants. Therefore, while the space may not meet the general guidelines set out in the SPD in terms of size and depth for a garden serving a family dwelling, it would be sufficient to provide an acceptable standard of living for future occupants.

15. For these reasons the proposal would provide a satisfactory residential environment for future occupants, with specific regard to outlook, privacy and the amount and utility of garden space. Thus, it would not harm their living conditions. The proposal would accord with Policy EN27 of the Local Plan in this regard, which seeks to permit development that would ensure a satisfactory environment for the future occupants, including adequate provision for daylight, sunlight, privacy, garden space and/or appropriately landscaped amenity areas.

Protected Species

16. Paragraph 99 of Circular 06/2005 advises that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted. However, surveys should only be required where there is a reasonable likelihood of the species being present and affected by the development.
17. The Preliminary Ecological Appraisal (March 2021) undertaken by PJC Consultancy (PEA), found the site to provide some suitable habitat for foraging, commuting, nest building and hibernating opportunities for dormice, and consequently required further studies to determine the presence/likely absence of dormice across the site. The results of these surveys would determine subsequent requirements for mitigation, compensations and/or licences to facilitate the proposed development. Although the PEA found the likelihood of Great Crested Newts being present on site to be less than dormice, it states that further studies may be required to determine their presence/likely absence if any vegetation removal of woodland and associated understorey would be required at any stage to facilitate the development.
18. Taking this into account and given that the proposal and the associated construction activities would affect some of the existing trees and therefore would be likely to affect the associated understorey habitat, in the absence of further surveys, I cannot rule out adverse effects on these European protected species.
19. Accordingly, it has not been demonstrated that the proposal would not harm European protected species. It would therefore conflict with Policy EN1 of the Local Plan, which pursues sustainable development when assessing the effects of proposals on the environment. It would also conflict with Policies WCS12 and WCS14 of the Core Strategy, which seek to ensure habitats, biodiversity features and ecological networks are maintained, restored, enhanced and where possible created and to secure development that improves the environmental conditions in the area. Furthermore, it is contrary to the aims of paragraphs 174 and 180 of the Framework, to contribute to and enhance the natural and local environment and avoid, adequately mitigate, or compensate any significant harm to biodiversity.
20. I note that the Council have referenced conflict with Policy EN15 of the Local Plan with regards to European Protected Species. However, this policy relates to designated nature conservation sites rather than protected species and therefore is not relevant to this main issue.

Other Matters

21. The Council also refused permission on the basis that, in the absence of a signed Section 106 legal agreement, the proposal would result in adverse effects to the integrity of the Ashdown Forest Special Protection Area (SPA). To mitigate adverse effects of the proposal, I understand that a tariff-based contribution is required towards Suitable Alternative Natural Green Space (SANG) and Strategic Access Management and Monitoring (SAMM). This approach is supported by Natural England and, had the Council been minded to support the appeal scheme, these contributions would have been sought through a Section 106 legal agreement.
22. The appellant has indicated that planning obligations, including one that might secure mitigation for adverse effects on the SPA, take time to complete and are commenced after an agreement in principle with the Council that permission would be approved. However, I must determine the appeal based on the evidence available to me now, and there is no such agreement before me to secure the required mitigation.
23. The appellant has referred to the Council not engaging with them nor their agent during the planning application process. Also, that the Planning Officer did not leave sufficient time after the Biodiversity and Arboricultural Officer's comments to respond to the agent/applicant regarding any additional information. Whether or not this is the case, I must consider the appeal and evidence before me and I have concluded that it would harm the character and appearance of the area and, in the absence of evidence to the contrary, also harm protected and unprotected trees and European protected species.

Conclusion and Planning Balance

24. The Council is unable to identify a five-year supply of specific deliverable sites to meet housing needs. Their five-year land supply figure as of the 1 April 2021 was 3.66 years, which shows there to be a significant shortfall in supply. Therefore, paragraph 11d) of the Framework falls to be considered.
25. If I was to accept that mitigation could be secured that would avoid any adverse effects on the SPA, this would mean planning permission should be granted unless the adverse impacts of the proposal would significantly and demonstrably outweigh its benefits when assessed against the policies in the Framework taken as a whole.
26. The proposal would provide a dwelling that would contribute towards the district's housing supply and the Government's objective of significantly boosting the supply of new homes. However, while the provision of any additional housing carries significant weight, the single dwelling in this case would make only a modest contribution to the Council's housing supply.
27. Against this benefit is the identified harm that would be caused to the character and appearance of the area and, in the absence of evidence to the contrary, harm to protected and unprotected trees and European protected species. As identified above, this conflicts with the aims of paragraphs 130, 131, 174 and 180 of the Framework.
28. Accordingly, when the proposal is assessed against the policies in the Framework taken as a whole, the adverse impacts of the proposal would significantly and demonstrably outweigh its benefits. Therefore, even if adverse

effects on the integrity of the SPA could be avoided, the proposal would still not benefit from the presumption in favour of sustainable development.

29. For the reasons above, having regard to the development plan as a whole and all relevant material considerations, including the Framework, the appeal is dismissed.

Hannah Guest

INSPECTOR