



Appeal Decision

Site Visit made on 13 October 2020

by Gemma Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th November 2020

Appeal Ref: APP/W1525/W/20/3249154

95 Brook End Road South, Springfield, CHELMSFORD, CM2 6NZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr S Niven against the decision of Chelmsford City Council.
 - The application Ref 19/01434/OUT, dated 15 August 2019, was refused by notice dated 16 October 2019.
 - The development proposed is erection of detached dwelling house.
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Decision

1. The appeal is allowed and planning permission is granted for construction of a detached dwelling at 95 Brook End Road South, Springfield, Chelmsford, CM2 6NZ in accordance with the terms of the application, Ref 19/01434/OUT, dated 15 August 2019, and the plans submitted with it, subject to the following conditions:
 - 1) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
 - 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
 - 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
 - 4) The development hereby permitted shall be carried out in accordance with the following approved plans: 19/558/01C
 - 5) No development shall take place until full details of the finished levels, above ordnance datum, of the ground floor of the proposed building, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
 - 6) The building shall not be occupied until the area to be provided for parking has been drained and surfaced and charging infrastructure for electrical vehicles has been installed in accordance with details that shall first have been submitted to and approved in writing by the local planning authority, and that area shall thereafter be kept available at all times for the parking of vehicles.

Preliminary Matters

2. Since the time of the original decision, the Council has adopted a new Local Plan – the Chelmsford Local Plan 2020 (LP). The Council has confirmed which new policies correspond with and replace the policies which the application was determined against. In accordance with planning law, I have determined the appeal on the basis of the current development plan.
3. The original application was made in outline with all matters reserved except for access and I have had regard to drawing no 19/558/01C. I have dealt with the appeal on this basis and I have treated any details not to be considered at this stage as being illustrative only.

Main Issue

4. The main issue is whether the proposed development would provide acceptable living conditions for future occupants, with particular reference to odour.

Reasons

5. The appeal site is located within a small cluster of development, off Brook End Road South. A rural lane which extends beyond the residential development of Chancellors which forms part of Chelmer Village and is within the urban area of Chelmsford. The site is close to the Chelmsford Water Recycling Centre (WRC).
6. The Council has found the development acceptable in all respects except for the potential impact of odour from the WRC on the living conditions of future residential occupiers. The site is within a recommended 400 metre zone as defined by Anglian Water (AW), the appointed water and sewerage undertaker for the Anglian region, within their Asset Encroachment Policy Position. The objective of this is to preclude any development within the zone that would potentially be sensitive to odour or other nuisance arising from the location of the works without an appropriate risk assessment.
7. Having regard to the national approach set out in the DEFRA Code of Practice on Odour Nuisance from Sewage Treatment Works this cautions against adopting a standard distance for a cordon sanitaire as these do not take into account differing circumstances, but goes on to advise that operational and complaints' history of a sewage works should be carefully considered. I shall also give consideration to the potential impact of the development on the WRC.
8. Although most were built before the current protocol came into force, there are currently a number of residential properties, including part of both Chelmer Village and Chancellor Park residential estates and other uses within the zone. There is also a cluster of approximately 20 dwellings which are in close proximity to the primary settlement tanks and circular filter beds of the WRC. Accordingly, the WRC, because of the encroachment of the town over time, does not enjoy the protection of an undeveloped cordon sanitaire. As a result, I consider that the operation of this site must already be subject to considerable restraint on its operation to protect existing residents.
9. As such regard should be given to the measures already in place to control odour emissions, taking account of the existing surrounding development. The appellant states, and this is not disputed by AW, that the main risk of adverse odour results from when anaerobic conditions arise at the works and that the more odorous parts of the works is the sludge treatment centre.

10. The 400m radius arc shown in Figure 2 of the Odour Impact Assessment prepared by ADAS illustrates that the majority of the tanks and treatment assets at the WRC are in excess of 400m from the appeal site. On this basis it is concluded that the separation distance of the majority of the WRC, and in particular the sludge treatment centre would further mitigate against the potential emission of odour from the works in this case.
11. As identified by the appellant, the prevailing wind here is generally north easterly or south westerly and that would carry odours away from the appeal site which is to the north west of the WRC. Accordingly, I believe that having regard to the relationship of the works and appeal site, the risk of nuisance from odour is further reduced in this case.
12. Having regard to the number of complaints received over the last 5 years these seem to be relatively small having regard to the density of surrounding development and the number of residential properties falling within the zone.. This suggests that historically odour emissions from the plant do not, in any significant way, impact on the living conditions of existing residents within the 400m zone. I appreciate that complaints from residential occupiers are likely to involve AW in some additional time in liaising with the complainant. However, the addition of one additional dwelling would not necessarily on their own give rise to a substantial increase in the level of complaints or result in the need to change the requirement for odour mitigation at the plant.
13. AW advise that future new development and changes in legislation are likely to lead to the sewage works being extended. Having regard to the existing substantive surrounding development, and the restrictions that this must already exert on the site, I am not convinced that the proposed development here would be likely to impact in any significant way on the future development of the works, even if new plant were to be located close to the boundary.
14. I have had regard to the previous appeal decision on the site which dealt with the same main issue, APP/W1525/A/00/1053348. However, I am satisfied that since the date of that decision (2001) there have been a number of policy changes which include the adoption of the new Local Plan. There have also been a number of operational improvements made to the WRC. These factors allow me to come to a different conclusion.
15. I conclude the existing sewage treatment works would not be likely to cause significant harm by reason of odour on future residential occupiers. The proposal would therefore accord with Policy DM29 of the Chelmsford Local Plan 2020 which requires development to be compatible with neighbouring uses in the vicinity of the site, to ensure the development avoids unacceptable levels of polluting emissions.

Other matters

Blackwater Estuary Special Protection Area (SPA) and Ramsar site, and Essex Estuaries Special Area of Conservation (SAC)

16. The appeal scheme proposes a dwelling on a site that lies within the Zone of Influence of the Blackwater Estuary SPA and Ramsar site and Essex Estuaries SAC. This is a typical, undeveloped, coastal plain estuarine system with associated open coast mudflats and sandbanks and comprises the major estuaries of the Colne, Blackwater, Crouch and Roach rivers. Essex Estuaries

contains a very wide range of characteristic marine and estuarine sediment communities and some diverse and unusual marine communities in the lower reaches, including rich sponge communities on mixed, tide-swept substrates which support nationally important breeding and over wintering populations of birds.

17. The Conservation of Habitat and Species Regulations 2017 (the Regulations) require that the competent authority must ensure that there are no significant adverse effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of the SAC and SPA. The effects arising from the proposal need to be considered in combination with other development in the area and adopting a precautionary approach.
18. Since the development is for one dwelling only, the number of additional recreational visitors would be limited and the likely effects on the SAC and SPA sites from the proposed development alone may not be significant. However, in combination with other developments it is likely that the proposal would have significant effects on the designated site. Given my findings, the Regulations place a duty on the competent authority to undertake an appropriate assessment of the implications of the appeal scheme in view of the site's conservation objectives.
19. The site is within the defined zone of influence for the SAC and SPA and at such close distance new residential development is likely to result in recreational pressure, which would, both alone and in combination with other development within the wider zone of influence, have a likely significant effect on the interest features of the aforementioned site. Therefore, I consider that the development would have an adverse effect on the integrity of the site, but regard can be had to whether these adverse effects can be mitigated.
20. The Essex Coast 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 and SAC sites.
21. The appellants have submitted a Unilateral Undertaking for the per dwelling contribution of £122.30 to fund the RAMS. Given the evidence before me I am satisfied that the mitigation measures have been secured. The contributions would be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development, in accordance with Regulation 122 of the Community Infrastructure Levy Regulations. As such, the contributions toward the mitigation schemes would count as mitigation toward maintaining the integrity of the sites.

Setting of Listed building

22. Section 66 (1) of the Planning (Listed Building and Conservation Areas) Act 1990 requires special regard to be had to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest

which it possesses when dealing with planning applications. Paragraph 193 of the Framework states that when considering the impact of a proposed development on the significance of a designated asset, great weight should be given to the asset's conservation; the more important the asset, the greater the weight should be.

23. I have considered the effect on the Grade II Listed Laburnum Cottage (95 Brook End Road South) which is a timber framed house of seventeenth century origin and its significance is derived from its age and architectural quality. It has previously been considerably extended, with additions to the rear and a large outbuilding. The context remains generally rural, with cottages spaced out along the lane. Although the presence of the A12 and residential estate as well as the sewage works have intruded into this rural character.
24. Having regard to the overall scale of the plot and the degree of separation between the proposed dwelling and the listed building, I consider that even developed, the proposal would not result in harm to the designated asset, taking into account how the listed building would be appreciated or the elements that form its setting.

Conditions

25. The Council has suggested conditions which I have considered against the advice in the Framework and Planning Practice Guidance. I have attached conditions relating to the submission of reserved matters and the time limits associated with this. I have also included a condition specifying the relevant plans as this provides certainty.
26. In the interests of the character and appearance of the area a condition in respect of floor levels is necessary. In order to ensure an appropriate level of parking provision, I have imposed a condition requiring the parking spaces to be provided prior to occupation of the dwelling and retained for the life of the development. I have also required charging infrastructure to be provided on site, in order to ensure adequate provision for charging plug-in vehicles.
27. I have not imposed a condition requiring the submission of details of the boundary treatments as I consider that this would be dealt with as part of the reserved matters for landscaping and is therefore not necessary.

Conclusion

28. For the reasons given above I conclude that the appeal should be allowed.

G. Pannell

INSPECTOR