



Appeal Decision

Site visit made on 27 March 2024

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 April 2024

Appeal Ref: APP/C1435/W/23/3329513

Tinkers Wood, Tinkers Lane, Hadlow Down, East Sussex TN22 4ET

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Christopher Mitchell against the decision of Wealden District Council.
 - The application Ref is WD/2023/1334/F.
 - The development proposed is the conversion of rural building to dwellinghouse.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposed development on a) Ancient Woodland and ancient and veteran trees; and b) the living conditions of future occupants.

Reasons

Ancient Woodland

3. The appeal site lies close to Tinkers Wood, an area of Ancient Woodland (AW). There are also two ancient or veteran trees to the south of the appeal building.
4. Paragraph 186 of the National Planning Policy Framework (the Framework) makes it clear that development resulting in the loss or deterioration of irreplaceable habitats (such as AW and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists.
5. Standing advice from Natural England and the Forestry Commission (NE & FC), indicates that a buffer zone of at least 15 metres should be maintained between the boundary of AW and proposed development. This advice furthermore states that development proposals, including gardens, should not be approved within such a buffer zone.
6. As set out in the NE & FC standing advice, development within such close proximity to AW is associated with risks such as increased pollution, disturbance of wildlife due to increased activity and domestic pet predation and pressure for tree management. While some of the potential risks could possibly be managed through appropriate planning conditions, such as the works to the foundations, others are unavoidable, given the very close relationship between the building and the woodland.

7. Whilst the proposal would be within the 15m buffer zone, I am mindful that the existing building already exerts some effect on the adjoining woodland. However, introducing a new use such as the one proposed, with a defined garden curtilage and a range of new activities and disturbances has the potential to intensify and diversify the harm to the woodland and its habitat. Thus, any existing level of impact would not necessarily stay the same and there is a clear risk of new or further impacts and harm occurring. Accordingly, the existing situation does not represent a wholly exceptional reason that would lead me to find in favour of the appellant on this main issue.
8. The appellant has suggested that a condition to provide compensation would be appropriate. However, this is only applicable where wholly exceptional reasons for allowing the proposal have been demonstrated, which is not the case in this instance.
9. Therefore, based on the evidence before me, I find that the proposed development would be highly likely to result in deterioration of the AW habitat. This would conflict with Saved Policy EN13 of the Wealden Local Plan 1998 which seeks to avoid harm occurring to such areas.
10. The proposal would also be contrary to paragraph 186 of the Framework which states that development resulting in deterioration of irreplaceable habitats such as AW should be refused unless there are wholly exceptional reasons justifying the development.

Living Conditions

11. The appellant has an agricultural operation that encompasses some 40.5 hectares of owned land plus further rented land. The appeal building is said to be used for grain storage. It forms one of a group of buildings in close proximity to each other. The main workshop building is used to maintain the appellant's agricultural machinery, including his tractors. The other buildings are said to be either used for storage or are not currently being used. The appellant also has an operator's licence for a 7.5 ton lorry.
12. There does not appear to be any planning history that details exactly what activities are permitted on site or in the buildings. Furthermore, there is no indication that there are any restrictions on matters such as hours of operation, vehicular movements or noise levels. It therefore seems clear that given the proximity of the buildings to one another and the potential range of activities that could be undertaken in and around them, there is a real risk of harm arising to the living conditions of the proposed dwelling's future occupants.
13. I have been presented with a number of different scenarios and reasons as to why any conflict between the existing and proposed uses would not arise or be harmful. These include the appellant's future work/employment intentions; only the appellant occupying the dwelling; the dwelling not being sold separately from the other buildings; no one being likely to want to occupy the dwelling whilst the other operations continue on site.
14. I don't doubt the appellant's intentions with regard to working practices and his future plans for the business and the site. I also acknowledge that many other potential future occupants of the dwelling would be deterred by the proximity of any on-going agricultural operations.

15. Nevertheless, circumstances can change and evolve over time, and there are no formal controls on when or how the existing agricultural activities are undertaken, or who might undertake them or their scale or intensity. Similarly, any future sale of the land cannot be predicted with certainty. Although the appellant has suggested imposing conditions on the existing operations, aside from them being outside of the appeal site, such an approach would not meet the test necessary for a planning condition.
16. In addition to the above, the building, and its garden would be positioned such that they would be significantly overshadowed by the existing woodland trees. It is suggested that the appellant would be willing to accept this situation. However, I have no planning basis on which to justify limiting the occupancy of the dwelling to the appellant.
17. More fundamentally, one of the key purposes of the planning system is to ensure neighbouring uses are compatible and that harm does not arise to existing or proposed uses or occupiers. To allow a scheme on the basis that an existing rural business would be curtailed and that future occupants of the dwelling would rely on recourse to the Environmental Protection Act or simply be aware of what they were moving into and so accept it, would excuse a failure to provide a sufficient quality of living environment in the first place.
18. Additional glazing to the roof is suggested as one possible solution to the building being overshadowed. However, aside from the lack of any details and an appeal not being the correct forum in which to evolve a scheme, there is little evidence that this would achieve sufficient internal natural lighting levels. Furthermore, such measures would not address the lack of sunlight to the garden area but may well have unintended consequences such as additional light spill into the AW or creating additional pressure for tree pruning.
19. I note that it might be possible to provide a building that is warm and energy efficient despite the overshadowing. I also acknowledge that a converted building may necessitate some compromises in the living accommodation that is provided. However, such considerations would not overcome the harms I have identified.
20. Therefore, despite the appellant's assurances and suggestions, on this main issue I find that the proposal would cause harm to the living conditions of future occupants.
21. As such, the proposal would be contrary to Saved Policy EN27 (3) of the Wealden Local Plan 1998 and Spatial Planning Objective SPO13 of the Wealden District Core Strategy Local Plan 2013 which, amongst other things, require developments to ensure an attractive, high quality living environment for all, which includes an adequate provision of daylight and sunlight for future occupants.

Other Matters

22. I note that there were no objections to the scheme from the Parish Council, neighbours or the Council's Environmental Health Officers. Furthermore, the proposal is not of a scale to necessitate the submission of an Environmental Statement. However, none of these factors mean that the current scheme is acceptable and does not in any event absolve me from making an assessment as to its effects in regard to the main issues of the case.

23. The site is located within the open countryside, beyond any settlement boundaries. However, the main parties disagree on whether the site represents an appropriate location in principle for a dwelling. They have also discussed whether the site is isolated within the terms of the Framework. These matters did not form part of the reasons for refusal and in the light of my findings above, it is not necessary for me to come to any conclusions on them.
24. I have been referred to other appeal decisions although this appears to be primarily in regard to the principle of the site's location. However, I do not have the full details of those schemes before me and therefore cannot be sure that they represent a direct parallel particularly with regard to the AW. In any case, I have determined the appeal on its own merits.
25. I note the appellant's background and stewardship credentials. However, as I have set out above, any permission would run with the land and I cannot control the appellant's ongoing relationship with, or ownership of, the land or buildings. Therefore, this is not a factor to which I can give positive weight.
26. I have not had further regard in this decision to concerns over how the Council handled the application as this is an administrative matter to be taken up directly with them. I have focused on the planning merits of the scheme in regard to the main issues of the case.

Planning Balance and Conclusion

27. There is no dispute between the main parties that the Council is unable to demonstrate a 5 year supply of deliverable housing land. Paragraph 11 of the Framework would therefore be engaged. However, the presumption in favour of sustainable development as set out in Paragraph 11 does not apply where policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed. In this case Footnote 7 confirms that such policies include those relating to irreplaceable habitats, which includes AW.
28. Therefore, the unacceptable risk of harm to the AW provides a clear reason for refusing the development. Accordingly, the proposal does not benefit from the presumption in favour of sustainable development.
29. Notwithstanding the harm to the AW, I have also found harm to the living conditions of future occupants, which also weighs heavily against the proposal.
30. Whilst there may be some beneficial aspects of the scheme, considered overall the development would cause significant harms which would conflict with the development plan when taken as a whole. There are no other material considerations, including the Framework, which lead me to determine the appeal other than in accordance with the development plan.
31. Therefore, I conclude that this appeal should not succeed.

Stewart Glassar

INSPECTOR