

Appeal Decision

Site visit made on 13 August 2024

by C Carpenter BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th September 2024

Appeal Ref: APP/B1550/W/23/3333454

Valentine Cottage, Ethelbert Road, Ashingdon, Essex SS4 3JS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Miss Suzie Leigh against Rochford District Council.
 - The application Ref is 23/00623/FUL.
 - The development proposed is a new dwelling and associated development.
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Decision

1. The appeal is allowed and planning permission is granted for a new dwelling and associated development at Valentine Cottage, Ethelbert Road, Ashingdon, Essex SS4 3JS in accordance with the terms of the application, Ref 23/00623/FUL, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. The appellant has submitted the following revised plans with the appeal: 201 Rev 01 Existing and Proposed Site Plans; 202 Rev 01 Proposed New Dwelling Details; and 204 Rev 01 Existing and Proposed Block Plans. I have compared these with the previous iterations considered by the Council. I find they include minor amendments to ensure consistency in depiction of the proposed rooflights across all drawings. These rooflights are shown on drawing nos 202 Rev 00 and 203 Rev 00, which were submitted with the application. Consequently, I am satisfied the revisions do not involve a fundamental change to the application and there would be no procedural unfairness if I were to take them into account in my decision.
3. On 30 July 2024 the Government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework) and other changes to the planning system. I invited the parties to consider whether the proposed reforms had relevance to this appeal and have taken account of their responses in my decision.
4. The proposed revisions to the Framework are draft and therefore may be subject to change before the final Framework is published. Consequently, I give them limited weight.

Background and Main Issue

5. The appeal was made on the basis of the Council's failure to determine the planning application within the statutory timescale. The Council has provided a statement explaining the reasons it would have refused planning permission had it been able to do so. I have had regard to the Council's statement in framing the main issue.
6. In addition, the Council has confirmed the appeal site is within the Zone of Influence of one or more European designated sites.
7. The main issues are:
 - whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies; and
 - the effect of the proposal on the integrity of protected European sites.

Reasons

Green Belt

8. Paragraph 154 of the Framework states the construction of new buildings in the Green Belt is inappropriate subject to various exceptions. One of these is e) limited infilling in villages.
9. Policy GB1 of the Rochford District Council Local Development Framework Core Strategy 2011 (CS) prioritises the protection of Green Belt land based on how well the land helps achieve the purposes of the Green Belt. This is not fully consistent with the Framework, which states at paragraph 152 that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Accordingly, I give full weight to the Framework as a material consideration and limited weight to CS Policy GB1. CS Policy GB2 relates to rural diversification within the Green Belt, so is not directly relevant to this appeal.
10. The question of whether a settlement constitutes a village is a matter of planning judgement.
11. On the evidence before me, Ashingdon originated as a rural village and parish several centuries ago. It still has its own Parish Council and is referred to as a village distinct from Rochford in several historical and contemporary descriptions of the area. I recognise Ashingdon has grown in recent years to encompass dispersed plotlands including those along Ethelbert Road. Nevertheless, I observed on my site visit that the appeal site is part of a loose cluster of development with some local services, and this cluster is clearly separated from the continuously developed settlement at and around Rochford. I therefore agree with the Inspector in the previous appeal¹ in this regard.
12. There is no pertinent evidence before me to demonstrate Ashingdon and Rochford are physically linked or to substantiate the suggestion that

¹ Appeal decision APP/B1550/W/22/3304163

Ashingdon is too large to be a village. The boundaries of urban areas have not been provided to me. The fact that Ashingdon is linked to Rochford in tier 1 of the settlement hierarchy is not in itself sufficient to demonstrate Ashingdon is no longer a village.

13. Therefore, whether or not Ashingdon has the form and appearance of other villages, I am satisfied it does constitute a village for the purposes of paragraph 154e) of the Framework.
14. There is no dispute the proposed development would comprise limited infilling. Consequently, the proposal would satisfy all the requirements of Framework paragraph 154e).
15. The Council states the proposal would fail to meet the tests at paragraph 154g) of the Framework. However, as I have found exception e) would be satisfied there is no need for me to consider exception g).
16. For the above reasons, I conclude the proposal would not be inappropriate development in the Green Belt. I also find no conflict with CS Policy GB1.

Integrity of protected European sites

17. The appeal site lies within the Zone of Influence of the Essex Estuaries Special Area of Conservation (the SAC), and four Special Protection Areas that are also Ramsar sites: Blackwater Estuary, Crouch and Roach Estuaries, Dengie, and Foulness Estuary (the SPAs). The SAC and SPAs are European sites protected under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations).
18. The SAC is a coastal plain estuarine system with associated open coast mudflats, sandbanks, saltmarshes, scrubs and inter-tidal zones. It contains a very wide range of marine and estuarine sediment communities, including the reef-building worm and brittlestar. The SPAs support nationally and internationally important populations of breeding and migratory bird species, such as the little tern, hen harrier and ringed plover. They are particularly important for wintering waterbirds such as the dark-bellied brent goose.
19. Together, the SAC and SPAs provide an important recreational and economic resource. On the evidence before me, the proposal, particularly when combined with other development in the area, would be likely to have a significant effect on these protected European sites. Consequently, under the Habitats Regulations, an appropriate assessment is required in relation to the effect of the development on the integrity of the sites. This responsibility falls to me as competent authority in the context of this appeal.

Appropriate Assessment

20. The conservation objectives of the SAC and SPAs aim to ensure the integrity of the sites is maintained or restored. This includes maintaining or restoring the extent, distribution, structure, function and supporting processes of the habitats; and the population and distribution of each of the qualifying features within the sites. There is a threat to their integrity from public access and disturbance, including from recreational activities such as walking, dog walking and water sports.

21. It is likely the occupants of the proposed dwelling would visit the SAC and SPAs, resulting in increased recreational activity that could disturb the protected habitats and birds within the sites. Therefore, the development, alone and in combination with other development, would be likely to have a significant adverse effect on the integrity and conservation objectives of the SAC and SPAs.
22. The parties have agreed a financial sum in accordance with the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) and associated Essex Coast RAMS Supplementary Planning Document. The sum would be put towards a programme of strategic mitigation measures. Natural England has been consulted as part of this appropriate assessment and has confirmed that the Essex Coast RAMS measures are sufficient to avoid an adverse impact on the integrity of the SAC and SPAs.
23. Although not contained within a legal agreement, I am satisfied on the evidence before me that the appropriate tariff has been received by the Council for the purposes of contributing to the strategic mitigation measures in the Essex Coast RAMS. I therefore find there would be no adverse effect from the proposed development on the integrity of the SAC and SPAs as European designated sites. Therefore, the proposals would be consistent with the Framework, which requires adequate mitigation if significant harm to sites protected under the Habitats Regulations cannot be avoided.

Conclusion

24. For the reasons set out above, I conclude the proposed development would not have an adverse effect on the integrity of protected European sites.

Other Matters

25. A concern has been raised that the proposed development would be out of character with nearby dwellings, including Valentine Cottage which is a bungalow. The homes nearest the appeal site in Ethelbert Road comprise a mix of single and two-storey buildings of varied sizes and styles. The proposed house would be a chalet-style dwelling with first floor rooms in the roof, so would not read as a two-storey house in the street scene. Its ridge height would be comparable to that of Valentine Cottage and other nearby dwellings, and lower than some others in the road. It would respect established front and rear building lines. Agreement of external materials could be secured via condition were the appeal to be allowed.
26. Consequently, I find the proposal would not harm the character and appearance of the area surrounding the appeal site.

Conditions

27. I have considered the conditions put forward by the Council and have amended the wording where necessary in the interests of clarity and simplicity. In addition to the standard time limit condition, I have imposed a condition requiring that the development is carried out in accordance with the approved plans. This is in the interest of certainty.
28. The condition concerning nesting birds is necessary to protect wildlife. The conditions securing approval of details of materials and landscaping, and

restricting permitted development rights, are necessary to ensure a satisfactory appearance for the proposed development. The condition relating to boundary treatment is necessary to secure a satisfactory appearance and to protect the living conditions of neighbouring occupiers.

29. The conditions relating to parking and surface treatment of the vehicular access are necessary in the interests of highway safety. The condition requiring details of a surface water drainage scheme is necessary for the effective management of surface water.
30. Electric vehicle charging infrastructure is covered by another regulatory regime, so a condition securing this is not necessary.

Conclusion

31. For the above reasons the proposal accords with the development plan, read as a whole. Material considerations, including the Framework, do not indicate that a decision should be taken otherwise than in accordance with it. I therefore conclude the appeal should be allowed.

C Carpenter

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 drawing nos: 200 Rev 00 Site Location Plan; 201 Rev 01 Existing and Proposed Site Plans; 202 Rev 01 Proposed New Dwelling Details; 203 Rev 00 Sections and Street Scenes; 204 Rev 01 Existing and Proposed Block Plans.
- 3) Removal of any vegetation on or around the site shall be carried out between 1 March and 31 August in any year. Prior to removal of any vegetation a detailed survey shall be carried out to check for the presence of nesting birds. Where nests are found in any hedgerow, tree, shrub or other habitat to be removed, a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person and a report shall be submitted to and approved in writing by the local planning authority before any further works within the exclusion zone take place.
- 4) Notwithstanding condition 2, no development above ground level shall take place until details of the materials to be used in the construction of the external surfaces of the dwelling hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

- 5) Notwithstanding condition 2, no development above ground level shall take place until a scheme of landscaping has been submitted to and approved in writing by the local planning authority. The scheme shall include details of:
- all existing trees and hedgerows to be retained on and adjoining the site and measures for their protection throughout the course of development; and
 - new planting including layout, number, species mix and plant size.

All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the dwelling or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

- 6) No development above ground level shall take place until details of a surface water drainage scheme for the site, based on sustainable drainage principles, have been submitted to and approved in writing by the local planning authority. Those details shall include a timetable for the scheme's implementation; and a management and maintenance plan for the lifetime of the development.

The development shall be carried out in accordance with the approved details. The surface water drainage scheme shall be managed and maintained in accordance with the approved management and maintenance plan.

- 7) Prior to occupation of the dwelling hereby permitted details of the positions, design, materials and type of boundary treatment to be erected shall be submitted to and approved in writing by the local planning authority. The boundary treatment shall be completed in accordance with the approved details before the dwelling is occupied.
- 8) No unbound materials shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary.
- 9) The development hereby permitted shall not be occupied until the vehicle parking spaces have been provided in accordance with drawing no 201 Rev 01. Thereafter those spaces shall be retained for the parking of vehicles only.
- 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development permitted by virtue of Classes A, B, C and E of Part 1 of Schedule 2 to the Order shall be undertaken.

End of schedule