
Appeal Decision

Site visit made on 16 June 2020

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th August 2020

Appeal Ref: APP/B1550/W/20/3244558

Ricbra, Lower Road, Hockley SS5 5NL

- 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 Woodrow Barker against the decision of Rochford District Council.
 - The application Ref 19/00446/FUL, dated 15 May 2019, was refused by notice dated 10 July 2019.
 - The development proposed is demolish existing buildings and construct four 4-bedroom dwellings with vehicular access.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Although not a reason for refusal, the effect of the proposal on the Crouch and Roach Estuaries Special Protection Area and Ramsar Site (SPA) is potentially a determinative issue. Therefore, I have elevated this matter to a main issue.

Main Issue

3. The main issues are:
 - whether or not the proposal would be inappropriate development in the Green Belt, including its effect on openness having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
 - the effect of the development on the SPA

Reasons

Whether the proposal would be inappropriate development in the Green Belt

4. The appeal site is situated in the Metropolitan Green Belt. The Framework indicates that other than in connection with a small number of exceptions, the construction of new buildings should be regarded as inappropriate in the Green Belt.

5. Both parties accept that the site comprises previously developed land and therefore paragraph 145(g) of the Framework applies. This allows for limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use which would not have a greater impact on the openness of the Green Belt than the existing development.
6. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and the essential characteristics of Green Belts are their openness and their permanence. A significant part of the site currently contains a range of buildings, associated with the sites previous use as a nursery.
7. The demolition of the existing buildings, in particular those located within the rear part of the site and the replacement with dwellings along the frontage would reduce the overall amount of development and in particular enable the rear of the site to become more open. I also consider that any increase in volume across the overall site would be off set by the reduction in built form across the depth of the site. The proposed scheme would follow the pattern of other development along Lower Road and would therefore, in spatial terms, have a less harmful impact upon the openness of the Green Belt.
8. However, openness also has a visual aspect as well as a spatial one. I note that the proposed dwellings with garages would be positioned along the road frontage, with a single access point. The dwellings would be located within a row of similar residential dwellings, the majority of which are bungalows or chalet bungalows, similar to that proposed.
9. I note the concerns raised with regard to the height of plots 1 and 4, however whilst the height of these plots would be greater than the height of the existing bungalow on site, they would be comparable to the neighbouring dwelling as illustrated on the submitted street scene. Therefore, I consider that the proposed dwellings would be seen in the context of their neighbours and they would not be visually harmful to the openness of the Green Belt
10. I conclude that the development would not be inappropriate development in the Green Belt and is in accordance with the Framework. The proposal would also comply with saved policy GB1 of the Rochford District Council Local Development Framework, Development Management Plan 2014 which seeks to protect the Green Belt based on how well the land helps achieve the purposes of the Green Belt.

Effect on the Crouch and Roach Estuaries Special Protection Area and Ramsar site

11. The site is within the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy(RAMS) zone of influence for the Crouch and Roach Estuaries Special Protection Area and Ramsar site and the proposed development falls within the scope of the RAMS as relevant development. Given that the proposal is for additional housing, and its proximity to the SPA there is a reasonable likelihood that it would be accessed for recreational purposes by future occupants of this development. This additional activity would have the potential, either alone or in combination with other development in the area, to have a likely significant effect on the European site.

12. The Conservation of Habitat and Species Regulations 2017 (the Regulations) require that the competent authority must ensure that there are no effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of the SPA. The likely significant effects arising from the proposal need to be considered in combination with other development in the area and adopting the precautionary principle.
13. The Essex Local Planning Authorities within the Zones of Influence have developed a mitigation strategy to deliver the measures to address direct and in-combination effects of recreational disturbance on SPA. The Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) sets out a strategic approach to mitigation by several councils across the wider area. It details mitigation measures that would be funded by financial contributions at a specified tariff per dwelling. Since these include a range of habitat-based measures such as education, communication and monitoring, and have been endorsed by Natural England (NE), I am satisfied that the measures would adequately overcome any adverse effects of the proposal on the SPA. A tariff to fund the mitigation, which is payable for all additional new dwellings is currently set at £125.58 per dwelling. Whilst the appellant has indicated that they are willing to pay this contribution I have not been provided with a signed and dated Unilateral Undertaking making provision for the required contribution.
14. Due to the lack of a mechanism to secure the contribution to mitigate the impacts of recreational pressure, I cannot be satisfied that the appeal proposal would not result in an adverse effect on the integrity of the SPA. Had such mitigation been in place, I would have sought clarification from the main parties on this matter and, if necessary, undertaken an Appropriate Assessment in order to consider the implications of the development on conservation objectives. However, this avenue is not available to me.
15. Whilst I accept that under the previous approval on the site the Council did not seek mitigation, it is recognised by both parties that since the previous decision was made the RAMS has been developed and therefore it is necessary to take this into account in order to ensure any appropriate assessment and subsequent decision are robust.
16. Based on the precautionary principle and the evidence before me, I conclude that the appeal scheme would be likely to have a significant adverse effect on the SPA due to the potential increased disturbance through recreational activity. The proposal would therefore fail to comply with the requirements of the Regulations as well as Paragraph 175(a) of the Framework which states that where significant harm to biodiversity resulting from a development cannot be adequately mitigated, then planning permission should be refused.

Conclusion

17. For the reasons given above I conclude that the appeal should be dismissed.

G. Pannell

INSPECTOR