



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: 12th August 2025

Appeal Ref: APP/C1435/W/24/3356924

Kingsmead, Myrtle Road, Crowborough, East Sussex TN6 1EY

- 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 Asprey Homes (Southern) Ltd against the decision of Wealden District Council.
 - The application Ref is WD/2024/1309.
 - The development proposed is described as 'erection of 6 dwellings, access and landscape'.
-

Decision

1. The appeal is dismissed.

Preliminary Matter

2. A Section 106 agreement has been submitted with the appeal, dated 5 December 2024 (the S106). This has been taken into account in the determination of the appeal.

Main Issues

3. The Council accept that the S106 adequately addresses the reason for refusal relating to the effects of the proposal on the Ashdown Forest Special Protection Area (SPA). As this matter is not in dispute between the main parties I have not dealt with it as a main issue of the appeal.
4. The main issues are:
 - The effect of the proposal on badgers and their setts;
 - The effects of the proposal on the outlook, privacy and natural light experienced by the occupants of properties on Valley View Close, and;
 - Whether the proposal would achieve suitable biodiversity net gain.

Reasons

Badgers

5. The appeal site comprises an area of rear garden which is partially overgrown and largely enclosed by trees and shrubs. The appellant's Preliminary Ecological Assessment identified a suspected badger sett on the site, as well as an associated commuting route. Badgers and their setts are protected by the Protection of Badger Act 1992 and Natural England provide Standing Advice for badgers, which should be taken into account when making planning decisions.

6. Accordingly, the appellant has provided a Badger Monitoring Report¹ (the BMR), which sets out that the holes were monitored for three weeks from February to March 2024 to assess activity levels and to establish whether any potential sett was in current use. The results confirmed this to be an active badger sett, finding a combination of moderate and low level badger activity across the monitored weeks. The BMR concludes the sett was in infrequent use and an outlier sett. This is at odds with the Council's Biodiversity Officer who considered it to be a main sett. It is not apparent that the BMR considered badger movements beyond the site's boundaries and, given the evidence before me of badger activity in the surrounding area together with the Council's findings in surrounding gardens, the possibility of the sett extending beyond the site's boundaries cannot be ruled out.
7. The proposal would entail the subdivision of the appeal site and new development within the recommended buffer zones of the sett as drawn out in the BMR, including within the smallest 10 metre buffer zone. The proposal would therefore present negative effects on badgers through harm to, or loss of, the sett, foraging areas, connectivity and disturbance. There is not evidence to suggest that avoidance strategies have been considered to avoid negative effects, or that mitigation or compensation measures, such as those suggested by the Standing Advice, have been included in the development.
8. It is proposed to close the sett, which the appellant accepts would require a license from Natural England after the grant of planning permission. Nonetheless, the Standing Advice states that before planning permission can be granted, the decision maker must be confident that Natural England will issue a license. There is not evidence before me to demonstrate the likelihood of such a license being issued. Furthermore, given the evidence which suggests the scale of the sett extends beyond the site's boundaries, the effectiveness of the sett closure would likely rely on actions on land outside the appellant's control. The lack of assurances on these matters adds further to my concerns and I cannot be confident that such a license would be granted. Overall, there is not substantive evidence to support that the closing of the sett would be an acceptable means of addressing the presence of badgers and their sett on the site.
9. For the reasons given, the proposal would be likely to result in harm to badgers and their setts. It would conflict with Policy WCS12 of the Council's Core Strategy 2013 (the CS) which seeks to sustain wildlife in both rural and urban areas, and Policy EN1 of the Wealden Local Plan 1998 (the LP) insofar as it relates to assessing the effects of proposals on the environment.

Living Conditions

10. Policy EN27 of the LP includes that development should not create an unacceptable adverse impact on the privacy and amenities of adjoining developments. Policy SPO13 of the CS similarly states, among other things, that the development of attractive living environments for communities will be encouraged. The Wealden Design Guide 2008 (WDG) provides guidance on these matters and advises that side-to-back distances should be interpreted flexibly to avoid undue, direct and invasive overlooking and loss of privacy.
11. The Council's concerns relate to the effects of proposed development on Plots 2 and 3 on the adjacent properties on Valley View Close to the north. I observed that

¹ 'Badger Monitoring Report 2023', by Ecology Partnership, dated 25/04/2024

those properties on Valley View Close which directly about the appeal site comprise two stories with multiple windows, including habitable room windows, within their rear elevations at the ground and first floor levels. I observed them to have fairly shallow rear gardens separated from the appeal site by close boarded fencing. In the absence of any built forms on the appeal site, those gardens and rear habitable rooms currently experience good levels of privacy.

12. The proposed houses on Plots 2 and 3 would be positioned close to this northern boundary and the existing trees on the boundary would be removed. Views from the proposed ground floor windows of the development towards Valley View Close would be largely obscured by the new boundary treatments and new hedgerow planting, which could reasonably be secured by condition. However, the proposed first floor windows, due to the combination of their height and proximity to the boundary, would allow views over the boundary and towards the rear windows and private gardens of those neighbouring properties. The most significant effect would occur from the window of the master bedroom of Plot 3, but harmful effects would also arise from bedroom 2 of Plot 3 and from the master bedroom window of Plot 2, albeit to a lesser degree. The window of bedroom 3 on Plot 2 is set further from the boundary and a greater distance from the neighbouring properties and its effects would be unlikely to cause significant harm.
13. In addition, the proposed developments on Plots 2 and 3 would be positioned to the south of the Valley View Close properties and the combination of the height and proximity of development to the boundary could result in a harmful loss of sunlight and/or daylight to those existing south facing windows. Both main parties acknowledge the ground level of the appeal site to be lower than those on Valley View Close, and there are existing trees on the site which would be likely to affect existing levels of lighting to the back of the Valley View Close properties at certain times of year. However, while the overall ridge heights may be similar and boundary treatments and intervening outbuildings may exist, these matters do not provide assurances that levels of sunlight and daylight would not be significantly reduced as a result of the proposal. I am unable to conclude, based on the information before me, that harm to the living conditions of occupants of those properties would not therefore occur as a result of loss of sunlight or daylight.
14. The appellant has highlighted the relationships between other properties nearby, particularly at corner plots. However, based on the information provided and the orientation of those other properties, it has not been demonstrated that the circumstances are the same here.
15. The view and outlook from those properties and gardens on Valley View Close would undoubtedly change as a result of the proposal. However, given the existing dense trees and shrubs on the site, I do not consider that the change in outlook alone would cause unacceptable harm to living conditions.
16. In conclusion on this main issue, the proposal would cause unacceptable harm to the living conditions of the occupants of the neighbouring properties on Valley View Close through loss of privacy and, in the absence of evidence to the contrary, loss of natural light. The proposal would conflict with Policy EN27 of the LP and SPO13 of the CS, summarised above. There would also be a degree of conflict with the WDG insofar as it advises that regard should be had to providing satisfactory levels of amenity and privacy in considering site design.

Biodiversity Net Gain

17. The statutory provisions for biodiversity net gain (BNG) under Schedule 7A of the Town and Country Planning Act 1990 are also relevant to the proposal, which require the developer to deliver BNG of 10%. The Council has raised concerns as to whether the biodiversity gain condition would be capable of being discharged given its concerns for the submitted information and the appellant accepts the proposal would be reliant on the purchase of credits to achieve the requirement. While noting the Council's concerns, based on what I have seen I have no strong reason to doubt that a suitable solution could reasonably be achieved and this would be a statutory requirement for later consideration should permission be granted. For these reasons in combination I do not consider this should amount to a reason to refuse planning permission.
18. The Council's reason for refusal cites conflict with CS Policy WCS12, although this seeks only to maximise opportunities for enhancement where possible. As such I do not find conflict with that policy in respect of BNG.

Planning Balance

19. The Council accept that it is unable to demonstrate a five year land supply for housing. It states it has a supply of 3.68 years and accepts that the provisions of paragraph 11d) of the Framework are therefore relevant to the appeal. While I have not reached a conclusion on the effects of the proposal on the Ashdown Forest designated habitat site, the balancing exercise below adopts an 'even if' approach, which considers whether the presumption in favour would apply even if the proposal were found to be acceptable in that regard.
20. In terms of paragraph 11d)i, the application of policies in the Framework which protect areas of assets of particular importance do not provide a reason for refusing the proposed development. Accordingly, 11d)ii requires consideration of whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, having regard to the policies in the Framework taken as a whole and having particular regard to the policies in the footnote.
21. The adverse impacts of granting planning permission would be the harm to badgers and their setts, as well as harm to the living conditions of the adjoining occupants in terms of privacy and lighting. The harm to protected species has the potential to be significant and paragraph 193a) of the Framework states that if 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. I give that harm substantial weight. The harm to living conditions of adjoining occupants would conflict with paragraph 129 of the Framework which states the importance of securing healthy places, and paragraph 135 which, among other things, states developments should create places which promote health and well-being with a high standard of amenity for existing and future users. The effects of this harm would be significant and long lasting, and I also give this very significant weight.
22. In terms of benefits, the proposal would provide six new homes which would contribute to the national objective to boost the supply of homes and which is of particular importance here given the undersupply of land for homes in the District. These would be in an existing built up area with good accessibility to local services

and facilities, and where the occupants need not be reliant on private cars, in line with the policies of paragraphs 110 and 115 of the Framework. The Framework also recognises the important contribution which small sites can make towards meeting the housing target. There would also be economic benefits arising from the construction process as well as ongoing expenditure into the local economy by future occupants. Some BNG would also be achieved elsewhere through the intended purchase of credits. The scale of these benefits would, however, be restricted given the scale of the proposal. Together I give these benefits considerable weight.

23. For the reasons given, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The proposal would not benefit from the presumption in favour of sustainable development in the Framework.

Other Matters

24. As above, effects on the Ashdown Forest designated habitats site also formed a reason for the refusal of planning permission and a S106 has been provided alongside the appeal. For the reasons set out, even if a positive conclusion were reached on those matters, this would not alter the outcome of the appeal. It is not therefore necessary to consider this matter further and a habitats regulations assessment is not necessary. For the same reason, as it would not alter the outcome of the appeal, it is not necessary to address the further issues raised in the public objections to the scheme.

Conclusion

25. The proposal would conflict with the development plan and there are not material considerations of sufficient weight, including approaches in the Framework, which indicate that a decision should be made other than in accordance with it. The appeal is therefore dismissed.

C Shearing

INSPECTOR