



Appeal Decision

Site visit made on 14 February 2023

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 March 2023

Appeal Ref: APP/C1435/W/21/3288132

**Land to rear of Boars Head Filling Station, Eridge Road, Boars Head
TN6 3HD**

- 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 Mr S Turner against the decision of Wealden District Council.
 - The application Ref WD/2021/1444/O, dated 24 May 2021, was refused by notice dated 16 September 2021.
 - The development proposed is a new detached dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal seeks outline permission, with details of access and layout submitted for consideration. I have considered the appeal on this basis and have treated any plans in relation to matters of appearance, landscaping and scale as illustrative.
3. The appellant has submitted a Unilateral Undertaking under section 106 of the Town and Country Planning Act, dated 9th March 2023 (the UU). I have had regard for this document in reaching my decision.

Main Issues

4. The main issues are:
 - the effects of the proposal on the Ashdown Forest Special Protection Area (SPA) and ecology on the site;
 - whether the site is suitable for new housing with regard to its accessibility to services and facilities, and;
 - the effects on the character and appearance of the area, including the High Weald Area of Outstanding Natural Beauty (AONB).

Reasons

Ashdown Forest SPA

5. The site lies within 7km of the Ashdown Forest SPA, designated for being home to populations of breeding Dartford Warbler and Nightjar, which are rare and vulnerable birds. One of the principal threats to those birds is disturbance from visitors during the breeding period. The proposed development would increase the local population and provide a pathway for effects on the SPA. By reason of

its proximity to the SPA, within the 7km buffer, and adopting a precautionary approach, the proposal would be likely to have a significant effect on the internationally important features of the SPA through recreational disturbance, either alone or in combination with other projects.

6. Policy WCS12 of the Wealden Core Strategy Local Plan 2013 (the CS) requires provision of Suitable Alternative Natural Green Space (SANGS) and contributions to on-site visitor management measures (Strategic Access Management and Monitoring (SAMMS)), to mitigate the impacts of new developments on the SPA. Based on the evidence, I am satisfied that financial contributions to the SANGS and SAMMS would ensure that the proposal would not adversely affect the integrity of the SPA.
7. The submitted UU intends to provide the required financial contributions to mitigate the effects of the proposal. However, I have concerns regarding the UU itself and whether it would be capable of securing the contributions required. Most notably there are concerns surrounding the issue of Probate, and whether those who have signed the document are able to bind the appeal site for these purposes. In addition, the UU lacks the attached site plan to which the definitions refer, and which is necessary to identify the land, particularly given its description which is 'land to the rear of...'. The absence of such a plan creates further uncertainty. Taken together, and on the basis of the evidence before me, I am not satisfied that the submitted UU would be capable of taking effect and securing the intended obligations. As such I cannot afford weight to the obligations it contains.
8. The appellant has questioned whether the required mitigation would need to be secured at this outline stage. Regulation 70 of the Habitats Regulations is clear that the competent authority can only grant outline planning permission if it can be demonstrated that there would be no adverse effects on the integrity of a European site. For this reason, it could not be delayed or dealt with at reserved matters stage.
9. I have considered whether this could be dealt with by a negatively worded condition. Planning Practice Guidance (PPG) states that no payment of money or other consideration can be positively required by a condition when granting planning permission. It also states that a negatively worded condition should only be used in exceptional circumstances, where there is clear evidence that the delivery of the development would otherwise be at serious risk. Based on the evidence before me, I am not satisfied that the circumstances described by the PPG are applicable here. Such a condition would not be reasonable, nor would deliver sufficient certainty on this matter.
10. The appellant has evidenced a decision issued by the Council¹ where no such mitigation was secured, and which the Council accept was an administrative error. For this reason it does not provide reason to change my judgement on this issue.
11. In light of the above, as it cannot be established with certainty that mitigation would be secured, and no alternative solutions have been put forward, adverse effects on the integrity of the SPA cannot be excluded. Nor has evidence of imperative reasons of overriding public interest been put forward. The proposal would conflict with objective SPO1 and policy WCS12 of the CS which relate to

¹ Wealden District Council reference WD/2022/0177/O

the protection and enhancement of biodiversity, and with the objectives of the National Planning Policy Framework (the Framework) relating to habitat sites.

Ecology on the Site

12. Based on the evidence, the site formerly comprised grass and scrubland. However, at the time of my site visit the ground had been heavily disturbed and comprised predominantly bare ground and rubble with the exception of some shrubs to its northern edge. While this is regrettable, the site consequently has little ecological value and is unlikely to accommodate any protected species. On this basis, further ecological information regarding the existing position would not be necessary.
13. Policy WCS12 of the CS relates to biodiversity and among other things requires that, where possible, habitats, biodiversity features and ecological networks are created to achieve a net gain in biodiversity. The Framework at paragraph 174 states that decisions should contribute to and enhance the natural and local environment by, among other things, minimising impacts on and providing net gains for biodiversity.
14. There is little evidence before me relating to the matter of biodiversity net gain from the main parties. However, considering the existing condition of the site, and that a scheme of landscaping would inevitably be provided at the reserved matter stage, the proposal would deliver some form of biodiversity enhancement. While the quality and extent of the enhancement is not known, it would nonetheless constitute an improvement to the existing situation and I consider this would comply with the thrust of Policy WCS12 of the CS and objectives of the Framework and circular 06/05 relating to biodiversity.

Accessibility to Services and Facilities

15. The appeal site lies outside any settlement boundary. Saved policies DC17 and GD2 of the Wealden Local Plan 1998 (the LP) together resist housing development outside development boundaries, unless it conforms with other policies in the Plan. Saved Policy EN1 requires sustainable development, having consideration for matters including location, and the supporting text explains such considerations include encouraging land uses that reduce the need to travel, especially by car. Strategic planning objective SPO7 of the CS similarly encourages reductions in the need to travel by car, by focusing development where it can most closely relate to public transport opportunities.
16. The appeal site sits directly behind an operational petrol station which includes a small shop, which would be easily accessible to future occupants of the site. At the time of my site visit, Eridge Road was reasonably heavily trafficked and the traffic included heavy goods vehicles. However, the carriageway is wide and there is a footpath along the road which leads towards Steel Cross and Crowborough. The path is separated from the carriageway by a grass verge for significant distance and regular street lighting also exists further to the south. For these reasons it provides a suitable route for pedestrians.
17. Given the characteristics of the carriageway and its lighting, the route may also be attractive to cyclists, and a bus route operates along Eridge Road, which provides links to the nearest settlements and onward connections to public transport.

18. Taking the above considerations together, while a degree of reliance on the private car is likely, I am satisfied that there are reasonable alternatives to car use available to future occupiers of the site. For these reasons the proposal would comply with saved Policy EN1 of the LP and objective SPO7 of the CS summarised above, and also with the objectives of the Framework relating to sustainable transport and healthy lifestyles. As the proposal would conform with these policies in the development plan, in turn the proposal would comply with saved policies DC17 and GD2 of the LP.
19. Insofar as this main issue is concerned I do not find conflict with strategic planning objective SPO1, which relates to the rural economy and biodiversity.

Character and Appearance

20. The appeal site sits centrally among a small cluster of developments set around the petrol station on the eastern side of Eridge Road. It is set directly behind the utilitarian structures of the petrol station which fronts the road and adjoins a number of residential curtilages. This cluster of buildings is surrounded by predominantly open countryside including a golf course to the east, interspersed by belts of woodland and trees. The existing buildings and structures around the appeal site form a visually distinct group in the wider landscape character.
21. The proposal would introduce an additional building and associated residential paraphernalia to this small cluster of development. However, due to its location being central within the cluster, it would reinforce the existing pattern of development. The proposal would not result in creep into the wider natural landscape and instead would be well contained within this group of development. In addition, while I do not have substantive evidence on this matter, the development is likely to be heavily shielded from public views due to its set back from the road and the height and proximity of the nearest developments. For these reasons, taken together, the proposal would conserve and enhance the landscape character of the AONB. In terms of scale and appearance, a solution appropriate to the character of the area could be achieved at the reserved matters stage.
22. In conclusion on this main issue, the proposal would not cause harm to the character and appearance of the area and would conserve and enhance the landscape character of the AONB. The proposal would comply with saved Policy EN6 of the LP and objective SPO1 of the CS, which together seek to protect and enhance the landscapes of the District. Accordingly, the proposal would also comply with the objectives of the Framework relating to conserving and enhancing AONBs.

Other Matters

23. While the Council accept that it does not have a 5 year land supply for housing, the policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development, insofar as they relate to habitat sites. Furthermore, paragraph 182 of the Framework is clear that the presumption in favour of sustainable development does not apply where the project is likely to have a significant effect on a habitat site, either alone or in combination with other plans or projects, unless it is concluded that it will not adversely affect the integrity of the site.

24. Policy WCS14 of the CS broadly reiterates the presumption in favour of sustainable development given in the Framework. For the reasons given, my determination of the appeal conforms with that policy.
25. The appellant has drawn my attention to other appeal decisions relating to developments in the surrounding area. However those do not amount to justification to alter my judgement in respect of the harm identified above.

Conclusion

26. For the above reasons, having taken account of the development plan as a whole, the approach in the Framework, along with all other relevant material considerations, the appeal is dismissed.

C Shearing

INSPECTOR