



Appeal Decision

Site visit made on 3 April 2024

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 April 2024

Appeal Ref: APP/C1435/W/23/3329193

Forest Hall, Dodds Bank, Nutley, TN22 3LX

- 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 Mrs C Hill against the decision of Wealden District Council.
 - The application Ref WD/2023/0849/F, dated 16 March 2023, was refused by notice dated 19 July 2023.
 - The development proposed is described as change of use from church hall to holiday accommodation. No increase in footprint bulk or volume no external alterations.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Framework was updated in December 2023, and accordingly for the purposes of this decision I have referred to the latest version of the Framework. The content of the Framework has not been materially altered in respect of the main issues which I have considered. Therefore, it has not been necessary to seek further views from the main parties in this instance.
3. In November 2023, the National Landscapes Association reported that all designated Areas of Outstanding Natural Beauty (AONBs) had become National Landscapes. However, the Framework continues to refer to them as AONBs. In this decision I have used the term AONB, consistent with the evidence and the Framework. The legal designation and policy status of such areas is unaffected, whichever term is used.

Main Issue

4. The main issue is the effect of the proposal on the Ashdown Forest Special Protection Area and Special Area of Conservation.

Reasons

5. The appeal site is located outside any defined development boundary within the High Weald AONB. The site, and nearby residential dwellings to its rear, are accessed via a short track leading from Cackle Street. The appeal property is a small single-storey former chapel. The chapel is within a small, fenced garden plot that lies within the exclusion zone of 400 metres surrounding the Ashdown Forest Special Protection Area (SPA) and the Ashdown Special Area of Conservation (SAC).
6. The Ashdown Forest SPA is designated because of the important habitat it provides the Dartford Warbler and the European Nightjar, both of which are

nationally important species of ground nesting birds. The qualifying features underpinning the Ashdown Forest SAC designation are the presence of North Atlantic wet heaths, European dry heaths and great crested newts. The conservation objectives for the Ashdown Forest SAC can be summarised as ensuring the favourable conservation status of its qualifying features by, amongst other things, maintaining or restoring the extent, distribution, structure and function of the qualifying natural habitats and the habitats of the qualifying species.

7. The proposal is to convert the chapel into a two-bedroom holiday accommodation. The exclusion zones are created to protect heathland sites from a combination of adverse impacts, including human recreation and additional urbanisation effects. Whilst not providing permanent residential accommodation, and even if used at a maximum of 80% occupancy rate, the proposal would result in an intermittently increased population from successive holiday makers staying within the exclusion zone of 400 metres of the SPA and SAC.
8. The Council advise that due to the appeal site's proximity to the protected area, both on-site mitigation measures and alternative mitigation measures such as financial contributions to Suitable Alternative Natural Greenspace (SANG) and Strategic Access Management and Monitoring (SAMM), as outlined within the Council's Ashdown Forest Mitigation Zone Background Paper, would be ineffective. Furthermore, 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.
9. The evidence shows that the SPA and SAC are under significant pressure from an increase in population nearby and a consequent increase in public access to the SPA and SAC for recreational purposes, including dog-walking. This increased disturbance, is harmful to the protected Dartford Warbler and Nightjar breeding populations and to the heathland habitat from increased local pollutant sources like road traffic emissions as a result of urban development.
10. In these circumstances, the Conservation of Habitats and Species Regulations 2017 (the Regulations) require that an Appropriate Assessment is carried out. The submitted evidence indicates that visitor surveys demonstrate that residents living and staying within 7km of the Ashdown Forest are likely to visit it. Furthermore, surveys have shown that there has been a decline in Dartford Warblers and Nightjars within the Forest. I have no substantive evidence to demonstrate that this information is out of date.
11. It is reasonable to suppose that visitors to the development would potentially visit the SPA and SAC for recreational purposes. Indeed, it seems to me, that the proximity to Ashdown Forest would likely be a draw for visitors when booking the holiday accommodation, who would be able to walk at will through the SPA and SAC on a regular basis. I therefore conclude that the proposal, particularly when combined with other development in the area, would have a significant effect on these habitat designations through increased disturbance arising from recreational activity.
12. Furthermore, the proposal would provide ample opportunity for wide-ranging recreational activity which has potential for more risk such as discarding cigarettes, litter and intrusion into the area and introducing risk of fires,

trampling or disturbing vegetation and alien plant life. These would have the potential to adversely impact on the integrity of the SAC vegetation protected European Sites. I am required under the Regulations to consider the effect of the proposal both individually and in combination with other projects. As such, there is a risk of a significant effect on the internationally important interest features of the protected habitats.

13. No avoidance or mitigation measures are proposed. Instead, the appellant contends that, because it was used by large groups of people, the recreational activity associated with the former chapel use would have been greater in comparison to that which would be generated by the proposal. However, I find that the activities associated with the former chapel use would be likely to be contained within the appeal building and its grounds. There is no compelling evidence that the use of the chapel would include regular walking within the SPA and SAC with or without dogs.
14. It has been suggested that a clause, when letting the holiday property, could be included to prevent visitors from bringing pets. However, I do not find that this, or a planning condition requiring the same, would be reasonable or enforceable to restrict future visitors from bringing pets to the property and therefore such a condition would fail to meet the statutory tests.
15. The appellant set out that two nearby commercial businesses and nearby residential dwellings may already be causing harm to the SPA and SAC. Furthermore, there is no specific car parking for the site and parking close by is very limited which can result in people having to walk considerable distances to reach the chapel. That may be so, but these factors do not give sufficient justification to place additional recreational pressure on the SPA and SAC and also give weight to the possibility of other negligible impacts, which in combination become significant.
16. The appellant makes reference to the fact that Natural England initially raised no objection to a previous planning application which was subsequently dismissed at appeal¹. However, a copy of Natural England's later advice, dated 11 January 2021 is provided within the Council's Statement of Case. This confirmed that it was not possible to ascertain that the proposal would not result in adverse effects on site integrity.
17. As the competent authority, I need to be certain that adverse effects on the integrity of the site can be ruled out beyond all reasonable scientific doubt. However, based on the evidence before me and taking a precautionary approach, I cannot ascertain this. In such circumstances, the Habitat Regulations set out that the competent authority may only agree to the project if there are no alternative solutions, and the project must be carried out for imperative reasons of overriding public interest. Although no alternative solutions have been put to me, the available evidence does not indicate that the proposal meets the tests of overriding public interest. Therefore, under the Habitat Regulations, I cannot agree to the proposal.
18. For the above reasons, the proposal would be contrary to Policy WCS12 of the CS and saved Policies EN1, EN7 and EN15 of the Wealden District Council Local Plan (1998). Collectively, these policies seek to safeguard designated nature

¹ APP/C1435/W/21/3271303

conservation sites and identify that development which would be likely to have an adverse effect on nature conservation interest will not be permitted.

19. I also find conflict with Paragraph 186 of the Framework which states that significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or as a last resort, compensated for, then planning permission should be refused.

Other Matters

- Fallback

20. The appellant has brought to my attention that the appeal property falls within Use Class F1 and indicates that it could be used for a variety of uses without a requirement for planning permission. These include uses such as for the provision of education, display of works of art, museum, public library or reading room, public hall or exhibition hall, or as a law court. The appellant indicates that this is a fallback position.
21. In my view the activities associated with these alternative uses would be likely to primarily take place within the appeal building and its grounds. I have no convincing evidence before me to persuade me that the alternative uses would include visitors regularly linking trips to the property with recreational walking within the SPA with or without dogs.
22. Therefore, while it may be a possibility that the property could be used for other activities falling within the F1 use class, given that they would be less harmful than the proposed holiday accommodation I give minor weight to the fallback.

- Other issues

23. The site is within the High Weald Area AONB. Since the appeal site is within an AONB, great weight should be given to conserving and enhancing landscape and scenic beauty, as set out in paragraph 182 of the Framework. As the proposal would not involve significant external alterations I am satisfied that it would conserve and enhance the natural beauty of the AONB.
24. I note that the Parish Council supported the application, as they consider that there are few other viable uses for the building and it may fall into disrepair and become derelict in the future. The proposal would provide an additional holiday unit to meet demand and there would be some benefits to the local economy from visitor spend. I afford these benefits limited weight.
25. The appellant indicates that the building would use an air source heat pump, and that photovoltaic panels would be installed, as would an electric car charging point, whilst visitors would be offered a discounted rate for electric vehicle users. I afford these benefits limited weight.
26. The main parties agree that there would be no harm in relation to matters such as the living conditions of existing and future residents and the impact on the character and appearance of the area. However, the absence of harm or development plan conflict with respect to other relevant matters is neutral and weighs neither for nor against the proposal.

Planning Balance and Conclusion

27. There is an overriding objection to the holiday accommodation because of the adverse effect on the integrity of the SPA and SAC. In light of this and the provisions of paragraph 188 of the Framework, the presumption in favour of sustainable development set out at paragraph 11 of the Framework does not apply.
28. 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.
29. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

B Pattison

INSPECTOR