



Appeal Decision

Site Visit made on 28 September 2021

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th October 2021

Appeal Ref: APP/B1550/W/20/3259815

Adj Little Brays, Brays Lane, Rochford, SS4 3RP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Mr Davies against Rochford District Council.
 - The application Ref 19/00179/FUL, is dated 25 February 2019.
 - The development proposed is demolish buildings and clear site. Construct one new 3-bed bungalow.
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Decision

1. The appeal is dismissed and planning permission for Demolish buildings and clear site. Construct one new 3-bed bungalow is refused.

Preliminary Matters

2. Although not a reason for refusal, the effect of the proposal on the Crouch and Roach Estuaries Special Protection Area and Ramsar Site and the Essex Estuaries Special Area of Conservation is potentially a determinative issue. Therefore, I have elevated this matter to a Main Issue and the Council and appellant have had an opportunity to comment on the implications of this.

Main Issues

3. The main issues are:
 - the effect of the development on the Crouch and Roach Estuaries Special Protection Area and Ramsar Site and the Essex Estuaries Special Area of Conservation; and
 - 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;

Reasons

Effect on the Special Protection Area

4. 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 (SPA) and the Essex Estuaries Special Area of Conservation (SAC) 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 and SAC 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.

5. 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.
6. 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 the SPA and SAC. The 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, I am satisfied that the measures would adequately overcome any adverse effects of the proposal on the SPA and SAC.
7. A tariff to fund the mitigation, which is payable for all additional new dwellings is currently set at £127.20 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.
8. 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.
9. 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 180(a) of the National Planning Policy Framework (the Framework) which states that where significant harm to biodiversity resulting from a development cannot be adequately mitigated, then planning permission should be refused.

Green Belt

10. 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.

11. Both parties accept that the site comprises previously developed land and therefore paragraph 149(g) of the Framework applies, despite a lack of evidence regarding the previously lawful use of the site. 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.
12. 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. The site currently contains a range of buildings and associated external storage, associated with the sites previous use, which extend across the depth of the site.
13. The submitted block plan indicates a number of buildings and there is some dispute between the parties as to whether they all remain as indicated. However, as part of my visit, it was possible to observe a range of buildings which were distributed across the site. However, I have given limited weight to the floor area calculations provided for each building as some of the buildings are in a significant state of disrepair.
14. The demolition of the existing buildings, in particular those located within the rear part of the site and the replacement with a dwelling along the frontage would reduce the overall extent of development across the site. In particular, this would 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 Brays Lane and would therefore, in spatial terms, have a less harmful impact upon the openness of the Green Belt.
15. However, openness also has a visual aspect as well as a spatial one. I note that the proposed dwelling would be positioned along the road frontage, with a single access point. The dwelling would be located within a row of similar residential dwellings, the majority of which are bungalows or chalet bungalows, similar to that proposed.
16. I note the concerns raised with regard to the increased height of the proposed dwelling in comparison to the heights of the existing buildings. However, I consider that the development would be seen within the context of existing neighbouring dwellings and would be comparable in height and as such would not be visually intrusive.
17. Therefore, I conclude that the development would not be inappropriate development in the Green Belt and as such it should not be regarded as harmful to the purposes of including land within it 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.

Conclusion

18. In conclusion, whilst I have found that the development would not be inappropriate development within the Green Belt, I cannot be satisfied that the appeal proposal would not cause harm to the integrity of the SPA and SAC. Therefore, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

G Pannell

INSPECTOR

