



Appeal Decision

Hearing held on 16 May 2023

Site visit made on 16 May 2023

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 June 2023

Appeal Ref: APP/C1435/W/22/3313666

Land East of Quabrook Cottage, Colemans Hatch, HARTFIELD, TN7 4HG

- 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 and Mrs E LEE against the decision of Wealden District Council.
 - The application Ref WD/2022/1012/FR, dated 27 June 2022, was refused by notice dated 16 November 2022.
 - The development proposed is change of use of land to a mixed use for the keeping of horses and a single pitch Gypsy and Traveller site with associated development including hard standing/ access track, panel fencing, bio disc treatment plant and stables.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development and address in the heading above has been taken from the Council's decision notice. This was confirmed by the appellant as part of the hearing as being the correct address and the amended description had been agreed with the appellant during its consideration and I have therefore used these in my formal decision.

Main Issue

3. The main issue in this appeal is whether the development would affect the integrity of the Ashdown Forest Special Protection Area (SPA).

Reasons

4. The parties agree that the site is located within the 400m buffer zone to the SPA of the Ashdown Forest. Policy WCS12 of the Wealden District (Incorporating Part of the South Downs National Park) Core Strategy Local Plan 2013 (CS) seeks to prevent new development requiring planning permission within 400m of the Ashdown Forest boundary. Natural England have confirmed that exclusion zones are created to protect heathland sites from a combination of adverse impacts, including human recreation and additional urbanisation effects.

5. The appeal site does not provide direct access into the forest and access is only possible via an unadopted road or track which serves 5 dwellings and is not a formal right of way. From this track it is possible to reach a public right of way which crosses over the fairways of the existing golf course which is within Ashdown Forest. The Council state that the proposed use could have a significant effect on the European site by virtue of additional recreational disturbance effecting SPA bird species.
6. Given that the proposal is for an additional residential use, and its proximity to the SPA there is a reasonable likelihood that the SPA would be accessed for recreational purposes by future occupants of this development. This additional activity would have the potential to have a likely significant effect on the European site. Whilst the proposal is small scale and there is intervening development between the appeal site and the Ashdown Forest, the appellant's Ecological Impact Assessment by Enyzgo accepts that there will be a negligible impact arising from the development, albeit it concludes that this would not be sufficient to result in a likely significant effect.
7. Whilst the in-combination effects have not been quantified by either the Council or Natural England, I am satisfied that there will be a likely significant effect arising from the proposed development and this is also the view of Natural England. It is a key principle of the Habitats Regulations that many apparently negligible impacts can combine to become something significant. The precautionary principle also requires that where it is unclear whether an effect would be significant, it must be assumed that such an effect would be, unless there is objective evidence to the contrary.
8. The appellants set out how permitted development, and householder applications for developments such as annexes were also increasing development within the exclusion zone and that the promotion of Ashdown Forest as a tourist destination were directly in contradiction with the aims of the exclusion zone. That may be so, but these factors do not give sufficient justification to place additional recreational pressure on the SPA and also give weight to the possibility of other negligible impacts, which in combination become significant.
9. The appellant also raised points regarding the increased use of electric cars and the established use of the site for the keeping of horses, however these suggestions were made in connection with the impacts on airborne pollution and the Council have now confirmed that the impacts from the proposed development that are of concern are limited to recreational disturbance.
10. According to the appellant, they have no interest in visiting or using the Ashdown Forest for recreational purposes. In addition, the nearest access point into the forest is not practical or inviting as it involves access along a private lane and across the fairways of the neighbouring golf course. It would however, not be reasonable or enforceable to restrict future occupants from accessing the Forest and therefore such a condition would fail to meet the statutory tests.
11. Although questions have been raised about the overall approach to the Ashdown Forest SPA, the development plan remains the policy framework against which proposals should be judged. This approach has also been accepted at appeal recently for a similar scheme within the exclusion zone¹.

¹ APP/C1435/W/21/3288629

12. The Conservation of Habitat and Species Regulations 2017 require that the competent authority must ensure that there are no significant effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of the SPA. The likely significant effects arising from the proposal need to be considered adopting the precautionary principle.
13. A likely significant effect can not be ruled out at the screening stage due to the impact pathways of human disturbance to SPA birds species, with the protection afforded to the whole site covered by the SPA designation and not just those areas which one plan or project may effect. Evidence from Natural England indicates that it is not possible to effectively mitigate for such impacts resulting from net increases in residential uses within 400m of the heathland SPA.
14. Accordingly, without such mitigation, I am unable to conclude other than that the proposed development would have an adverse effect on the integrity of the SPA. If the adverse effects on the integrity of a European site cannot be excluded then consent can only be given if there are no alternative solutions, the plan or project must be carried out for imperative reasons of overriding public interest (IROPI) and compensatory measures will be provided which maintain the ecological coherence of the Natura 2000 network. The appellant has not put forward any such compensatory measures.
15. In conclusion the development would therefore conflict with policies EN1, EN7 and EN15(i) of the Wealden Local Plan 1998 (LP), as well as policies SPO1, WCS11, WCS12 and WCS14 of the CS. Policy EN7 defines the extent of the Ashdown Forest, whilst policy EN15 seeks to safeguard designated nature conservation sites and identifies that the development which would be likely to have an adverse effect on nature conservation interest will not be permitted. Policy SPO1 requires development to protect the Ashdown Forest and policy WCS11 supports proposals that do not compromise features such as the Ashdown Forest SPA.

Other Matters

16. The Planning Policy for Traveller Sites (PPTS) requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against locally set targets and identify a supply of specific developable sites. The Council confirms that it does not have a 5 year supply of pitches, with evidence provided within the East Sussex Gypsy, Traveller and Travelling Showpeople Accommodation Needs Assessment (May 2022). This sets out that within Wealdon District Council there is a need for 32 pitches for those meeting the 2015 PPTS definition and a need for 51 pitches for those meeting the ethnic definition between 2021-40. It concludes that the district has no proposed land supply to meet these identified needs. As such I consider that need for gypsy and traveller sites carries considerable weight.
17. In accordance with the PPTS, in these circumstances, lack of supply should be a significant material consideration in relation to a planning decision when considering the grant of a temporary planning permission. However, the PPTS makes it clear that this does not apply to sites within, amongst other things, an Area of Natural Beauty (AONB). The site is within the High Weald AONB.

Personal Circumstances

18. The appeal site is currently occupied by the appellants and their family. If the appeal is dismissed, then the family would return to living in temporary locations on the roadside and the children's welfare would be seriously disrupted.
19. The occupants of the proposed pitch are, as Irish Travellers, an ethnic minority, and thus have the protected characteristic of race under s149(7) of the Equality Act 2010. The proposal would meet the needs of those persons with a relevant protected characteristic, by reason of race, and so, as required by section 149(1) of the Equality Act 2010, the public sector equality duty is applicable.
20. There is therefore a need to have due regard to eliminating discrimination, advancing equality of opportunity and fostering good relations. The appeal scheme would support the traditional way of life of a family that have a protected characteristic and facilitate the establishment of a settled base for the appellant's family whilst they continued to pursue a nomadic lifestyle for economic purposes.
21. Aside from the best interests of the children, I attach moderate weight to the other personal circumstances as a factor in favour of the scheme.

Best Interests of the children

22. Article 3 of the United Nations Convention on the Rights of the Child requires a child's best interests to be a primary consideration. Although a primary consideration, the best interests of a child are not a determinative planning issue, but no consideration must initially be regarded as more important or, in advance of the subsequent assessment of the individual circumstances, be given greater weight.
23. Accordingly, decision-makers need to consider whether children's best interests are relevant to any planning issue under consideration. In doing so, it similarly advises they will want to ensure the approach is proportionate. Decision-makers need to consider the case before them, and need to be mindful that the best interests of a particular child will not always outweigh other considerations including those that impact negatively on the environment or the wider community.
24. The appeal scheme would provide a settled base for 3 children, and this would be in their best interests. The children of school age currently attend school full time and the youngest child attends pre-school. The children have above average levels of attendance and the evidence provided indicates that they have settled well and take both an active part in school life and have made good academic progress during their time at the school.
25. In addition, living an uncertain roadside existence would not support the children's welfare and development. Instead, an enduring settled base would enable continued access to education, healthcare and generally supporting the children's welfare by, for example, attending clubs and making friends. It would also enable the family to continue to receive support from the school community which has been beneficial to the family as a whole.

26. I accept that the best interests of the children, would, in principle, be served by a permanent and secure home, having regard to the fact that their educational needs are currently being met by a school in the local area. The merits of the case presented are such that I afford the benefits, of this development to the best interests of the children, considerable importance and weight.

Planning Balance

27. Notwithstanding that the scheme would be contrary to the development plan as a whole, the question remains whether there are material considerations which would warrant a decision in this instance other than in accordance with the development plan.
28. There are several points in favour of the proposal. The Council are unable to meet the accommodation needs of the appellant who meets the planning definition of Gypsies and Travellers in the PPTS. The appeal scheme would support the traditional way of life of a family that have a protected characteristic.
29. The appeal scheme would facilitate the establishment of a settled base for the appellant whilst they continued to pursue a nomadic lifestyle for economic purposes. This would allow cultural traditions to be balanced with the practicalities of modern living thereby, advancing equality of opportunity. The unmet need for pitches also indicates inequality in housing opportunities and the proposal would help to offset this in a modest way.
30. These are important points in achieving the social sustainability sought by Paragraph 13 of the PPTS. It does not automatically follow that the appeal should be permitted because the PSED is relevant. Nonetheless, the equality implications weigh notably in favour of permitting pitches at the appeal site because dismissing the appeal would perpetuate the disadvantages currently endured.
31. The accommodation needs and personal circumstances of the intended occupiers are together, significant points which attract considerable weight, in favour of the proposals. Furthermore, the best interests of 3 children is a primary consideration. All would benefit considerably from a settled base from which to gain stability and an education. I have attached moderate weight to the accommodation needs and personal circumstances of the appellant's family, and considerable importance and weight to the best interests of the children.
32. However, in the overall planning balance, the benefits of the proposal are not sufficient in this case by virtue of the Habitat Regulations to outweigh the adverse effects on the integrity of the European designated nature conservation sites.
33. By virtue of the Habitats Regulations, agreement cannot be given to the project because the integrity of a European site would be adversely affected. Given the impacts upon the integrity of the designated site and the accompanying conflict with the development plan as a whole, this is sufficient for me to conclude that the proposed development is unacceptable.

34. I attach considerable weight to my finding that mitigation cannot be provided to mitigate recreational disturbance. Consequently, there is no certainty that the proposal would not adversely affect the integrity of the European designated nature conservation site. The proposal would be contrary to the development plan in these respects.
35. Dismissing the appeal would represent an interference with the potential home of the appellant such that Article 8 of the Human Rights Act is engaged. There is also a positive obligation imposed by Article 8 to facilitate the gypsy way of life.
36. The proposal would meet the needs of those persons with a relevant protected characteristic, by reason of race, and so, as required by section 149(1) of the Equality Act 2010, the public sector equality duty is applicable. There is therefore a need to have due regard to eliminating discrimination, advancing equality of opportunity and fostering good relations.
37. The human rights interference associated with this conclusion is in accordance with the law and is necessary in a democratic society to protect environmental interests which is a legitimate objective. The public interest cannot be achieved by means that cause less interference with the appellant's rights. Therefore dismissing the appeal is a proportionate response in all the circumstances and a violation of rights under Article 8 would not occur.
38. In accordance with the public sector equality duty, due regard has been paid to minimising the disadvantages suffered by the intended occupier of the site as a person without a permanent home and to meeting their needs in so far as they are different to those without a relevant protected characteristic. Whilst ultimately the appeal is to be dismissed, these considerations have been at the forefront of the decision-making process. Because of the significant objections identified the outcome is a proportionate one.

Temporary Planning Permission

39. Possibilities for a temporary planning permission require a balancing exercise taking into account the limited duration of any permission and any reasonable expectation of a change in planning circumstances by the end of that period.
40. I have considered the best interests of the children, and in granting a temporary period that they would be able to remain in the local school and to the difficulties of finding alternative, authorised accommodation.
41. However, the harm arising to the SPA, would remain but be incurred for a strictly limited period of time only. The Council is in the process of updating its Local Plan and therefore there is a possibility of legitimate alternative sites becoming available through that process, from around the time of its adoption.
42. Nonetheless, I have no indication as to whether a period of three years is likely to be sufficient for the Council to complete its assessment and adopt a new Local Plan, or for any future allocations to come forward.
43. Therefore, the material considerations would not clearly outweigh the temporary harm arising from a limited period of occupation such to justify the grant of a temporary permission personal to the appellant's and their family.

Conclusion

44. The proposal would lead to significant adverse effect on the integrity of designated sites contrary to the requirements of the Habitat Regulations, in conflict with the development plan policies which seek to protect Ashdown Forest SPA. There are no other considerations which are of greater significance which would outweigh this finding or the conflict with the development plan as a whole.
45. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

G Pannell

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mrs A Heine – Heine Planning Consultancy
Mr & Mrs Lee
Miss L Drury – Headteacher
J Turnbull-Allen – Pre-School Manager

FOR THE LOCAL PLANNING AUTHORITY:

Rob Bewick - Assistant Team Leader – South Team
Michael Taylor

DOCUMENTS

1. Ashdown Forest SPA Monitoring Strategy by Footprint Ecology (extract)
2. Email exchange between Mrs A Heine and Natural England