



Appeal Decision

Site visit made on 9 January 2024

by D Wilson BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 January 2024

Appeal Ref: APP/P1425/W/23/3326376

Land South of 61A Allington Road, Newick BN8 4NB

- 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 D Chewter against the decision of Lewes District Council.
 - The application Ref LW/21/0915, dated 29 November 2021, was refused by notice dated 3 May 2023.
 - The development proposed is a new residential dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. In December 2023 a revised National Planning Policy Framework (the Framework) was published. However, in respect of the main issues for consideration in this appeal, the revised Framework has not changed Government Policy and so the cases for the appeal parties have not been prejudiced. I shall consider the appeal accordingly. In respect of the paragraphs submitted that are no longer correct, I have considered the most relevant paragraph in the current Framework.

Main Issues

3. The main issues are the effect of the proposed development on:
 - highway safety with particular regard to access; and
 - the Ashdown Forest Special Protection Area (SPA).

Reasons

Highway safety

4. The appeal site is located to the South of Allington Road and is set behind several houses on an open parcel of land. It is currently accessed to the side of 61A Allington Road and is also shown to be the access for the proposed development.
5. The proposed access would remain at the same width as existing, which has been used historically for a horticultural nursery business. The width of the access and track is only wide enough for a single vehicle to be able to pass.
6. The proposal is for a single dwelling and therefore movements to and from the dwelling would be limited. Therefore, while the access is narrow, it is likely that incidences of cars exiting or entering at the same time would be very

infrequent. I note that interested parties have raised concerns that the land has not been used for the horticultural business for some time. However, there is no evidence before me to suggest that this is a use that could no longer take place, without any restrictions on vehicle movements. While not determinative, it is also noted that I have been provided with no recorded incidences of road traffic issues at the appeal sites access.

7. The access is close to a school but sight lines to the west, towards the school are clear with restrictions for car parking on the road which allows space for good visibility in this direction.
8. To the east is a wall and hedge which do provide a more restrictive view when looking in this direction. However, Allington Road is subject to a 30mph speed limit and cars would, therefore, be likely to be travelling at reasonably low speeds. While cars leaving the appeal site may need to edge onto the pavement, this is likely to be for a short period of time and would not be detrimental to pedestrian safety given the reasonable intervisibility that would be available. I also note that the vehicular access and sight lines could be improved through a suitability worded planning condition.
9. I acknowledge that the proposal is next to a school and the access for some children to enter the school is nearby. However, on the basis of the provision of the existing access, limited number of trips that would be likely each day as well as a suitability worded condition to improve sight lines, I am satisfied that the proposal would not harm pedestrian safety during school drop-off.
10. In regard to the concerns over construction vehicles being able to access the site, the appellant has proposed the use of smaller vehicles and I am satisfied that this could be controlled by an appropriately worded condition that requires details of how this would be managed and controlled during construction.
11. I therefore conclude that the proposed development would be unlikely to have a detrimental effect on highway safety. I find no conflict with Policies CP11 of the Lewes District Local Plan Part 1 Joint Core Strategy 2010-2030 May 2016 and DM25 of the Lewes District Local Plan Part 2 Site Allocations and Development Management Policies February 2020. Amongst other things, these seek to ensure development is well integrated in terms of access.

SPA

12. The appeal scheme proposes a dwelling on a site that lies within the Zone of Influence of an SPA. The Conservation of Habitat and Species Regulations 2017 require that, where a project is likely to have a significant effect on a European site¹, either alone or in combination with other projects, the competent authority must make an appropriate assessment of the project's implications in view of the relevant site's conservation objectives. The effects arising from the proposal need to be considered in combination with other development in the area and adopting a precautionary approach.
13. The SPA is noted for its extensive area of common land on mainly sandy soils, wet and dry heath, valley bog and woodland. The SPA supports several uncommon plants, a rich invertebrate fauna and nationally important numbers of breeding nightjar and Dartford warbler.

¹ as defined at regulation 8 of The Conservation of Habitats and Species Regulations 2017 (as amended).

14. The conservation objectives of the SPA generally seek to ensure that the integrity of the SPA is maintained or restored as appropriate. A threat to the integrity of the SPA is public access and disturbance through recreational activities associated to additional development. The site is within the zone of influence where new residential development is likely to result in recreational pressure, which would likely have a significant effect on the protected site.
15. Given the modest scale of development proposed, the number of additional recreational visitors would be commensurately modest. However, in combination with other developments it is likely that it would have significant effects on the designated site. Given my findings, I must undertake an appropriate assessment of the implications of the appeal scheme in view of the site's conservation objectives.
16. The Habitats Regulations require that permission may only be granted after having ascertained that it will not affect the integrity of the European site. I may give consideration 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 site.
17. The Council have proposed that financial contributions could be made through a S106 agreement. However, there is no formal agreement between the main parties nor has an undertaking through a planning obligation been provided as part of the appeal submissions. No alternative mitigation measures have been proposed by the appellant.
18. The evidence before me indicates that there is potential for recreational disturbance to the SPA through additional activity associated with the development, which could affect the integrity of the SPA. The Habitats Regulations require me to consider whether there are any alternative solutions. However, no such solutions have been put to me. Consequently, having regard to the Habitat Regulations, permission must not be granted. I therefore find that the proposed development would result in significant harm to the integrity of the SPA.

Other Matters

19. I note that concerns have been raised in relation to the provision of waste and refuse as well as whether the proposal would be appropriately located. However, in respect of these matters the Council have found no harm for which I have no reason to conclude against.
20. The proposal is within the Impact Risk Zone of the Chailey Common Site of Special Scientific Interest (SSSI). If I had been minded to allow this appeal I would have been required to undertake an assessment of potential risks to the SSSI posed by development. However, as I am dismissing the appeal for other reasons I have not sought to explore this matter further.
21. I note the appellant's frustration with the Council in terms of the time taken to consider the application. However, I am only in a position to consider the planning merits of the appeal proposal.

Planning Balance and Conclusion

22. The Council are unable to demonstrate a 5 year housing land supply. However, I have found that the proposal would result in significant harm to the integrity

of the SPA which is area of particular importance under paragraph 11 d i) of the Framework, as defined in footnote 7. In this instance, the policies in the Framework provide a clear reason for refusing permission such that the so-called tilted balance arising from the area's current housing land supply circumstances is disengaged. Apply the conversional planning balance, the benefits of the scheme are very comfortably outweighed by the harm. This is primarily because the former would be limited due to the modest scale of the development and bearing in mind the international importance of the SPA. Accordingly, the appeal scheme would not be sustainable development in the terms of the Framework.

23. Therefore, the appeal should be dismissed.

D Wilson

INSPECTOR