
Appeal Decision

Site visit made on 11 November 2015

by Cullum J A Parker BA(Hons) MA MRTPI AIEMA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 November 2015

Appeal Ref: APP/B1550/W/15/3130774

**Land east of former shellfish packing station, Fambridge Road,
South Fambridge**

- 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 D Adams against the decision of Rochford District Council.
 - The application Ref 14/00678/FUL, dated 19 September 2014, was refused by notice dated 21 May 2015.
 - The development proposed is described as 'reinstatement of ferry crossing, including ancillary car parking'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The original planning application form gave the site address as Fambridge Yacht Haven, Church Road, North Fambridge. However, both parties confirm that the site address is that used in the above header, which is also found on the appeal forms and the Council's decision notice. I have therefore adopted its usage for the purposes of this appeal.
3. The appeal site is located within the Green Belt, which the government attaches great importance to. The Council considers that the proposal would be local infrastructure which can demonstrate a requirement for a Green Belt location. Given that it would serve as a ferry link between the settlements of South and North Fambridge, would preserve openness due to its generally open form and use of 'grasscrete' (or other similar surfacing material), safeguard the countryside from encroachment and constitutes an engineering operation (through the formation or laying out of means of access to highways) it would be not inappropriate development as defined by Paragraph 90 of the National Planning Policy Framework (the Framework). I therefore see no reason to disagree with the Council's position and have proceeded on the basis that the proposal is not 'inappropriate development' in the Green Belt.

Application for costs

4. An application for costs was made by Mr D Adams against Rochford District Council. This application is the subject of a separate Decision.

Main Issue

5. The main issue is the effect of the proposed development on local biodiversity.

Reasons

6. Put simply, the appeal scheme seeks permission for the creation of forty parking spaces with perimeter fence and low level lighting to serve a reinstated ferry crossing, which I understand has obtained permission under other regulatory regimes. The ferry service would be for pedestrians only, licensed for up to 12 foot passengers and operated between 08:00 and 17:00. The *Extended Phase 1 Habitat Survey (Preliminary Ecological Assessment)* undertaken by t4 ecology Ltd in September 2014 explains that at the time of the preliminary survey work two adders¹ were identified on the appeal site. It goes on to state that '*further surveys to establish population range, size and suitable mitigation measures are advised.*' The survey goes on to describe the overgrown nature of the site which is un-managed and the nearby presence of water bodies. These are all factors which point to a need to undertake specific surveys, and in particular, to determine whether Great Crested Newts (GCN)², are within close proximity to the site, in addition to other protected animals or habitats.
7. The summary of the survey concludes by recommending that a further invertebrate survey be undertaken to identify whether species of invertebrate interest would be impacted by the development proposals. It is clear, from reading the Habitat survey, that its purpose was to provide a preliminary view, with further surveys undertaken to establish whether or not protected species were present on or near to the appeal site and factors such as the size of any population. No such further surveys appear to have been undertaken or submitted. Natural England advised on 29 May 2015 that they have not assessed the application for impacts on protected species and refer to their Standing Advice, which is a material consideration. There is no evidence before me that the standing advice has been specifically considered or used in order to consider the impact of the proposal on protected species.
8. I saw during my site visit that the appeal site consist of unmanaged grass areas with water bodies nearby such as a pond and dyke-like ditches, which reflect the context identified within the habitat survey. The currently undeveloped nature of the appeal site leads me to conclude that there is a reasonable likelihood of protected species on the appeal site, which may be adversely affected by the proposal. The *Planning Practice Guidance* (the Guidance) indicates that an ecological survey will be necessary in advance of a planning application if the type and location of development are such that the impact on biodiversity may be significant and existing information is lacking or inadequate.³
9. Whilst I acknowledge that there is some information here, it appears to be of a general nature, with no species specific surveys or assessments of likely population sizes, which in turn would inform any mitigation strategy, were protected species identified on or near to the appeal site. *Circular 06/2005: Biodiversity and geological conservation*, sets out that that a survey should be carried out before planning permission is granted and that surveys should only be required by condition in exceptional circumstances. I note the comments from the appellant who considers that a condition could be used in this case.

¹ Protected under the Wildlife and Countryside Act 1981, as amended (WCA)

² Protected under the European Conservation of Habitats and Species Regulations 2010(Habitat Regulations) and the WCA

³ *Planning Practice Guidance*, Paragraph: 016 Reference ID: 8-016-20140612, Revision Date 12.06.2014

This position was also recommended by the Council's Open Spaces Manager (however only if the 'consent' was not refused or deferred pending the receipt of a more complete report).

10. Nevertheless, no 'exceptional circumstances' have been suggested in this case; beyond the fact that earlier communication by the Council could have meant any survey work could have been undertaken at a suitable time in 2015. Furthermore, there is uncertainty as to whether, and indeed which, protected species are or may be present on the site, and if appropriate mitigation measures would be possible. Given this degree of uncertainty, the use of a condition would not be reasonable in this case. Moreover, the absence of this information means that it is not possible to be certain that the proposal would not result in significant harm to biodiversity as envisaged by Paragraph 118 of the *National Planning Policy Framework* (the Framework). For similar reasons the proposal would also fail to achieve one of the core planning principles set out in Paragraph 17 of the Framework, in which planning should contribute to conserving and enhancing the natural environment.
11. I therefore conclude that the proposed development would fail to protect local biodiversity. It would therefore be contrary to the Policies of the Framework identified above, which in addition to the aforesaid aims, include Paragraph 109 which seeks to minimise the impacts on biodiversity and providing net gains in biodiversity where possible, and contributing to the Government's commitment to halt the overall decline in biodiversity.

Other Matters

12. The appeal site is located within or in close proximity to designated sites including; a European designated site (known as Natura 2000), the Crouch and Roach Estuaries Special Protection Area (SPA) which is also listed as a Ramsar site, the Crouch and Roach Estuaries Special Areas of Conservation, and the Crouch and Roach Estuaries Site of Special Scientific Interest (SSSI). Natural England, the government's adviser on the natural environment, did not raise specific concerns in terms of these protected designated areas. On the basis of the evidence before me, I see no reason to take a contrary position and find that there would not be any significant adverse impacts on these designations.
13. I also note the comments from Essex County Council Historic Environment Advisor in that the proposal is in an area of potential archaeological interest and a condition is suggested. However, as the appeal is to be dismissed for other reasons, I have not considered this aspect any further.

Overall Conclusion

14. In regarding the purpose of conserving biodiversity, whilst there may not be significant adverse impacts on the designated sites, this does not overcome the substantial lack of information in terms of protected species on, or near to, the site which may be affected by the proposal. For the reasons given above, I therefore conclude that the appeal should be dismissed.

Cullum J A Parker

INSPECTOR