



Appeal Decision

Site visit made on 15 April 2024

by Chris Couper BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17.05.2024

Appeal Ref: APP/C1570/W/23/3333221

Cranwellian, The Street, Takeley, Essex CM22 6NB

- 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 and Mrs Tear against Uttlesford District Council.
 - The application Ref UTT/23/2080/FUL is dated 12 August 2023.
 - The development proposed is described as 'rebuilding of dwelling following total loss due to fire and the erection of single storey rear extensions approved previously but not erected prior to fire'.
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Decision

1. The appeal is dismissed and planning permission is refused.

Application for costs

2. An application for costs was made by Mr and Mrs Tear against Uttlesford District Council. This application is the subject of a separate decision.

Background and Procedural Matters

3. The application seeks the replacement of a dwelling that stood on the site until a fire in May 2023. As depicted on the submitted drawings, the proposed dwelling would be of the same size and appearance as the dwelling that previously stood on the site, and it would be in the same location. However, it would include a rear extension with an enclosed swimming pool, which was granted planning permission in March 2023 under Ref: UTT/18/1974/HHF ('the extension application'), but which had not been constructed by the time of the fire. I have dealt with the appeal on this basis, and if there are other structures on site which the Council maintains are unauthorised, that is a matter for it to address separately.
4. Section 78 of the Town and Country Planning Act 1990 provides that an applicant may appeal if the Council has not given notice of its decision on a planning application within the statutory period (or within an extended period if agreed in writing). The Council did not issue a decision in this case; and neither has it provided an appeal statement or putative concerns in connection with this appeal.
5. That said, having regard to the evidence submitted by the appellants, which includes correspondence with the Council, together with responses by consultees, and representations by interested parties, the broad principle of a replacement dwelling on the site does not appear to be in dispute.

6. However, having regard to the submitted evidence, contamination risks associated with former uses of the site, surface water drainage and flood risk, and the impact on a statutorily designated nature conservation site, are significant unresolved matters. I have framed the main issues in the appeal accordingly.
7. Finally, the revised National Planning Policy Framework was published in December 2023 ('Framework'). Having regard to the main issues in the appeal, there are no material differences between it and the now superseded version. It is therefore the current version that I refer to in my reasoning, rather than the superseded version which was in place at the time the appellants provided their statement of case.

Main Issues

8. The main issues are whether or not the proposal appropriately addresses matters relating to:
 - land contamination;
 - surface water drainage and flood risk; and
 - the impact on a statutorily designated nature conservation site.

Reasons

Land contamination

9. The Planning Practice Guidance 'Land affected by contamination' ('PPG') sets out that whilst responsibility for securing a safe development rests with the developer and/or landowner, local planning authorities should be satisfied that a proposed development will be appropriate for its location and will not pose an unacceptable risk.
10. It continues at ID:33-007-20190722 that if there is a reason to believe contamination could be an issue, applicants should provide proportionate but sufficient site investigation information prepared by a competent person to determine the existence or otherwise of contamination, its nature and extent, the risks it may pose and to whom/what, so that these risks can be assessed and satisfactorily reduced to an acceptable level.
11. The application the subject of this appeal was accompanied by a Report on Ground Investigation prepared by Sue Slaven in November 2018 ('the RGI'). Although I note that the Council validated this scheme with that RGI, it is clear that it was prepared in connection with the extension application.
12. Having regard to the RGI, including its references to earlier reports, and to detailed evidence submitted at application and appeal stages by the nearby residents of Hawthorns and 3 Stane Cottages ('local representations'), I understand that a previous owner accepted consignments of waste from local hauliers, which comprised predominantly clay, but with some road planings and other materials, and that this was used to raise ground levels on parts of the site. Additionally, the RGI references a bungalow which previously stood on the site and was also destroyed by a fire, and which may be buried on part of it. The local representations include a description, timeline and photographic evidence of those activities.

13. The RGI included the excavation of three trial pits, which found a mix of made-ground comprising gravel, concrete, brick, glass, tarmac, plastic and wood, overlying gravelly clay/sand. Loose fibres of asbestos were detected at one location; but no metals, polycyclic aromatic hydrocarbons, or petroleum hydrocarbons, above the relevant generic assessment criteria thresholds were detected. On that basis, the Council granted planning permission for the extension application subject to conditions relating to land contamination and drainage. The appellants maintain that the same approach should apply to this scheme.
14. At the time of my visit, only the footprint of the former house that stood on the site remained. The appellants assert that the replacement house will be built on the existing foundations, subject to Building Control approval, and state that it is therefore unlikely that any excavations other than those associated with the extension application would be required.
15. However, I observed on my visit that the existing materials around ground level on the footprint of the former house were broken up in places, and I have no cogent evidence before me, such as a structural engineer's report, to demonstrate that the foundations of the former house were not significantly damaged in the fire. Thus, I cannot be certain that they would provide an appropriate basis on which to build the new structure.
16. At paragraph 5.2.1, the RGI is clear that its recommendations were based on the information obtained from the ground investigation carried out in the context of a proposed house extension. As depicted on the plan at Figure 1 of the RGI, the trial pit locations were therefore, understandably, close together and within the footprint of that proposed development.
17. On that basis, whilst the RGI provides a starting point for determining what is present on parts of the site, it does not provide a suitably accurate assessment of the nature and extent of any contamination that may lie beneath the site of the former house, nor what risks it may pose, and how these can be satisfactorily reduced to an acceptable level.
18. The applicants state that the proposal would utilise the existing drainage system. In support of their application, they submitted a Proposed Swimming Pool and Site Drainage Report by Intermodal Transportation Limited (Amended December 2022) ('the SDR'). The SDR discusses the foul and surface water regime across the whole site, including the house, stable block, and associated land, although its focus is the extension application, and it concludes that there is a suitable drainage plan in place to permit its construction without adversely affecting the surrounding areas.
19. In an email dated 1 November 2023, the appellants state that drawing no. IT2353/DS/02 and the SDR detail exactly how the drainage across the site works. However, it is clear to me that that drawing and the SDR only show how drainage appeared to operate, with foul drainage discharging into a ditch around the site's northern boundary via a package treatment plant, water from the former house and garage roofs 'assumed to connect into foul drainage', and a catchpit not believed to be connected to any building or drain, and of unknown purpose. In fact, the SDR notes at paragraph 5.8 that the drainage paths have not been exhaustively proven.

20. At paragraph 4.1.5, the RGI observed that in the absence of leachability tests and collection of water samples, pollution risks to groundwater and surface water could not be directly assessed. The Environment Agency in its consultation response to the extension application dated 23 December 2022, observed that whilst it would be content with limited water disposal from the swimming pool to a ditch following several days storage in a holding tank, it would not support infiltration through potentially contaminated soils on the site unless it could be demonstrated that this would not result in a deterioration in groundwater quality.
21. For the above reasons, and given the considerable uncertainty regarding the proposed means of surface water disposal, the extent and nature of land contamination, and whether the existing foundations could be re-used, I am not persuaded that pollution of ground or surface water would not arise as a result of this scheme, including during its construction.
22. The Environmental Protection Officer's consultation response to this application indicates that, assuming all queries and concerns regarding foul and surface water drainage are addressed, and that there would not be increased water infiltration into land that could result in the increased mobilisation of contaminants, the scheme would be acceptable, subject to conditions relating to excavation works and contamination. However, for the above reasons, such concerns have not been appropriately addressed, and the matter of potential contamination could not therefore be dealt with by means of conditions as suggested.
23. Summing up on this issue, I am not persuaded that the proposal would not present unacceptable risks in terms of land and water contamination. Consequently, the scheme would not comply with the advice in the PPG; and I cannot be sure that it would satisfy those parts of Uttlesford Local Plan 2005 ('ULP') Policy GEN2 which require development to provide an environment which meets the reasonable needs of all potential users, and which minimises its environmental impact on neighbouring properties by appropriate mitigating measures.

Surface water drainage and flood risk

24. Amongst other things, ULP Policy GEN3 sets out that for all areas where development will be exposed to, or may lead to, an increase in the risk of flooding, applications shall be accompanied by a full flood risk assessment which sets out the level of risk associated with the proposed development, and which will demonstrate the effectiveness of the flood mitigation measures proposed. The Framework sets out at paragraph 173 that when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere.
25. The SDR sets out that the site is located within Flood Zone 1, which is the lowest classification for fluvial flooding. However, the local representations, supported by photographic evidence, refer in considerable detail to instances of flooding on and around the site, which they claim is partly as a result of ditches overflowing, causing excess water to flow downhill from the site through neighbouring gardens and outbuildings.
26. The appellants maintain that drainage from the replacement dwelling would connect to the existing drainage system, and that conditions 6 and 12 imposed

on the extension application could be re-applied. However, those conditions only address water discharge from the swimming pool and from the extension roof. In my view, and on the basis of the available evidence, there remains considerable uncertainty regarding how the surface water regime operated on the site prior to the fire, and how effective it was; and I am not persuaded from the available evidence that simply discharging surface water to the ditch without, for instance, any form of attenuation would not exacerbate flood risks.

27. Thus, given the site's planning history and substantive evidence from interested parties regarding flooding events on the site and on nearby land, in the absence of further evidence, I am not satisfied that the provision of a scheme of surface water drainage is a matter that could be appropriately dealt with by means of planning conditions as suggested. Consequently, the proposal does not adequately address surface water flooding issues, and it would thereby conflict with ULP Policy GEN3 and with paragraph 173 of the Framework.

The impact on a statutorily designated nature conservation site

28. As part of their application, the appellants submitted a Preliminary Ecological Appraisal by Open Spaces Landscape Architects ('PEA'). It identified that the site is within 5km of Hatfield Forest and Thorley Flood Pound Sites of Special Scientific Interest ('SSSI'), but that re-constructing one dwelling would not adversely impact statutorily designated locations. Having regard to the PEA, the Council's Assistant Ecological Consultant raised no objections to the application subject to conditions.
29. On the basis of the plan at Appendix 2 of the PEA, and the Council's email dated 6 October 2023, the site borders the Hatfield Forest SSSI. In its consultation response, Natural England indicates that impacts on that statutorily designated nature conservation site are likely. However, the scope of the PEA was largely to assess the likely presence of protected species on the site, and until an appropriate drainage strategy has been submitted, I am unable to assess what the potential off-site impacts on the SSSI would be, particularly as a result of potentially contaminated water discharge.
30. As a result, I am unable to conclude whether or not the scheme would comply with ULP Policy GEN7 which states that development which would have a harmful effect on wildlife features will not be permitted unless the need for the development outweighs the importance of the feature to nature conservation.

Other matters

31. I note the appellants' dissatisfaction with the Council's handling of their application, with particular regard to delays and requests for additional information, and the upset that the delays are causing them. However, I have dealt with the application before me on its planning merits, and I have also found that the submitted evidence is insufficient to demonstrate that potentially harmful impacts can be adequately addressed.

Conclusion

32. Summing up, I appreciate that the scheme involves the replacement of a dwelling that previously stood on the site, with a building of the same size and design, and in the same location. Whilst the appellants feel that they have been unfairly treated by the Council as a result of events prior to their

ownership of the site, that history has a significant bearing on the site's characteristics and the evidence that is therefore required to demonstrate that a replacement dwelling would not pose unacceptable risks.

33. For the above reasons, I am not persuaded that the submitted evidence is sufficient to demonstrate that matters related to land contamination, drainage and flood risk, and the impact on a statutorily designated nature conservation site, have been appropriately addressed.
34. Consequently, and having regard to all other matters, the appeal is dismissed and planning permission is refused.

Chris Couper

INSPECTOR