
Appeal Decision

Site visit made on 28 September 2021

by C Osgathorp BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 October 2021

Appeal Ref: APP/B1550/W/20/3256769

Land north of the Rambles, Eastwood Rise, Leigh-on-Sea SS9 5BS

- 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 Mitchell Nunn against the decision of Rochford District Council.
 - The application Ref 19/00258/OUT, dated 12 March 2019, was refused by notice dated 25 March 2020.
 - The development proposed is described as 'outline planning permission for the demolition of the existing structures and replacement with two detached dwellings along with associated works with all matters reserved apart from access'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the Council made its decision, the Government published a revised version of the National Planning Policy Framework (the Framework). The main parties were given the opportunity to comment on any implications for the appeal of this change, and I am satisfied that no prejudice would be caused by my consideration of the appeal in light of the revised Framework.
3. The application was submitted in outline form with all matters reserved for subsequent consideration apart from access. The appellant states that the substitution of the original site layout plan for an indicative site layout plan means that access should now be taken as being a reserved matter. I have therefore determined the appeal on the basis of an outline application with all matters reserved. I have treated the submitted drawings showing a proposed site plan, floor plans and elevations for the proposed dwellings as being for indicative purposes only.

Main Issues

4. The main issues are:
 - Whether the proposed development would make satisfactory provision for foul drainage, with particular regard to the effect on the environment.
 - The effect of the proposed development on land stability.

Reasons

Foul drainage

5. The focus of the planning system should be on whether the proposed development is an acceptable use of the land, including the impacts of those uses, rather than the control of processes or emissions themselves where these are subject to approval under separate pollution control regimes. However, before granting planning permission, decision-makers will need to be satisfied that environmental issues can or will be adequately addressed through the pollution control regimes.
6. The Planning Practice Guidance advises that if there are concerns arising from a planning application about the capacity of waste-water infrastructure, applicants can be asked to provide information about how the proposed development will be drained and wastewater dealt with. Accordingly, applications for developments relying on anything other than connection to a public sewer will need to be supported by sufficient information to understand the potential implications for the water environment. When drawing up wastewater treatment proposals for any development, the first presumption is to provide a system of foul drainage discharging into a public sewer to be treated at a public sewage treatment works (those provided and operated by the water and sewerage companies). This will need to be done in consultation with the sewerage company of the area.
7. The appellant's Drainage Strategy Report¹ sets out that there is not an existing public sewer in the vicinity of the appeal site to accommodate foul water drainage from the proposed development. This is supported by observations of the access track adjacent to the appeal site indicating that there are no visible manholes. Consequently, a private package Sewage Treatment Plant (STP) is proposed, which would discharge into the ditch around 5 metres to the west of the appeal site adjacent to Eastwood Rise. The Drainage Strategy Report indicates that this flows in a north-easterly direction to the River Roach.
8. The Environment Agency's (the EA) initial consultation response dated 18 November 2019 raised a holding objection on the basis that the application did not demonstrate that the risks of pollution to controlled waters would be acceptable or can be appropriately managed. Following the appellant's submission of a Phase 1 Preliminary Risk Assessment² and the Drainage Strategy, the EA removed its objection, subject to conditions. I am aware that any discharge of domestic sewage or effluent made to surface water will need to be registered as an exempt water discharge activity or be subject of an environmental permit³ issued by the EA. As such, there is a relevant pollution control regime outside the planning system. Nevertheless, I need to be satisfied that the proposed development could make satisfactory provision for foul drainage to mitigate its effect on the water environment.
9. Whilst I note the contents of the Drainage Report and the letter from Intermodal Transportation Ltd dated 15 June 2020, the appeal scheme contains little information regarding the water environment into which the STP would discharge, including its characteristics and whether the adjacent ditch has

¹ Prepared by Intermodal Transportation Ltd dated January 2020

² Prepared by Stansted Environmental Services dated 18 December 2019

³ In accordance with the Environmental Permitting (England and Wales) Regulations 2010, as amended.

water flow throughout the year, and the potential implications arising from the proposal for the water environment. At the time of my site visit, I observed that the ditch was mostly dry, and any water was stagnant. Furthermore, there are limited details regarding the maintenance of the STP. The system would be shared by separate households, and it is unclear who would be responsible for its operation and on-going maintenance. There is no legal mechanism before me for this to be secured and it is not a matter that could be addressed through a planning condition. The absence of sufficient information in the above respects would cause an unacceptable risk of water pollution. Furthermore, there is no substantive evidence before me that the current equestrian use causes pollution and this would not mitigate my concerns.

10. The Council has not cited any relevant development plan policies. Nevertheless, in the absence of sufficient information, I conclude that the development would be unacceptable in terms of foul-water drainage, contrary to paragraphs 174 and 185 of the National Planning Policy Framework and guidance in the PPG. Amongst other things, this states that planning decisions should contribute to and enhance the natural and local environment by preventing new development from contributing to or being adversely affected by unacceptable levels of water pollution; and ensure that new development is appropriate for its location taking into account the likely effects of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development.

Land stability

11. The appellant's Phase 1 Preliminary Risk Assessment sets out that the appeal site historically formed part of a landfill. Due to the potential geotechnical hazards identified in the assessment, a further geotechnical site investigation was recommended to facilitate the design of foundations and floors slabs.
12. The appellant submitted a supplementary report⁴ with the appeal, which provides a visual assessment of slope stability. This states that at the time of the site visit, all the slopes were heavily vegetated and did not show any obvious signs of current or historical instability. Furthermore, the slope appears to be stable, and the siting of the proposed dwellings would be unlikely to impose any additional weight on the slope causing instability to occur. The report comments that even if the geotechnical site investigation were to find elements of instability in the ground or slope, a suitable foundation solution can be adopted that would ensure the stability of the buildings and the slope.
13. There is no substantive evidence before me to doubt this assessment and I am satisfied that the matter could be addressed through the imposition of a planning condition. In this regard, the proposal would accord with paragraph 183 of the Framework, which states that planning decisions should ensure that a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability.

Other Matters

14. The proposed development would be located within the Zone of Influence of the Crouch and Roach Estuaries Special Protection Area (the SPA) and Ramsar, and the Essex Estuaries Special Area of Conservation. The SPA is a designated

⁴ Prepared by Stansted Environmental Services dated 17 July 2020

habitat site which is subject to statutory protection under the Habitat Regulations⁵. Had the proposal been acceptable in planning terms, it would have been necessary for me to have undertaken an Appropriate Assessment (AA) as the competent authority. However, regulation 63(1) of the Habitat Regulations indicates that the requirement for an AA is only necessary where the competent authority is minded to give consent for the proposal. As I am dismissing the appeal for other reasons, it has not been necessary for me to consider this matter further.

Planning balance and conclusion

15. The appellant states that the Council is unable to demonstrate a deliverable 5 year housing land supply, which is not disputed by the Council. In these circumstances, the most important policies for determining the appeal are out-of-date in accordance with footnote 8 of the Framework. Paragraph 11(d) ii of the Framework is therefore engaged.
16. Paragraph 60 of the Framework sets out the Government's objective of significantly boosting the supply of housing. The proposed development would provide two dwellings in an accessible location within walking distance of passenger transport services, shops and facilities, which would make a small contribution towards the supply of housing in the district. Small sized sites can make an important contribution to meeting the housing requirement of an area and are often built-out relatively quickly, as indicated in paragraph 69 of the Framework. The proposal would also create some employment at the construction stage, although this would be relatively short lived and so a relatively limited benefit. The occupiers of the proposed dwellings would help to support local facilities and services, although the economic contribution arising therefrom would be limited again by the scale of the proposals. Taking the benefits together, and for the reasons I have given, I would afford them moderate weight.
17. I have found that the proposed development would fail to make satisfactory provision for foul drainage, which would pose an unacceptable risk of water pollution. This conflicts with paragraphs 174 and 185 of the Framework and guidance in the PPG, which seeks to protect the natural and local environment, and is a matter that attracts significant weight.
18. Even if I had found that the proposal would avoid an adverse effect on the integrity of the SPA, and hence that there was not a clear reason for refusing the development proposed, I conclude that the identified adverse effects of the proposal would significantly and demonstrably outweigh the benefits outlined above, when assessed against the policies in the Framework taken as a whole.
19. Therefore, for the reasons given, the appeal is dismissed.

C Osgathorp

INSPECTOR

⁵ The Conservation of Habitats and Species Regulations 2017