



Appeal Decisions

Site visit made on 2 May 2023

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 May 2023

Appeal A Ref: APP/X1545/W/22/3297100

Mill Farm, Stoney Hills, Burnham-on-Crouch, Essex CM0 8QA

- 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 Mrs P Green against the decision of Maldon District Council.
 - The application Ref FUL/MAL/22/00222, dated 3 February 2022, was refused by notice dated 8 April 2022.
 - The development proposed is described as "Land to the rear of Mill Farm: Proposed 4 new chalet styled bungalows".
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Appeal B Ref: APP/X1545/W/22/3303229

Mill Farm, Stoney Hills, Burnham-on-Crouch, Essex CM0 8QA

- 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 Mrs P Green against the decision of Maldon District Council.
 - The application Ref FUL/MAL/22/00571, dated 26 April 2022, was refused by notice dated 21 June 2022.
 - The development proposed is described as "Land to the rear of Mill Farm: Proposed 4 new chalet styled bungalows".
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Decision

1. Appeal A and Appeal B are both dismissed.

Applications for costs – Appeal A and Appeal B

2. Applications for costs were made by Mrs P Green against Maldon District Council. These applications are the subject of a separate decision.

Main Issues

3. The Council has stated that the appellant has paid directly to them a sum of money towards measures to mitigate any adverse impacts of the development on the Crouch and Roach Estuaries Special Protection Area and Ramsar Site (SPA). The Council has confirmed that this satisfies their requirements. Nevertheless, 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 these designated sites. It is therefore necessary for me to consider this matter as a main issue.
4. The main issues for both Appeal A and Appeal B are the effect of the proposed development on the character and appearance of the surrounding area and the integrity of the SPA. There is also an additional main issue in respect of Appeal A regarding the effect of the proposed development on the living conditions of future occupiers, with particular reference to outlook.

Reasons

Character and Appearance – Appeal A and Appeal B

5. The surrounding area has seen several new dwellings constructed in recent years, some of which front onto Stoney Hills and others that have been constructed around small cul-de-sacs. The dwellings in the surrounding area comprise a diverse mix of designs, materials and heights, with varying plot sizes but are predominantly detached. Mill Farm comprises a detached bungalow that fronts onto Stoney Hills; a single width unmade road enclosed by hedgerows to either side. The bungalow is set back from the road by a front garden/parking/turning area and is highly screened from the road due to the height and density of the front boundary treatment and the limited scale of the dwelling. Beyond the host dwelling's rear garden is a paddock, manege and two stable buildings that are accessed via a driveway that traverses along the southern side of the host dwelling.
6. The appeal site comprises the paddock and manege to the rear of the host dwelling together with the existing access road along the southern boundary. The proposal would result in the demolition of an existing stable building and the construction of four detached dwellings arranged around a central access road that would extend from the existing access. The appeal site is heavily screened from public vantage points by existing dwellings, trees, hedgerows and other vegetation.
7. The proposed dwellings would be predominantly one and a half storeys in height however, they would also include two-storey gabled features. These elements are not considered to be overly dominant and would complement the appearance of the proposed dwellings. While I note that the host dwelling and the property to the north are bungalows, the surrounding area comprises a varied mix of property designs and heights, and I saw on my site visit that two storey features on one and a half storey properties are not uncommon. Furthermore, the two-storey features would not be highly prominent when viewed from public vantage points due to the siting of the proposed dwellings behind existing dwellings and a significant distance from the surrounding roads.

Character and Appearance – Appeal A

8. The side elevations of the proposed dwellings on plots 1 and 2 would face towards Stoney Hills, thereby reducing the expanse of built form that would be visible from the road. Furthermore, the dwellings on plots 2 and 4 would be sited behind the host dwelling, while the dwellings on plots 1 and 3 would be predominantly sited behind the rear gardens of 48 and 50 Mill Road.
9. The proposed dwellings would be located a substantial distance from Stoney Hills and the narrowness of both the access road and Stoney Hills together with the enclosed character of Stoney Hills would limit views of the proposed dwellings from the road. Similarly, views of the proposed dwellings from Mill Road would be restricted to glimpses between the gaps of the existing dwellings. The proposed dwellings would therefore not be highly prominent in the surrounding area.
10. The width of the existing access and the access road would not be altered. However, a passing place would be created to the north of the existing access adjacent to Stoney Hills. The appellant has clarified that the existing hedgerow

to the front boundary would be retained. A 1.8m high close boarded fence comprises the boundary treatment to the southern side of the access road, which would be retained. Along the northern side of the access road is a mix of hedging and fencing set back from the access and a wooden post and rail fence to the host dwelling's rear garden which create an open and green appearance.

11. It is proposed to replace the existing boundary treatment along the northern side of the access with a 1.8m high close boarded fence abutting the access. The Landscaping drawing indicates that the fence would extend from the existing access onto Stoney Hills to the end of the host dwelling's rear garden. There appears to be a discrepancy with the drawing as the proposed fence would surround the host dwelling with no vehicular or pedestrian access. Notwithstanding this, the proposed fence would extend for a substantial distance and would have a narrow and enclosed appearance that would be overly dominant and detract from the leafy character of this part of Stoney Hills.
12. I have been directed to an example of a close boarded fence along either side of an access that leads to a recent housing development at 'Oaklands' to support the appellant's appeal. Limited information has been provided regarding this planning approval, however, the evidence before me suggests that a similar close boarded fence was already in-situ prior to the planning approval and planting in front of the fence was proposed as part of the development. It is therefore not directly comparable to the appeal proposal. Furthermore, the site is a significant distance from the appeal site and in any event, I must determine the proposal on its own merits.
13. In conclusion, the proposed development would adversely affect the character and appearance of the surrounding area. It would be contrary to Policy D1 of the Maldon District Approved Local Development Plan 2014-2029, adopted 2017 (LDP) that, amongst other things, seeks to ensure that developments respect and enhance the character and local context, contribute to and enhance local distinctiveness, and contribute positively the public realm around the development. It would also be contrary to the National Planning Policy Framework ('the Framework') that seeks to achieve well designed places.

Character and Appearance – Appeal B

14. The dwelling on plot 1 would be angled within its plot and would front towards the proposed access and the dwelling on plot 2 would be sited so that its side elevation would face towards Stoney Hills. As previously described, the dwellings on plots 2 and 4 would be sited behind the host dwelling, while the dwellings on plots 1 and 3 would be predominantly sited behind the rear gardens of 48 and 50 Mill Road.
15. The expanse of built form on plot 1 visible from Stoney Hills would be greater than the layout of Appeal A. However, the proposed dwelling would be located a substantial distance from Stoney Hills and the narrowness of both the access road and Stoney Hills together with the enclosed character of Stoney Hills would limit views from the road. The proposed dwelling on plot 1 would therefore not be highly prominent in the surrounding area.
16. The Landscaping drawing indicates that the existing hedgerows adjacent to the proposed passing place and adjacent to the southern side of the host dwelling would be retained. A 1.8m high close boarded fence would be erected from the

existing access onto Stoney Hills that would extend to the end of the host dwelling's rear garden. However, gates are proposed to allow access into the front garden of the host dwelling and a new hornbeam hedge is proposed to be planted in front of the existing and proposed close boarding fencing along either side of the access. The existing and proposed hedging would soften the appearance of the proposed fencing and would complement the leafy character of this part of Stoney Hills. Concern has been raised regarding the future retention of the proposed hedging along either side of the access. However, this could be conditioned accordingly.

17. In conclusion, the proposed development would not adversely affect the character or appearance of the surrounding area. It would comply with Policy D1 of the LDP which, amongst other things, seeks to ensure that developments respect and enhance the character and local context, contribute to and enhance local distinctiveness, and contribute positively towards the public realm around the development. It would also comply with the Framework that seeks to achieve well designed places.

Living Conditions of Future Occupiers – Appeal A

18. The proposal would comprise two house designs. The dwellings on plots 1 and 2 would have two bedrooms within the roofspace that would be of a similar size, while the dwellings on plots 3 and 4 would have three bedrooms within the roofspace of varying sizes. The bedroom annotated as 'Bed 2' on plots 1 and 2 and the bedroom annotated as 'Bed 3' on plots 3 and 4 of the proposed floor plan drawings would each be served by two rooflights. To avoid overlooking of neighbouring properties, the rooflights would be set above eye level and therefore the outlook of future occupiers of these bedrooms would be severely limited.
19. The appellant asserts that these bedrooms are not the main bedroom of each property. However, while not labelled 'Bed 1' for plots 1 and 2, it is of a comparable size to bedroom 1 and could accommodate two persons. Likewise, the room annotated as 'Bed 3' for plots 2 and 3 is the smallest of the three bedrooms, however, it could accommodate two persons. Therefore, it is likely that these bedrooms would be occupied as bedrooms and there is nothing to suggest that they would be used more infrequently than the other bedrooms.
20. The appellant asserts that these bedrooms could be switched with the ground floor studies within each house. However, amended drawings have not been submitted for this alteration and there is nothing before me that would prevent these first floor rooms from being utilised as bedrooms by future residents. I have been directed to a planning approval made by the Council in respect of a loft conversion served by rooflights to support the appellant's appeal. However, limited information has been provided regarding this planning approval and therefore I am unable to determine whether it is comparable to the appeal proposal. In any event, I must determine each case on its own merits.
21. In conclusion, the proposed development would have an adverse effect on the living conditions of future occupiers. It would therefore be contrary to Policy D1 of the LDP that, amongst other things, seeks to protect the amenity of surrounding areas taking into account outlook. It would also be contrary to the Framework that seeks to create places with a high standard of amenity for existing and future users.

Integrity of the SPA – Appeal A and Appeal B

22. The appeal site lies within 22km of the SPA, within the of Zone of Influence (ZoI). The SPA is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended ('the Habitats Regulations'). The Habitats Regulations impose a duty on me, as the competent authority, to consider whether the proposal would be likely to have a significant effect on the integrity of the SPA, either alone or in combination with other plans and projects. In 2018, the Court of Justice of the European Union held that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the Framework of an Appropriate Assessment (AA), rather than at the screening stage¹. This responsibility now falls to me as the competent authority.
23. Evidence shows that the SPA is under significant pressure from an increase in the level of public access for recreation, and disturbance of birds and their habitats, as a result of urban development. The proposed development has the potential to impact on the integrity of the SPA, through increased recreational disturbance. The increase in recreational pressure can lead to an increase in wildfires, damaging recreational uses, the introduction of incompatible plants and animals, loss of vegetation and soil erosion. Accordingly, disturbance by humans and their pets, amongst other factors, can have an adverse effect on the SPA.
24. There would be a likelihood of future occupiers visiting the SPA. The proposed development would be likely to result in recreational disturbance to the bird populations. I therefore conclude that the proposal, particularly when combined with other development in the area, would have a significant effect on these habitat designations through increased disturbance arising from recreational activity.
25. The Habitats Regulations state that permission may only be granted after I have ascertained that the development will not affect the integrity of the SPA. As part of my assessment, I must therefore consider whether the impact of the development could be mitigated. The Council has been operating a strategy for the protection of the SPA, which is set out in the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy Supplementary Planning Document, adopted 2020 (SPD). The SPD identifies that mitigation could include the management of recreational activities, education and communication, access/visitor management and habitat creation.
26. The Council has stated that the appellant has paid the relevant financial contribution per dwelling directly to them towards the Recreational disturbance Avoidance and Mitigation Strategy (RAMS) to mitigate any adverse impacts of the development on the SPA. They state that the harm to off-site nature conservation interests has therefore been adequately mitigated. However, for schemes of 10 or fewer dwellings, the SPD requires the RAMS payment to be secured by a unilateral undertaking (UU) and details the information that should be included with the UU which should be submitted when the planning application is submitted to the Council. No receipt has been provided to confirm that the money has been paid to the Council. Even if the Council was able to verify the payment, I have not been provided with a signed UU to ensure the

¹ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

money would be used for the RAMS. Consequently, the payment would not be properly secured, and therefore I am unable to give it any weight.

27. In conclusion, insufficient information has been submitted to verify that the proposal would not harm the integrity of the SPA. The proposal is therefore contrary to Policy D1 of the LDP which, amongst other things, seeks to ensure that developments make a positive contribution in terms of the natural environment particularly in relation to designated and non-designated sites of biodiversity value. The proposal would also be contrary to the SPD.

Planning Balance – Appeal A and Appeal B

28. The Council has stated that it is unable to demonstrate a five-year housing land supply of deliverable housing sites. Therefore, the relevant policies for the supply of housing cannot be considered up to date and paragraph 11(d) of the Framework is engaged which states, “where the policies which are the most important for determining the application are out-of-date, granting planning permission unless:

- (i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
- (ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework as a whole”.

29. The appeal site is located within the ZoI of specific sites afforded protection under the Habitats Regulations. This is a protected area by definition of Footnote 7 of paragraph 11(d)(i). As previously stated, I cannot rule out that the proposal would not harm the integrity of the SPA. Consequently, the application of policies in the Framework that protect habitats and biodiversity provide a clear reason for refusing the development proposed and the proposal would not benefit from the presumption in favour of sustainable development detailed in paragraph 11 of the Framework.

Conclusion

30. For the reasons set out above, having regard to the development plan as a whole and all other relevant material considerations, I conclude that Appeal A and Appeal B should be dismissed.

A Berry

INSPECTOR