



Appeal Decision

Site visit made on 3 July 2025

by **C Shearing BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15 July 2025

Appeal Ref: APP/C1435/W/25/3358512

Land north of Catts Hill, Town Row, Rotherfield, East Sussex TN6 3FH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant permission in principle.
 - The appeal is made by Denton Homes Ltd against the decision of Wealden District Council.
 - The application Ref is WD/2024/1548/PIP.
 - The development proposed is residential development of up to 2 dwellings and associated development.
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Decision

1. The appeal is dismissed.

Preliminary Matters and Main Issue

2. Article 5B(1) of the Town and Country Planning (Permission in Principle) Order 2017 (as amended) (the Regulations), provides that permission in principle cannot be given for habitats development. This is defined in Article 5B(5) as development which is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects) and is not directly connected with or necessary to the management of the site; and for which the competent authority has not given consent, permission, or other authorisation in accordance with Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations).
3. Planning Practice Guidance (PPG) advises that this means, for sites where development is likely to have a significant effect on a qualifying European site without any mitigating measures in place, the authority should ensure an appropriate assessment has been undertaken before consideration of the grant of Permission in Principle. It states that Permission in Principle can be granted if the authority is satisfied, after taking account of mitigation measures in the appropriate assessment and concluding that the development will not adversely affect the integrity of the protected site.
4. I have invited comments from both main parties on this matter, and those responses have been taken into account in reaching this decision. This included an amended 'Habitats Regulations Assessment' from the Council.
5. As the effect of the proposal on designated habitats sites is a potentially determinative issue, I have elevated it to the main issue of the appeal. Accordingly, the main issue is whether the proposal would be defined as habitats development under Article 5B of the Regulations.

Reasons

6. The Ashdown Forest is an attractive semi-natural area approximately 6.4km from the appeal site. Based on the evidence, it is a designated Special Protection Area (SPA) and falls within the statutory definition of a European Site set out in Regulation 8 of the Habitats Regulations. The qualifying features underpinning the SPA designation are the concentration of Dartford Warbler and European Nightjar. The conservation objectives for the area can be summarised as ensuring that the integrity of the site is maintained or restored as appropriate, so that it continues to support the population and distribution of its qualifying features. Natural England have identified that a principle threat to the ground nesting birds of the SPA is recreational disturbance. Increased recreation can result in damage to the bird's habitat through trampling and erosion, but also by causing disturbance during their breeding season and by walking of dogs, especially if off the lead.
7. Visitor surveys by the Council have established that those most likely to visit the SPA for recreational purposes are those living within 7km of it. The proposal would create new permanent residents within 7km of the Forest who would therefore be likely to visit the SPA for recreation, and contribute to the threats identified to its qualifying features. While mitigation measures may exist, it has been established that mitigation can no longer be taken into account at this screening stage. Therefore, a likely significant effect on the qualifying features of the European Site, that would undermine its conservation objectives either alone or in combination with other plans or projects, cannot be ruled out.
8. The Council have set out mitigation measures, in the form of financial contributions towards implementing strategies with support from Natural England. I have no strong reason to doubt the effectiveness of those measures, however such a contribution would not be secured here if Permission in Principle were granted.
9. For the reasons given and adopting the necessary precautionary approach, I cannot be confident that the development will not adversely affect the integrity of the protected site. As such the proposal would fall within the definition of habitats development set out in the Regulations and Permission in Principle cannot be granted.

Other Matters

10. I am mindful that this is not a matter which is in dispute between the main parties. I have also been provided with a copy of an appeal decision where the Inspector considered the matter can be addressed at the subsequent Technical Details Consent stage¹. However, these matters do not provide assurances or a justification to alter the above judgement, which is informed by the Regulations and PPG.
11. I have had regard to the matters raised within the reasons for refusal and those raised by interested parties. However, I have not gone on to consider these further, since the appeal is unable to proceed for the reasons above.

¹ APP/C1435/W/20/3257499 – 10 February 2021

Conclusion

12. For the reasons given, the appeal is dismissed.

C Shearing

INSPECTOR