



Appeal Decision

Site visit made on 3 January 2024

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 February 2024

Appeal Ref: APP/P1560/W/23/3322089

Site adjacent to Nuestra Casa, Wrabness Road, Ramsey, Harwich, Essex CO12 5HG

- 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 Paul Cuckow and Mrs Jackie Griffin against the decision of Tendring District Council.
 - The application Ref 22/01444/FUL, dated 23 August 2022, was refused by notice dated 22 February 2023.
 - The development proposed is detached dwelling & garage/cartlodge.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposed development has been screened in accordance with the Environmental Impact Assessment (EIA) Regulations 2017. It has been concluded that the development would not be of a scale and nature likely to result in a significant environmental impact and EIA is therefore not required.
3. Following submission of the appeal, the revised National Planning Policy Framework (the Framework) was published on 19 December 2023 and updated on 20 December 2023. The parts of the Framework most relevant to the appeal have not substantively changed from the previous version. Consequently, this update to national policy does not fundamentally alter the main parties' cases or prejudice their position at appeal, and it is not necessary to seek further comments.
4. The appellants suggest that they would be willing to reposition the proposed buildings or switch them around so that the garage would sit closest to the Nuestra Casa boundary. They have also offered to reduce the scale of the garage/cartlodge. However, no detailed plans are before me showing such amendments and accepting the principal of such alterations would deprive those who have an interest in the proposal from a chance to comment. Therefore, having regard to the Holborn Studios Ltd judgement¹, I have based my assessment on the same drawings that were before the Council when it made its decision.

Main Issues

5. The main issues are:

¹ Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

- (i) whether the appeal site is sustainably located having regard to the requirements of the development plan and the Framework;
- (ii) the effect of the proposal on the character and appearance of the area;
- (iii) whether the proposal would be acceptable in terms of flood risk having regard to local and national policy.

Reasons

Location

6. Policy SP 1 of the Tendring District Local Plan (Section 1 2021 and Section 2 2022) (LP) and the Framework set out a presumption in favour of sustainable development.
7. Policy SP 3 (Spatial Strategy for North Essex) of the LP confirms that existing settlements will be the principal focus for additional growth across North Essex. It also states that development will be accommodated within or adjoining settlements according to their scale, sustainability and existing role both within each individual district and, where relevant, across the wider strategic area.
8. Policy SPL 1 (Managing Growth) of the LP sets out a settlement hierarchy and includes Ramsey Village amongst a list of smaller rural settlements. The supporting text to this policy confirms that these smaller villages are considered to be the least sustainable locations for growth and that small scale increases in housing stock are envisaged over the plan period at these settlements.
9. The evidence before me indicates that the appeal site sits outside, and adjacent to, the settlement development boundary (SDB) for Ramsey. Policy SPL 2 (Settlement Development Boundaries) confirms that outside of SDBs proposals will be considered in relation to the pattern and scales of growth promoted through the settlement hierarchy in Policy SPL 1 and any other relevant policies in the LP. The supporting text to SPL 1 indicates that the SDB was drawn flexibly to allow for small scale increases to happen within and on the edge of villages. Therefore, the LP does not include a blanket restriction on development outside the SDB. A single dwelling just outside the SDB resonates with these principles subject to its compliance with other policies in the LP.
10. The site is located in close proximity to the public footway into the village. However, there are only limited services and facilities in Ramsey and therefore it is likely that occupants would need to travel further afield in order to meet their day-to-day requirements. Bus services in the village would provide an alternative option to the private motor vehicle. Therefore, I find that the site is reasonably sustainable from an accessibility perspective.
11. However, I understand that the site is situated within an area designated as a 'Coastal Protection Belt' (CPB) in the LP. Policy PPL 2 confirms that within the CPB planning permission will be refused for development which does not have a compelling functional or operational requirement to be located there. The supporting text to this policy confirms that the district contains areas which are under threat from coastal erosion and that the policy is intended to protect landscape character, but also to serve a further purpose in helping to ensure that any new development which does not need to be located within that area

is directed to more sustainable locations. This is consistent with the Framework which seeks to reduce risk from coastal change and at paragraph 177 confirms that plans should be clear as to what development will be appropriate in such areas and in what circumstances.

12. The appellant's personal desire to build a house on their land is not a compelling functional or operational reason to locate the dwelling in an area identified as being under threat from coastal erosion. This is particularly so given that there is nothing before me to suggest that the housing situation in the district is such that there is a pressing need to accommodate housing in the CPB and away from the more sustainable locations higher up the settlement hierarchy. For this reason, despite my observations in respect of the proposal's locational context with Ramsey, it conflicts with the overall strategic objectives of the LP.
13. I conclude, the proposal would not be sustainably located having regard to the locational requirements of the LP including the explicit requirements in Policy PPL 2 (Coastal Protection Belt) of the LP. In reaching this finding, I am also mindful that the Framework confirms that the planning system should be genuinely plan-led.

Character and appearance

14. The appeal site sits at a transition point on Wrabness Road where the linear built form of the village tapers off from a line of bungalows into a more open arable landscape. From my own observations on site, the mature hedges to the boundaries with Wrabness Road and a neighbouring Public Right of Way, together with its context adjacent to existing ribbon development, limits the site's scenic quality. Nevertheless, its prevailing open and soft landscaped attributes are inherently part of the rural surrounds of the settlement and the open character of the CPB.
15. The proposal would undoubtedly alter the site from a rural aesthetic to one of a domestic appearance. I understand that a previously dismissed appeal on the site² was for two detached dwellings of two-storey height. In this instance, the proposal would be more akin to the scale and density of neighbouring buildings where the village tapers off towards the countryside. The plans also indicate that the site's mature hedges could be retained and would read as a natural feature marking the extent of the village. Consequently, the effects on the appearance of the area would be tempered by the scheme appearing as a natural extension of the linear pattern of development along Wrabness Road. Nevertheless, there would be a modest adverse effect on the open character of the CPB.
16. I conclude, the proposal would have a modest adverse effect on the open character of the CPB. In that regard it would conflict with the character requirements of Policies PPL 2 (Coastal Protection Belt) and SP 7 (Place Shaping Principles) of the LP.

Flood Risk

17. Paragraph 165 of the National Planning Policy Framework (the Framework) states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. Paragraph

² LPA Ref 20/00304/FUL

- 168 of the Framework confirms that the aim of a sequential test is to steer new development to areas with the lowest risk of flooding and that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
18. Policy PPL 1 (Development and Flood Risk) of the LP endorses the Framework's 'sequential test' requirements and confirms that in cases where new development cannot be located in an area of lower flood risk and is otherwise sustainable, the exception test will be applied.
19. The evidence before me indicates that the site is situated within tidal Flood Zone 3a and 2 and therefore is classed as having a high probability of flooding. Dwellings are classified as being of a 'more vulnerable' development in the Planning Practice Guidance³ (PPG). In these circumstances, the proposal is required to pass the sequential and exception tests. Paragraph 024 of the PPG confirms that only where there are no reasonably available sites in Flood Zones 1 (low-risk) or 2 (medium-risk) should the suitability of sites in Flood Zone 3 (high-risk) be considered.
20. The appellant has a desire to live on the appeal site as they own it and contends that the cost of purchasing a site outside of the flood zone would be prohibitive. However, these are personal matters which do not override the above national and local policy requirements when considering more vulnerable development in the flood zone. There is no evidence before me to suggest that there are no sequentially preferable sites for a dwelling in the district at lower risk of flooding.
21. The exception test should only be applied if it is not possible for development to be located in zones with a lower risk of flooding. Therefore, the flood mitigation measures detailed in the appellant's Flood Risk Assessment (ref. 2932/RE/08-22/01 August 2022), do not overcome the fact that the sequential test has not been passed.
22. I conclude that it has not been demonstrated that there are no reasonably available sites in areas at lower risk of flooding. In that regard the development would not be acceptable having regard to the flood risk requirements in Policy PPL 1 of the LP and the Framework. This also further indicates that the appeal site is not a suitable location for the proposal.

Other Matters

23. The appellant has not provided any clear evidence to suggest that the Council cannot demonstrate a 5-year supply of deliverable housing land. At the time of the Council's decision the housing land supply stood at 6.5 years and there is nothing to suggest that there has been a significant change in the situation since then. Therefore, in accordance with the requirements of s38(6) of the Planning and Compulsory Purchase Act (2004), the appeal must be determined in accordance with the development plan unless material considerations indicate otherwise.
24. The Framework recognises the need to provide housing for different groups including for people wishing to commission or build their own homes. Notwithstanding that there is no planning obligation before me by which to secure the plot for self-build purposes, there is no evidence to suggest that the

³ PPG: Table 2: Flood Risk Vulnerability Classification

Council is not meeting demand for such plots on its self-build register. Furthermore, Ramsey as a 'smaller rural settlement' is not identified as a location where self-build and custom-build homes will be considered under Policy LP7 (Self-build and Custom-build Homes) of the LP. Overall, the potential for the site to deliver a self-build plot therefore carries limited weight in this instance.

25. While there was an existing container on the site at the time of my visit, the land is predominantly open and grassed and devoid of any substantial permanent structures. Consequently, I find that the site does not have attributes which would indicate that it should be considered as previously developed land having regard to the definition under Annex 2 of the Framework.
26. While a thermally efficient building incorporating green technologies and would be commendable, in the context of a single dwelling, the environmental credentials of the proposal would not be substantial.
27. The appellant suggests that they could build outbuildings such as stables and a menage under permitted development rights. There is no substantive evidence before me to suggest such development would be lawful. My attention has also been drawn to existing stables on a neighbouring site. In any case, such developments are not comparable to the domestic character and appearance of the appeal proposal.
28. The appellants have suggested that they would be willing to make a contribution to open spaces and sports delivery improvements. The Council has confirmed that such a contribution would be necessary. In any case, this does not address or justify the harm identified under the main issues.
29. The appeal site lies within the 'Zone of Influence' for one or more of the European designated sites scoped into the emerging Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS). In particular, the site lies within the Zone of Influence (ZoI) for the Special Protection Area, Special Area of Conservation and Ramsar site for the Stour and Orwell Estuaries to protect wading birds and wildfowl. These are also designated sensitive areas as defined by the EIA Regulations.
30. The LPA carried out a Habitats Regulations Assessment (HRA) which concluded that with mitigation, the proposal would not have an adverse effect on the integrity of the European sites included within the Essex Coast RAMS. I understand that a proportionate financial contribution would usually be sought in line with the Essex Coast RAMS requirements. The appellant has provided a Unilateral Undertaking with provisions for a RAMS contribution. As the competent authority, the onus would usually be on me to carry out an Appropriate Assessment as part of this appeal, including consideration of any mitigation put forward. However, as I am dismissing the appeal, it has not been necessary to consider this matter any further.

Conclusion

31. The location of the dwelling in the CPB would conflict with the clear spatial and protection of open character requirements of the development plan. Paragraph 12 of the Framework confirms that where a planning application conflicts with

an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted.

32. Moreover, the proposal conflicts with the requirements of the development plan and the Framework in respect of flood risk and this further indicates the site is not an appropriate location for the proposed development.
33. The other material considerations that have been advanced do not justify a decision other than in accordance with the development plan which, in terms of my conclusions under the main issues, the appeal scheme would clearly conflict. Therefore, for the reasons set out, I conclude that this appeal should be dismissed.

M Russell

INSPECTOR