



Appeal Decision

Site visit made on 19 September 2023

by Lewis Condé BSc (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 November 2023

Appeal Ref: APP/R3650/W/22/3303592

1 Lake Cottages, Witley Park Estate, Thursley, Godalming GU8 6ND

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr & Mrs Oleg Smirnov against Waverley Borough Council.
 - The application Ref WA/2022/00029, is dated 7 November 2021.
 - The development proposed is 'Reinstatement of original cottage by sub-division of existing 4 bedroom dwelling to create a 2 bedroom and a 3 bedroom cottage'.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Although the Council did not issue a decision on the application, it has provided a statement setting out the reasons why it would have refused planning permission. This has informed the main issues of the appeal.
3. The Council has highlighted that one of the reasons it would have refused permission was due to the effects of the proposal on the integrity of the Wealden Heath Phase II Special Protection Area. However, from the information before me it appears that the concern instead predominantly lies with the Wealden Heath Phase I Special Protection Area, given the appeal scheme's proximity to this European Designated site.
4. Since the original submission of the appeal, the Council has adopted its Local Plan Part 2: Site Allocations and Development Management Policies Plan. Relevant policies of the plan have been referred to or commented upon by both main parties. Accordingly, no party has been prejudiced by the change in policy circumstances.

Main Issues

5. The main issues are: a) whether the proposal is a suitable location for residential development with specific regard to the Council's spatial strategy and its accessibility to facilities and services; and b) the effect of the proposal on the integrity of European Designated Sites.

Reasons

Location

6. The appeal site is a two-storey terrace property that encompasses five residential units located within the Witley Park Estate. I am aware that the appeal building was historically constructed as six estate workers' cottages

(circa 1910) in association with the operations of Witley Park. It is also understood that two of the original cottages (1 x 2 bedroom and 1 x 3 bedroom) were subsequently converted to form a single four-bedroom dwelling. However, it is unclear when this change took place and the context at the time. In any case, the appeal scheme before me would introduce an additional open market residential unit to the site compared to the existing baseline position.

7. Policy SP2 of the Waverley Borough Local Plan Part 1: Strategic Policies and Sites (adopted 2018) (LPP1) seeks to direct development towards the Borough's four main settlements, whilst allowing varying degrees of growth to different villages within the area. This is to ensure that development is delivered in a sustainable manner, whilst also maintaining the Borough's character.
8. Meanwhile, Policy DM15 of the Waverley Borough Local Plan Part 2: Site Allocations and Development Management Policies (adopted 2023) (LLP2) relates specifically to development in rural areas. Amongst other matters, the policy identifies that development should not be isolated from everyday services and facilities, whilst maximising opportunities for walking and cycling and seeking to avoid dependency on private vehicles.
9. The appeal site is in a rural location, a significant distance outside of the Borough's main settlements or villages. However, the proposal would not be isolated in the context of Paragraph 80 of the National Planning Policy Framework (the Framework), given it would exist alongside a small cluster of other residential buildings. The circumstances whereby the Framework provides support for the development of isolated homes in the countryside are therefore not applicable in this instance.
10. Although residential units are already present at the site, and nearby, it remains that the appeal site is located a considerable distance from everyday facilities and services. Given the nature of the access road and surrounding rural lanes, including the topography, lack of street lighting and pavements, and limited surveillance, any future occupiers of the proposed dwelling would be heavily reliant on the use of private motor vehicles to access most facilities and services. This would be the least sustainable travel option. Consequently, the proposal would result in an unsustainable form of development.
11. Overall, the proposal would not be in a suitable location having regard to the development plan policies and its accessibility to facilities and services. The proposed development would therefore conflict with LPP1 Policy SP2 and LLP2 Policy DM15.

Effect of the Proposal on European Designated Sites

12. The appeal site lies within 400m of the Thursley, Hankley and Frensham Commons (Wealden Heath Phase I Special Protection Area) (the 'Phase I SPA') and the Thursley, Ash, Pirbright and Chobham Special Area of Conservation (the SAC). The qualifying features of these European Designated Sites are their breeding populations of rare ground nesting birds, namely Nightjar, Dartford Warbler and Woodlark, as well as the heathland habitats upon which they rely. Pressures, including those from recreational disturbance, are placing the birds and their habitats under threat.

13. The Conservation of Species and Habitats Regulations 2017 (the Habitat Regulations) require that permission may only be granted after having ascertained that it will not affect the integrity of a European site, such as the SPA and SAC.
14. Due to the proximity of the appeal scheme to the Phase I SPA and SAC, there is a reasonable likelihood that future residents would access the designated sites for recreational purposes. Furthermore, given the ease of access from the appeal site, I also consider it reasonably likely that future occupiers of the proposal may disproportionately access these designated sites (e.g., far more frequently) compared to other residents of the Borough. Therefore, although the proposed additional dwelling is likely to account for only a miniscule increase in the population within the Borough (e.g., a stated rise of approx. 0.002%), this does not convince me that the appeal proposal would not affect the integrity of the European Designated sites. Similarly, my view on this matter is not changed by statistical evidence provided by the appellants in relation to the UK population's leisure walking habits¹.
15. The appellants have also indicated that the proposed additional dwelling would most likely be occupied by an Estate worker who would be visiting Witley Park on a regular basis. It is therefore suggested that significant additional impacts on the designated sites are less likely given the proposal would not be permanently occupied. Be that as it may, there are no guarantees that the property would be utilised in this manner; particularly as the appeal scheme is for an open market dwelling, and there is no appropriate mechanism before me to control its occupation.
16. Consideration may be given to any conditions or other restrictions which could secure mitigation, and so provide certainty that the proposal would not adversely affect the integrity of the designated habitat sites. The appellants suggest that one such form of mitigation would be via a contribution towards avoidance measures. This is an approach adopted by the Council through the 'Hindhead Avoidance Strategy' in relation to another European Designated Site within the authority area.
17. Notwithstanding that there is no appropriate mechanism before me to secure such mitigation during the application Natural England (NE) advised that mitigation measures, including financial contributions, are unlikely to protect the integrity of the SPA in this instance. This is due to the proposal's location within the exclusion zone (within 400m of the SPA boundary), whereby it has been deemed that there is no remaining capacity for any further net gain in residential development, because of the potential adverse impacts to the SPA. As the statutory consultee on ecological matters, NE's views carry considerable weight.
18. In summary, therefore, the evidence indicates that there is a reasonable likelihood of recreational disturbance to the Phase I SPA and SAC through additional activity associated with the proposed development. This has the potential to affect the integrity of the designated sites, and I am not satisfied that this could be suitably mitigated.

¹ As outlined within 'Report to Inform Habitat Regulations Assessment Stage 1 and Stage 2' prepared by Tetra Tech Limited.

19. I must also consider whether there are any imperative reasons of overriding public interest. The provision of a single dwelling, taking into account the merits of the case and the modest scale of the development, is not sufficient to amount to such overriding public interest. Consequently, having regard to the Habitat Regulations, permission must not be granted.
20. Overall, the proposed development would result in unjustified harm to the integrity of the European Designated Sites contrary to LPP1 Policy NE1. The policy seeks to preserve and enhance biodiversity in the Borough, including that there will be no significant adverse impacts on European sites. Likewise, the development would not accord with the aims of the Framework in respect of protecting and enhancing biodiversity.
21. The appeal site is also located within 3km of the Wealden Heaths Phase II Special Protection Area, which is again designated because it supports breeding populations of ground nesting birds and the heathland habitat upon which they rely. Even if the scheme were to be determined not to affect the integrity of this designated site, or suitable mitigation measures could be secured, this does not overcome my concerns in respect of the Phase I SPA/SAC.

Other Matters

22. The appellants have drawn my attention to Policy DM35 of LPP2 in relation to the reuse of and alterations to large buildings. However, the wording of the policy is clear that the subdivision of larger dwellings into smaller residential units will attract support provided that the development complies with other policies in the Council's plan. As indicated above, the appeal scheme conflicts with the Council's wider development plan policies; as such, my findings do not turn on this matter.
23. The appeal site lies within the Surrey Hills Area of Outstanding Natural Beauty (AONB). The Council has not raised concerns in respect of the proposal's effect on the AONB. Given the overall scale and design of the proposal and its site context, there is no reason for me to conclude otherwise.

Planning Balance and Conclusion

24. The Council acknowledges that it is unable to demonstrate a five-year supply of deliverable housing sites in accordance with paragraph 74 of the Framework. As such, relevant policies for the supply of housing should not be considered up-to-date and paragraph 11 of the Framework should therefore be applied.
25. The provision of an additional housing unit would result in a small social benefit. However, whilst paragraph 60 of the Framework refers to significantly boosting the supply of housing, the provision of one additional unit would make little meaningful difference. Economic benefits would also arise through the construction and occupation of a new dwelling, albeit such benefits would be limited.
26. The provision of a dwelling in this location would be contrary to the spatial strategy for residential development established in the development plan. The meticulous application of the development plan policies may hinder the ability to address the Council's housing shortfall. Nonetheless, restrictions on development in the countryside in order that development is instead delivered in sustainable locations, with good access to facilities and services, is consistent with the provisions of the Framework.

27. Furthermore, as I have found that the scheme would be likely to have a significant adverse effect on the integrity of habitat sites, in accordance with footnote 7 of the Framework, it is a case that the policies in the Framework provide a clear reason to dismiss the appeal.
28. For the reasons outlined above, having regard to the development plan as a whole, and all other relevant material considerations, the appeal is dismissed and planning permission is refused.

Lewis Condé

INSPECTOR