



Appeal Decision

Site visit made on 6 December 2023

by J Hobbs MRTPI MCD BSc (hons)

an Inspector appointed by the Secretary of State

Decision date: 22nd February 2024

Appeal Ref: APP/C1435/W/23/3320568

Land to Rear of Badgers Run, Withyham Road, Groombridge TN3 9QT

- 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 Brett Windsor-Burrell against the decision of Wealden District Council.
 - The application Ref WD/2020/2460/F, dated 19 November 2020, was refused by notice dated 23 December 2022.
 - The development proposed is 4 Dwellings: 2 pairs of 3 bedroom semi-detached houses, with associated parking and landscaping.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. In November 2023 all designated Areas of Outstanding Natural Beauty (AONBs) in England and Wales became 'National Landscapes' (NLs). Thus, the High Weald AONB is now the High Weald National Landscape (HWNL). Its legal designation and policy status remain the same.
3. In December 2023, following the deadline for final comments, a revised version of the National Planning Policy Framework (the Framework) was published. Both the Council and the appellant have been consulted on the amended version of the Framework.
4. It has been confirmed in correspondence that the correct road name is 'Withyham Road'. I have replicated this within the banner above.

Main Issues

5. The main issues are:
 - The effect of the proposal upon existing trees/woodland,
 - the effect of the proposal on biodiversity and the local ecological network, and
 - the effect of the proposal on the Ashdown Forest Special Protection Area (the SPA) and Ashdown Forest Special Area of Conservation (the SAC).

Reasons

Trees

6. LP Policy EN12 sets out that the contribution of trees and woodland areas to the landscape character of the District, including the amenity value of trees in built up areas, shall be retained and enhanced. The proposal involves a

significant number of intended tree removals from central areas of the site. Whilst these removals would erode the site's wooded character to some degree, I acknowledge that the majority of these trees are not of high quality and not visually prominent owing to the existence of boundary planting that includes a linear strip of maturing Sycamores that runs alongside the B2188.

7. It is intended that various trees be retained along the boundaries with the B2188, Badgers Run and Crack Willow, including the aforementioned Sycamore trees which have landscape and amenity value. Moreover, the trees closest to the B2188 are subject to a Tree Preservation Order¹ (TPO).
8. The proposed dwellings would accommodate narrow rear gardens. The presence of trees along most of the boundaries with the B2188 and Crack Willow would reduce the extent of the usable space in the rear gardens of plots at either end of the development. Given the orientation of the site, the extent of trees, and the narrowness of the plots, the remaining usable space in these gardens would be overshadowed for long periods of the day. The proposed residential use would therefore lead to increased pressure for works to trees, including those which have landscape value, visual prominence, and make a noticeable contribution to the area's wooded character.
9. Despite the presence of a TPO applicable to some of the boundary trees, it would be difficult for the Council to resist future proposed works if, as fairly anticipated, the trees were to have a detrimental effect on the living conditions of residents. On the basis of current site circumstances, it would be difficult to justify any significant works to protected trees, as the site is free from development and not actively used for residential purposes. However, this situation would be likely to change should the proposed development of four dwellings be implemented as planned.
10. Overall, I conclude that, as the proposal would likely lead to increased pressure to undertake works to trees which provide landscape value in conjunction with significant tree removals from central areas of the site, the scheme would have an adverse effect upon existing trees/woodland and thus the associated amenity of the area. The proposal would be contrary to LP Policy EN12 which indicates that the Council will resist proposals which would result in the loss of trees which make a valuable contribution to the character of the landscape.

Biodiversity and the local ecological network

11. The Environment Act 2021 is statute. However, the mandatory BNG requirement set out within the Act applies to applications submitted after the application subject to this appeal. Although this is a material consideration, CS Policy WCS12 attracts greater weight in relation to BNG, as it forms part of the development plan. The policy indicates that the Council will prevent a net loss of biodiversity and where possible achieve a net gain in biodiversity.
12. The proposal includes several features that would provide biodiversity enhancements and a Preliminary Ecological Appraisal (October 2020) (the PEA) outlines additional measures that could be provided within the proposal. However, it would lead to the clearance of a large area of woodland, mainly comprising Goat Willow which has a low ecological value, is in poor condition, and has been unmanaged for a considerable length of time. Nonetheless, the

¹ Ref: Wealden District Council Tree Preservation Order No 114, 1990

extent of the loss of woodland would reduce the biodiversity value of the site. Due to a lack of satisfactorily robust evidence, I am unable to conclude that the proposed biodiversity enhancements would offset the reduction in biodiversity value that would inevitably be associated to the considerable loss of planting necessitated by the scheme.

13. Furthermore, the site can be fairly thought to contribute to the local ecological network, through the provision of habitat, buffering, and connectivity of trees (including connecting tree canopies over the B2188). Notwithstanding the submission of a Woodland Assessment (August 2019) and the PEA, it has not been satisfactorily demonstrated that the proposed development would not unacceptably fragment or erode this ecological network. This is a view shared by the Council's Biodiversity and Arboricultural Officer in their role as a specialist/technical internal consultee. In particular, despite the intention to introduce new elements of native planting, it is unclear how the woodland clearance of the middle section of the site and the increased residential activity may affect migrating arboreal species.
14. For the above reasons, it has not been demonstrated that the proposal would have an acceptable effect upon biodiversity and the local geological network. The proposal would be contrary to CS Policy WCS12 which indicates that the Council will work with partners to ensure that ecological networks are maintained. It would also be contrary to paragraphs 180 and 186 of the Framework. These paragraphs indicate that planning decisions should contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity including by establishing coherent ecological networks, and that if significant harm to biodiversity cannot be avoided or mitigated, or compensated for, permission should be refused.

European protected sites

15. The site lies in proximity to both the SPA and SAC, and thus two European sites². The Conservation of Habitats and Species Regulations 2017 (as amended) require that, where a project is likely to have a significant effect on a European site (either alone or in combination with other plans or projects), the competent authority must, before any grant of planning permission, make an appropriate assessment of the project's implications in view of the relevant conservation objectives. However, as I have ultimately found the proposal to be unacceptable for other reasons, it is unnecessary for me to consider undertaking appropriate assessments (AAs) nor to consider whether the scheme secures compliance with CS Policy WCS12 or saved LP Policies EN1, EN7 and EN15 in so far as they relate to safeguarding designated nature conservation sites. For the avoidance of doubt, even had I undertaken AAs and identified no adverse effect upon the integrity of European sites at both the SPA and SAC, it would not have affected my overall conclusions on this appeal.

Other Matters

16. I have noted objections/concerns raised by interested parties with respect to matters including land ownership and effects upon the HWNL, neighbouring living conditions, and highway safety. However, as I have found the proposal to be unacceptable for other reasons, it is not necessary for me to explore such matters further here.

² as defined at regulation 8 of The Conservation of Habitats and Species Regulations 2017 (as amended)

17. Several planning permissions³ have been put before me where the Council has granted permission for residential development and in some instances woodland clearance. However, full details of those applications are not before me and individual site circumstances would undoubtedly vary, so I cannot conclude that they set a precedent for the appeal proposal.
18. Within the evidence the appellant has made several specific references to the Framework and development plan policies, in relation to matters that are not in dispute or pertinent to the Main Issues. I acknowledge that the appeal proposal complies with some sections of the Framework and with various local policies including those that set a broad strategy for housing growth and parameters for an acceptable housing mix. Regardless, this does not alter my assessments on the Main Issues of the appeal.

Planning Balance

19. The evidence before me indicates that the Council can only demonstrate 3.92 years supply of deliverable housing land. As such, on the premise of no unacceptable adverse effect being caused to either the HWNL or the integrity of European sites, the presumption in favour of sustainable development would be engaged. For decision making this would mean that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework's policies taken as a whole.
20. In terms of scheme benefits an additional four houses to be situated in an accessible location would help address the identified shortfall in housing land supply. There would also be economic benefits associated with the construction of the scheme and an increased population living in the area. Whilst the number of dwellings proposed would not make a noticeable difference to the housing supply situation, in view of the current significant shortfall that applies, considerable weight is ascribed to these benefits in cumulative terms.
21. However, I have identified multiple harms and associated policy conflicts. The LP dates from 1998 and the CS dates from 2013, but the weight to be attached to these documents does not hinge on their age. Paragraph 225 of the Framework makes it clear that due weight should be given to existing policies according to their degree of consistency with the Framework. The Framework advises that planning decisions should contribute to and enhance the natural local environment by minimising impacts on and providing net gains for biodiversity and establishing ecological networks that are more resilient. Also, it advises that if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or compensated for than planning permission should be refused. Therefore, the conflicts between the proposal and CS Policy WCS12 and saved LP policies EN1, EN7 and EN15 attract substantial weight in the circumstances of this case and, in accordance with my reasoning set out above, are associated to significant harms by virtue of the proposal's effects upon existing trees/woodland as well as biodiversity and the local ecological network.
22. Having considered the benefits and adverse impacts of the scheme that is before me, I conclude that the harms and associated policy conflicts that I have identified would significantly and demonstrably outweigh the proposal's

³ Planning permission Refs WD/2021/1917/F, 10_2464_FUL, and 14_2599_FUL

benefits when assessed against the Framework's policies taken as a whole. The presumption in favour of sustainable development, as set out in the Framework and replicated at CS Policy WCS14, does not apply therefore.

Conclusion

23. The proposal conflicts with the development plan and there are no material considerations, including the shortfall in housing land supply, which indicate that the appeal should be determined other than in accordance with the development plan. Therefore, for this reason, I conclude that the appeal should be dismissed.

J Hobbs

INSPECTOR