



Appeal Decision

Site visit made on 4 January 2023

by C Harding BA(Hons) PGDipTRP PGCert MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 February 2023

Appeal Ref: APP/M1595/W/21/3289224

Linsteads, Orsett Road, Horndon-On-The-Hill SS17 8PW

- 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 Ian McKellar against the decision of Thurrock Borough Council.
 - The application Ref 21/01126/FUL, dated 25 June 2021, was refused by notice dated 3 September 2021.
 - The development proposed is demolition of storage building/yard, stable, mobile home, containers and construction of 2 x chalet bungalows with associated parking and amenity areas (resubmission of 20/00745/FUL).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the development used by the Council differs from that on the application form. However, as it appears to reflect the proposed development more accurately, I have used it in my decision.
3. The site is located within the identified Zone of Influence of the Thames Estuary and Marshes Special Protection Area and Ramsar sites ('the SPA'), which is afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitats Regulations). Although not forming part of the Council's reason for refusal, it is incumbent upon me as the competent authority to consider whether the proposal would be likely to have a significant effect on the integrity of the SPA. It is necessary to consider this matter as a main issue.

Main Issues

4. The main issues are:
 - The effect of the proposed development on the Thames Estuary and Marshes Special Protection Area and Ramsar sites, and;
 - The effect the of the proposed development upon the character and appearance of the area.

Reasons

The SPA

5. The SPA is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the

Habitat Regulations). While the appeal site is not within the SPA given its proximity, the main parties and Natural England agree that the proposed development would be likely to have significant effects on the features of interest of the SPA, due to the increased recreational use arising in combination with other development. I have found no reason to disagree. In these circumstances, the Habitats Regulations require that an Appropriate Assessment is carried out. I have sought further evidence on this matter, and Natural England was consulted.

6. The evidence indicates that the SPA provides coastal habitat for internationally important numbers of breeding and non-breeding birds, and that recreational pressures in areas of high levels of public access has the potential to adversely affect the SPA. The proposed development would comprise two dwellings, and due to its proximity to the SPA there is a reasonable likelihood that occupiers of these dwellings would access the SPA for recreational purposes. Although the scale of recreational pressure would be minor in itself, when considered in combination with other residential properties in the vicinity of the SPA, a significant effect on the integrity of the SPA would occur.
7. The Habitats Regulations require that permission may only be granted after having ascertained that it will not affect the integrity of a European site, such as the SPA. I may consider measures to secure mitigation with a view to ensuring that the proposal would not adversely affect the integrity of the SPA. Due to the small scale of the proposed development, there is no scope to provide on-site mitigation. There is, nonetheless, a strategic mitigation approach in the form of the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS), which has been prepared by the Council and Natural England. It includes measures to secure payments from new residential development to deliver mitigation.
8. The RAMS Supplementary Planning Document 2020 ('the SPD') identifies that a tariff of £125.58 per new dwelling should be paid in order to contribute towards mitigation measures within the RAMS, and that this figure shall be index linked and regularly reviewed. Natural England have advised that the most up-to-date figure is now £137.71 per dwelling.
9. The evidence before me indicates that the appellant has made a payment to the Council in respect of RAMS mitigation. However, there is no indication as to the amount that has been paid. Furthermore, the SPD states that for proposals of less than ten dwellings, that the RAMS tariff can be secured by means of unilateral undertaking and in the evidence before me, there is no mechanism linking the proposed development to the payment, securing how it would be spent or whether mitigation measures would be delivered prior to the impact occurring.
10. Accordingly, whilst the Council has indicated that it has a Delivery Officer in place to manage the delivery of the RAMS, I have been provided with little certainty that adequate mitigation could be secured, controlled and be in place prior to the occupation of the proposed dwellings. Consequently, I cannot therefore be certain the development would not adversely affect the integrity of the site.
11. The evidence before me indicates that there is potential for recreational disturbance to the SPA through additional activity associated with the development, which has the potential to affect the integrity of the SPA. The

Habitats Regulations require me to consider whether there are any alternative solutions. However, no such solutions have been put to me. I must also assess whether there are any imperative reasons of overriding public interest. The provision of two dwellings, taking into account the merits of the case, is not sufficient to amount to such overriding public interest. Consequently, having regard to the Habitat Regulations, permission must not be granted. I therefore find that the proposed development would result in harm to the integrity of the SPA.

Character and Appearance

12. The appeal site relates to land and building adjacent to Linsteads, a detached property in a countryside location. Currently the site comprises a yard area containing a large storage building, two containers, stables and a mobile home, as well as a larger open grassed area. A further existing single storey residential property lies between Linsteads and the appeal site, and a further single storey building adjoins the northern boundary of the appeal site.
13. The site is currently screened by substantial trees and hedgerow on its eastern boundary and immediately adjacent to the storage building. The grassed area is more open in nature but also retains mature hedgerow and trees. The surrounding landscape is flat, with views across open fields towards the A13 road.
14. The character of the appeal site is currently one of a number of detached buildings located within the wider site occupied by Linsteads. These buildings are closely related to each other and form a small, but tightly knit area of development within the wider countryside. This is reflective of the general pattern of development that is evident at other sites in the local area.
15. The proposed development would result in the removal of existing structures within the appeal site and the erection of two bungalows. One of the proposed bungalows would be situated in the location of the existing storage building, with the other situated adjacent, and at an angle, addressing a turning area.
16. This arrangement would result in a cluster of single storey residential properties being formed. However, this would not be inherently harmful, with the layout of the proposed development representing a logical approach to accommodating additional development without expanding the existing grouping of buildings. Furthermore, although the proposed dwellings would be closely related to each other, the angled arrangement and suitably sized garden areas means that they would not be situated such that they would appear cramped and would reflect the existing character of the appeal site.
17. The specific approach to detailed design, use of materials and the scale of the proposed bungalows are not matters of dispute, and I have not been presented with evidence that would lead me to a different conclusion in these respects.
18. Accordingly, the proposed development would accord with Thurrock Local Development Framework Core Strategy and Policies for Management of Development 2015 (TLDF) Policies PMD2, CSTP22, CSPT23 and the National Planning Policy Framework ('the Framework'), which together and amongst other criteria, require new development to respond to the sensitivity of the site and its surroundings, contribute positively to the character of the area and be of a high quality of design.

Other Matters

19. The appeal site is located with the Green Belt, however the parties are in agreement that the proposed development would not be inappropriate, having regard to Paragraph 149 (g) of the Framework. The evidence does not lead me to reach a different conclusion in this respect, therefore, it is not necessary for me to consider this issue further.

Conclusion and Planning Balance

20. The Framework is a material consideration in planning decisions. Paragraph 11 of the Framework states that where policies which are most important for determining the application are out of date, permission should be granted unless specific policies within the Framework provide a clear reason for refusing the development proposed; or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole. The appellant argues that paragraph 11d) ii) of the Framework is engaged as the Council cannot demonstrate a five-year supply of land for housing.
21. However, Paragraph 182 of the Framework makes it clear that the presumption in favour of development does not apply where a proposal is likely to have a significant effect on a SPA, either alone or combination with other projects, unless an appropriate assessment has concluded that it will not adversely affect the integrity of the site. In this case there would be harm to the integrity of the SPA. As this provides a clear reason for refusing the appeal proposal the presumption in favour of sustainable development in paragraph 11d) ii) does not apply.
22. Although I have found in favour of the appellant in relation to the second main issue, this cannot outweigh the harm in relation to the SPA. For the reasons given above, and taking into account all matters raised, I conclude that the appeal should be dismissed.

C Harding

INSPECTOR