



Appeal Decision

Site visit made on 16 April 2024

by L Francis BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 May 2024

Appeal Ref: APP/D1590/W/23/3332965

5 Smallholdings, Eastwoodbury Lane, Southend-on-Sea SS2 6UZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Brian Harding against the decision of Southend-on-Sea City Council.
 - The application Ref is 22/01881/FUL.
 - The development proposed is a two-storey single dwelling situated on the land east of 5 Smallholdings.
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Decision

1. The appeal is allowed and planning permission is granted for a two-storey single dwelling situated on the land east of 5 Smallholdings, at 5 Smallholdings, Eastwoodbury Lane, Southend-on-Sea SS2 6UZ in accordance with the terms of the application, Ref 22/01881/FUL, subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Mr Brian Harding against Southend-on-Sea City Council. This application is the subject of a separate decision.

Procedural Matter

3. The appeal site falls within the Zone of Influence of several European designated sites scoped into the Essex Coast Recreational disturbance Avoidance Mitigation Strategy (RAMS). The relevant designated sites include the Blackwater Estuary Special Protection Area (SPA) and Ramsar site, Benfleet and Southend Marshes SPA and Ramsar site, Dengie SPA and Ramsar site, Foulness Estuary SPA and Ramsar site and the Crouch and Roach Estuaries SPA and Ramsar site. Although not forming part of the Council's reasons for refusal, it is incumbent on me as competent authority to consider whether the proposal would be likely to have a significant effect on the integrity of the SPA and Ramsar sites. It is necessary to consider this matter as a main issue.

Main Issues

4. The main issues are the effect of the appeal proposal on:
 - the supply of best and most versatile agricultural Land (BMVAL);
 - the green buffer to the south of Eastwoodbury Lane and future use as public open space; and,

- the integrity of the SPA and Ramsar sites.

Reasons

Supply of Agricultural Land

5. Eastwoodbury Lane is lined, on its north side, by suburban development. The south side contains some sporadic development in the form of semi-detached former smallholders' cottages set within large plots. These cottages are surrounded by fields which form a substantial green space. The appeal site comprises a small plot of land to the east of 5 Smallholdings. The plot is well defined by close boarded fencing, hedges and trees, though is largely screened from public view by a line of conifers to the front boundary. The plot is mostly laid to lawn. It is visually distinct from the fields to the east and rear of the plot due to the boundary treatments and pattern of planting.
6. The proposal involves the erection of a two-storey chalet style detached house with hardstanding for parking and a vehicular access to Eastwoodbury Lane.
7. The development plan designates the site as best and most versatile agricultural land (BMVAL). Policy CP5 of the Southend-on-Sea Core Strategy 2007 (Core Strategy) seeks to protect BMVAL from irreversible damage where this is consistent with the full range of sustainability considerations.
8. The Council maintain that no evidence has been provided to demonstrate the land could not easily be used again for agricultural purposes. Conversely, no substantive evidence has been provided which would indicate there was a reasonable prospect of it being brought into agricultural use. The site is a 0.07ha parcel of land with defined boundaries in separate ownership to the surrounding land. The appellant maintains that the separate ownership of parcels of land adjacent would mitigate against there being a reasonable prospect of the appeal site being brought into commercial agricultural use. It is pertinent that the land is not currently cultivated as agricultural land. It is in a suburban location in close proximity to other residential development and the configuration and appearance of the site reads more as a residential plot than agricultural land.
9. The loss of such a small area of BMVAL which is not currently in agricultural use and which is adjacent to existing residential dwellings would not prejudice the potential future agricultural use of the remaining undeveloped land surrounding the appeal site. As such, there would be very limited harm as a result of the loss of this small parcel of land designated as BMVAL.
10. Whilst the appeal proposal would conflict with the protection afforded to BMVAL by Policy CP5, the magnitude of this conflict would be limited for the reasons outlined above.

Green Buffer

11. The appeal site also falls within a public open space designation set out by the London Southend Airport & Environs Joint Area Action Plan 2014 (JAAP). Policy ENV3 of the JAAP classifies the land as a green buffer and states that no development will be allowed in this area. The JAAP sets out that the purpose of the green buffer is to ensure that there is a green space maintained to the south of Eastwoodbury Lane as well as to help protect the amenity of neighbouring residents. Policy CP4 of the Core Strategy sets out a range of

principles to guide sustainable development, including protecting and enhancing all open areas whose townscape and amenity value is important to the surrounding areas.

12. Given the small scale of the appeal proposal and its location next to two existing dwellings, the proposal would not prejudice the use of any of the significant surrounding green space for future public use. The proposed house would be read in the street scene as part of the existing island of residential development formed by the houses at nos 5 and 6 Smallholdings. Given its location and size, the appeal site does not contribute in a significant way to the open space to the south of Eastwoodbury Lane in townscape terms. The proposal would therefore have a very limited effect upon the function of the undeveloped land to the south of Eastwoodbury Lane as a green buffer.
13. Whilst there would be conflict with the open space designation afforded by Policy ENV3 of the JAAP and the open space protection afforded by Core Strategy Policy CP4, given the scale of the appeal proposal as outlined above, the degree of conflict is limited.

Designated sites

14. The appeal site falls within the Zone of Influence of several European designated sites scoped into the Essex Coast RAMS, as described above. The RAMS forms a Supplementary Planning Document adopted in 2020 (SPD). All these sites are designated due to the internationally important numbers of breeding and non-breeding birds and their coastal habitats.
15. The Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations) requires the decision maker to undertake an Appropriate Assessment (AA) where there are likely significant effects from the proposal, either alone or in combination with other plans or projects. This responsibility falls to me as the competent authority in the context of this appeal.
16. The Essex Coast 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 Ramsar sites.
17. The appellants have indicated that they have made a contribution of £163.86 to fund the Essex Coast RAMS for the single additional dwelling proposed. The Council have confirmed receipt of the payment. This approach can be problematic as there is no obligation on the Council to spend the money as envisaged and in a particular timescale. However, the evidence before me indicates that the funds have been received by Southend-on-Sea City Council, which is the organisation responsible for administering the mitigation strategy. Therefore, I am satisfied that the mitigation measures have been secured and would be used for their intended purpose.
18. The contribution would be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development, in accordance with Regulation 122 of the Community Infrastructure Levy Regulations. As such, the

contribution toward the mitigation schemes would count as mitigation toward maintaining the integrity of the sites.

19. I am therefore satisfied that with the funding for the proposed mitigation measures in place, the proposal would not have an adverse effect on the SPA and Ramsar sites identified. The proposal would therefore comply with the Habitats Regulations.

Other Matters

20. My attention has been drawn to an outline planning permission¹ granted at no. 1 Smallholdings, which is located some way to the east of the appeal site. The permission is for 9 dwellings. It is directly adjacent to land that is already developed as housing. The immediate context of the surrounding land is different to the appeal site, but the permission is a relevant consideration in that the site was designated as BMVAL and was a larger area of land than the appeal proposal. I attach moderate weight to this decision given that there are some similarities with the appeal in terms of the principle of the loss of BMVAL for residential development. In any event I have determined the appeal on its own merits.
21. The proposed house would comply with the relevant space standards, both internal and external, set out in the development plan and Nationally Described Space Standards. In terms of the effect of the proposals upon the living conditions of neighbouring residents, I am satisfied that there would be sufficient separation from nearby houses both adjacent and opposite, to avoid an unacceptable degree of overlooking, loss of outlook or loss of daylight or sunlight to any neighbouring residential windows.
22. I note that the highway authority has not raised any objection to the principle of a new dwelling in this location and that the proposed parking spaces comply with the standards set out in the development plan. I have no reason to disagree with the Council's assessment that the proposal would not have any material impact upon the safety or operation of the public highway.
23. A preliminary ecological assessment submitted with the appeal indicates that whilst the site offers little opportunity for bat roosts, the hedges and trees offer good opportunities for foraging. In terms of mitigation the survey recommends the provision of bat boxes on site.

Planning Balance

24. As set out above, although the harm I have identified is limited, the proposal conflicts with the development plan, specifically Policies CP4 and CP5 of the Core Strategy and ENV3 of the JAAP which taken together aim to protect the BMVAL and prevent development in the green buffer to the south of Eastwoodbury Lane. I have afforded this conflict limited weight, for the reasons outlined above.
25. Whilst the proposal would only deliver one dwelling, this would nonetheless be valuable in boosting the housing stock. The proposal is located within an area where there is good access to facilities and employment. Socio-economic benefits would also stem from employment associated with the construction phase and future occupants would bring some trade to nearby shops and

¹ Reference 21/02034/OUT

services. The scheme would also deliver biodiversity and sustainability benefits through a planting scheme and the provision of bat boxes, along with some provision of renewable energy generation, secured by condition.

26. The Council acknowledges that they cannot demonstrate a 5-year supply of deliverable housing sites and state that the reported supply is equivalent to 4.18 years. Therefore, paragraph 11d)ii of the Framework is applicable. In these circumstances footnote 8 of the Framework establishes that the policies which are most important for determining the application are deemed out-of-date. Consequently, permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
27. As set out above, the identified benefits associated with the delivery of one good sized residential unit, given the Council's housing supply position, would be moderate. There is also support within the Framework for housing development on small sites. The dwelling would accord with the aims of the Framework to achieve well-designed and beautiful places as well as enhancing biodiversity.
28. When assessed against the policies in the Framework as a whole, the limited weight I have attributed to the conflict with the development plan would not significantly and demonstrably outweigh the benefits of an additional home in a suitable location which would preserve the appearance of the area and provide biodiversity enhancements. The presumption in favour of sustainable development applies and this indicates that permission should be granted.

Conditions

29. The Council has provided some suggested conditions which I have considered against advice in the Framework and Planning Practice Guidance; as a consequence I have amended or omitted some of the suggested wording. I have attached the standard time limit condition (1) and a plans condition (2) as this provides certainty. Condition 3 requires a tree protection plan and arboricultural method statement, to ensure the trees to be retained on site are protected during construction. It is a pre commencement condition to which the appellant has agreed. A condition (4) requiring replacement tree planting, at the Council's stated ratio of two planted for every one removed, is necessary in the interests of the character and appearance of the area. Condition 5 requires details of hard and soft landscaping, along with boundary treatments and biodiversity enhancements. This is necessary to ensure a satisfactory appearance and to enhance biodiversity.
30. I have added a condition concerning materials to ensure a satisfactory appearance (6). Condition 7 requires a surface water drainage scheme and is necessary to ensure surface water run-off is managed and flood risk minimised. Condition 8, requiring details of bicycle and refuse storage, is necessary in the interests of extending sustainable transport options and providing appropriate living conditions for future occupiers.
31. I have amended the Council's suggested conditions requiring compliance with the ecological assessment's recommendations and details of biodiversity enhancement. The ecological assessment's recommendations for mitigation and enhancement concern the provision of bat boxes, along with a native planting strategy. Condition 9 requires the provision of bat boxes; whilst biodiversity

enhancement through planting is already referenced in condition 5 as part of the landscaping details.

32. Condition 10 is necessary to ensure water efficiency; condition 11 is necessary to ensure that the development meets the access needs of future occupiers. Condition 12 ensures the proposed parking area is provided and is necessary in the interests of highway and pedestrian safety. I have removed the Council's reference to electric vehicle charging points since this matter falls under the Building Regulations. Condition 13 requiring at least 10% of the energy needs to be met through on-site renewable energy as required by the development plan, is necessary in the interests of carbon reduction. Condition 14 restricts hours of construction works and is necessary to protect the living conditions of nearby residents.

Conclusion

33. The proposal would not accord with the development plan, but material considerations, particularly the presumption in favour of sustainable development, outweigh this conflict. For the reasons given above, the appeal should be allowed.

L Francis

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: 001 Rev 04; 002 Rev 05; 003 Rev 03.
3. No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) including the street trees shown on drawing number 002 Rev 05 and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.
4. Prior to the first occupation of the dwelling, a full specification of all proposed tree planting shall be submitted to and approved in writing by the local planning authority. The specification shall include the quantity (at a minimum ratio of two additional trees for every one lost), size, species, and positions or density of all trees to be planted, how they will be planted and protected. The tree planting shall be carried out in accordance with the approved specification within the first planting season following first occupation of the approved dwelling. Any new tree which dies, is severely damaged, becomes seriously diseased or is removed within 5 years of planting shall be replaced by a tree of a similar size and species to that originally planted.
5. Prior to the first occupation of the dwelling, details of a hard and soft landscaping scheme shall be submitted to and approved in writing by the local planning authority. These details shall include:
 - a) Hard landscaping materials, including samples.
 - b) Soft landscaping details including existing planting to be retained, the species, size and density of proposed new planting.
 - c) Boundary treatments.
 - d) Biodiversity enhancement measures.

The landscaping, with the exception of new planting, shall be carried out in accordance with the approved details prior to first occupation of the dwelling and maintained for the lifetime of the development.

The new planting shall be provided and completed in accordance with the approved details prior to the end of the first planting season following completion of the development and maintained for a period of 5 years from the date of planting. Any new planting which dies, is severely damaged, becomes seriously diseased or is removed within that period shall be replaced by planting of a similar size and species to that originally planted.

6. Prior to the commencement of above ground works, full details of the external facing materials shall be submitted to and approved by the local

planning authority. The development shall be carried out according to the approved details and thereafter maintained.

7. No drainage infrastructure associated with the dwelling hereby approved shall be installed until details of surface water attenuation for the site, based on Sustainable Drainage Systems principles, have been submitted to and approved in writing by the local planning authority. Any drainage infrastructure shall be installed in line with the approved details and maintained on site as approved thereafter.
8. The dwelling shall not be occupied until full details (including elevations) of:
 - a) refuse and recycling storage and,
 - b) covered and secure cycle parking

have been submitted to and approved in writing by the local planning authority. The approved refuse and recycling store and covered and secure cycle store shall be provided in accordance with the approved details and made available for use by the occupants of the dwelling prior to the first occupation of the approved dwelling and be retained as such for the lifetime of the development.

9. The dwelling shall not be occupied until a minimum of 2 bat boxes have been installed within the site. Details of their size and location shall be submitted to and approved by the local planning authority before their installation; they shall thereafter be retained and maintained according to the approved details.
10. The dwelling shall not be occupied until the Building Regulations Optional requirement under Regulation 36(2)(b) of Part G2 of the Building Regulations (water efficiency) has been complied with. The water efficiency measures installed shall thereafter be maintained as approved.
11. The dwelling shall not be occupied until the Building Regulations Optional requirement M4(2) has been complied with.
12. The car parking spaces for the dwelling shown on approved plan 001 Rev 04 shall be provided and made available for use at the site prior to the first occupation of the dwelling hereby approved. The car parking spaces shall thereafter be permanently retained only for the parking of vehicles of the occupiers and visitors to the new dwelling.
13. A scheme detailing how at least 10% of the total energy needs of the dwelling hereby approved will be supplied using on site renewable sources shall be submitted to and agreed in writing by the local planning authority and implemented in full prior to the first occupation of the dwelling. The approved measures shall be installed and maintained for the lifetime of the development according to the approved details.
14. Demolition or construction works shall take place only between 08.00 to 18.00 on Monday to Friday, 08.00 to 13.00 on Saturday, and shall not take place at any time on Sundays or on Bank or Public Holidays.