



Appeal Decision

Hearing held on 20 November 2024

Site visit made on 21 November 2024

by G Sylvester BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 December 2024

Appeal Ref: APP/F2605/W/24/3348080

Land south of the A47, Swaffham PE37 7XD

- 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 outline planning permission
 - The appeal is made by G W Padley Property 4 Limited, against Breckland Council.
 - The application Ref is 3PL/2022/0412/H is dated 5 April 2022.
 - The development proposed is a hybrid planning permission comprising: full planning permission for the construction of buildings for light industrial, storage or trade counter uses (Class E(g) (ii) [R&D] and (iii) [Light Industrial], Class B2 and B8 [Storage]) to the western end of the application site (Phase 1) and Outline Planning Permission for the remaining site for flexible employment development (Phase 2).
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Decision

1. The appeal is dismissed and a hybrid planning permission comprising: full planning permission for the construction of buildings for light industrial, storage or trade counter uses (Class E(g) (ii) [R&D] and (iii) [Light Industrial], Class B2 and B8 [Storage]) to the western end of the application site (Phase 1) and Outline Planning Permission for the remaining site for flexible employment development (Phase 2) is refused.

Procedural Matter

2. The appellant submitted a letter of rebuttal to the Council's case, which was received outside of the appeal timetable. However, it presents the evidence already before me in a concise manner and does not amend the proposal. I am therefore satisfied that no prejudice would be caused to any party by me taking it into account in determining this appeal.

Main Issues

3. The Council would have refused planning permission had it been able to do so for the putative refusal reason set out in its statement of case. Based on this reason, I consider that the main issues in this appeal are the effect of the proposed development on flood risk and water quality, with particular regard to surface water drainage.

Reasons

Water quality

4. The ground investigation for Phase 1 of the proposed development shows the ground conditions on this part of the appeal site to comprise of topsoil and

clay above a chalk rock aquifer. It lies within Source Protection Zone 3 (SPZ3), defined as a principal aquifer rock unit important for water supply and river flow. In accordance with the Environment Agency (EA) guidance before me in evidence^{1,2} the main parties agreed at the hearing that the appeal site is in an area where groundwater constitutes a significant resource, which is where aquifer yield may support or already supports abstraction.

5. Surface water from the roofs and hardsurfaces of the Phase 1 development would drain into the chalk aquifer through a soakaway infiltration system. Infiltration drainage sits at the top of the surface water drainage hierarchy as a matter of principle and wherever possible the Planning Practice Guidance (PPG) requires³ surface water to drain into the ground through infiltration.
6. The Lead Local Flood Authority (LLFA) guidance document⁴, which requires development to utilise methods as high up the drainage hierarchy as possible, is consistent with the PPG and the CIRIA SuDS Manual in this regard. Policy ENV09 of the Breckland Local Plan ("the BLP") requires development to reflect best practice and LLFA guidance by minimising its own risk of flooding and not materially increasing risk to other areas through infiltration and attenuation measures designed to sustainable drainage (SuDS) principles.
7. However, the proposed soakaway system for Phase 1 would be defined by the LLFA and EA guidance as 'deep' infiltration with a depth greater than 2 metres below ground level. Deep infiltration poses an elevated risk of harmful contamination of the aquifer by creating a direct pathway for pollutants to be washed into the groundwater aquifer via the drainage system. The negative environmental effects of deep infiltration are set out in detail by the LLFA and EA guidance referred to above.
8. The commercial and industrial uses proposed, including the heavy commercial vehicles serving them, would be expected to deposit comparatively high levels of pollutants onto the proposed hard surfaces, and there could also be a risk of pollution spills. During rainfall events pollutants would be washed into the proposed Phase 1 drainage system and could enter the underlying aquifer beneath the protective clay layer via deep infiltration soakaways.
9. Consequently, the LLFA and EA guidance expects deep infiltration to be avoided and used only where no other feasible way of draining surface water from a development exists. Even though infiltration sits at the top of the drainage hierarchy, this reflects the EA's 'standard rules' for SuDS systems, which aim to protect groundwater.
10. The evidence before me on deep infiltration reflects the guidance in the PPG⁵ that some types of SuDS may not be practicable or appropriate in some locations, despite being at the top of the drainage hierarchy. This includes infiltration drainage where groundwater provides a potable supply of water. The PPG states that Local Planning Authorities may find it helpful to set out those local situations where they anticipate particular SuDS features being inappropriate.

¹ Appellant's Technical Memorandum TM001

² Lead Local Flood Authority's Statement of Case - Appendix 2(k)

³ Paragraph: 056 Reference ID: 7-056-20220825

⁴ Norfolk County Council Lead Local Flood Authority – Statutory Consultee for Planning Guidance, Guidance Document, Version 6.1, October 2022.

⁵ Paragraph: 056 Reference ID: 7-056-20220825

11. In this instance local advice on deep infiltration is set out in the LLFA guidance document. BLP Policy ENV09, requires applications to reflect best practice and LLFA guidance, including addressing the potential impact of infiltration upon groundwater Source Protection Zones. In this regard there is a strong degree of consistency between the PPG, the BLP, the LLFA guidance document and the EA guidance in respect of deep infiltration soakaway systems. As material considerations in this appeal, I give significant weight to the EA and LLFA guidance in respect of deep infiltration drainage.
12. The appellant's position is that deep infiltration is the only option for draining Phase 1 and is an appropriate solution. Despite agreement between the parties during the hearing that the adjacent business park is served by a private drainage system, the appellant contended that it would be a fair assumption that it would not be suitable to receive surface water from the proposed development.
13. However, there is very limited substantive evidence before me to demonstrate that the appellant has investigated draining surface water from Phase 1 into the private system, as opposed to deep infiltration into the aquifer. The evidence before me does not substantiate the appellant's concerns regarding the capacity of the private system, the adequacy of its receiving pipe sizes or the extent to which any such constraints to a connection into the private system might be overcome. There was little to support the appellant's concerns that the private system might not be adequately maintained and operated, or that the system's owner would refuse a connection into it.
14. Concerns over land levels and the requirement for the undesirable pumping of drainage into the private system were unsubstantiated by evidence. The submitted topographical survey of the appeal site indicates that land levels fall to the south where the private drainage network is located. Whilst not conclusive from the evidence before me, I saw that some form of open water storage feature existed on lower ground to the south of Green Way along the frontage to Castle Acre Road, which is a further indication that the business park is served by its own drainage system.
15. The appellant acknowledged during the hearing that whilst it may be possible to connect the proposed Phase 1 development into the private system, it might be precluded by unknown factors. Given that deep infiltration poses an elevated risk of groundwater contamination by the washing of pollutants into the aquifer, I find it incumbent on the appellant to properly investigate those unknown factors. There is no substantive evidence before me that the appellant has done so.
16. For the reasons given above, the appellant has failed to demonstrate, in accordance with LLFA and EA guidance, that deep infiltration drainage into the aquifer, a SPZ3, is the only practicable option for draining surface water from Phase 1 of the proposed development. Even when demonstrably proven as the only feasible option for draining surface water, the LLFA guidance document expects deep infiltration to have gone through the EA's risk assessment process.
17. Email exchanges between the EA and the appellant between May 2023 and June 2023⁶, confirm that information on a drainage scheme for the proposed

⁶ Appellant's Technical Memorandum TM001

development was considered by the EA. However, it is unclear whether the Phase 1 drainage scheme that is before me in this appeal is the same as put before the EA. Moreover, the EA's advice to the appellant is qualified in language that indicates that its scope was limited by being provided on a free of charge basis. It is unclear why the appellant did not take the EA's invitation to proceed onto its paid-for consultation and advice service, which appears likely to have resulted in a detailed assessment.

18. The appellant maintained at the hearing that they were entitled to rely upon the EA's 'no comment' response⁷ to the planning application as demonstrating that the proposed drainage scheme is satisfactory. However, on the evidence before me the EA does not have a statutory role in advising Council's on surface water drainage. It is not within the EA's remit, and this is made clear in the LLFA guidance document⁸. The evidence indicates that in most instances the EA places the responsibility on councils to implement its 'standard rules' for SuDS systems to protect groundwater. Those standard rules were set out in the email exchanges between the EA and the appellant in May and June 2023.
19. Based on the evidence before me, including the discussion at the hearing, I do not agree that the EA's 'no comment' response to the planning application is tantamount to its approval of the Phase 1 drainage scheme and its deep infiltration method. Moreover, the EA's advice to the appellant just a few months earlier in the email exchanges referred to above, made clear that deep infiltration, even at the lower end, should be avoided and only considered where all other drainage options are explored first. This is consistent with the LLFA guidance document and the evidence before me.
20. The main parties disagree over whether pollutants washed into the Phase 1 drainage system would be adequately treated before entering the aquifer through infiltration. However, even if I was to agree that the measures proposed to be incorporated into the drainage system reflect best practice, the evidence makes it clear that deep infiltration creates a direct pathway for pollutants to be washed into the underlying aquifer by surface water, posing an elevated risk of groundwater contamination.
21. Based on the evidence before me, the priority is to avoid the pollution risk to groundwater within the aquifer as a first principle. This is why deep infiltration should be avoided and only considered where every other method of drainage has been explored. The appellant indicated at the hearing that they had designed other schemes with deep infiltration that were acceptable to councils in other areas. However, no such examples are before me in evidence and therefore they are of limited relevance in this appeal.
22. Consequently, I am not persuaded that the methods and devices proposed to treat pollutants washed into the surface water drainage, even where adequately maintained, should override the LLFA and EA guidance that the risks associated with deep infiltration should be avoided as a precautionary principle. To my mind, there is an inherent risk of pollution treatment devices deteriorating or failing and risking contamination of the aquifer.

⁷ Consultation to the appeal planning application dated August 2023.

⁸ Paragraph 11.11.

23. In taking a necessarily precautionary approach to this issue, I conclude that the appellant has failed to demonstrate on the evidence before me that deep infiltration drainage is the only practicable option for the surface water drainage of Phase 1, such that the elevated risk it poses to groundwater contamination in the aquifer could not be avoided. I therefore find that the proposal would be contrary to EA and LLFA guidance, and would conflict with BLP Policy ENV09, which requires applications to reflect best practice and LLFA guidance, including addressing the potential impact of infiltration upon groundwater Source Protection Zones.

Flood risk

24. The main parties agreed at the hearing that the modelling of the Phase 1 drainage system assumes that surface water will infiltrate through the base and sides of the infiltration crates at the same rate. However, the crates would be set within clay, with only a modest amount of granular material between their sides and the surrounding clay. Therefore, the rate of lateral infiltration through the sides of the crates would be lower than through the bases of the crates and into the chalk aquifer below. Consequently, the drainage modelling has overestimated the rate at which surface water would infiltrate into the ground and in turn has underestimated the volume of surface water storage needed to balance the system and prevent flooding during the design rainfall event⁹.
25. The main parties also agreed during the hearing that the detailed design of the lined cellular surface water storage facility would be unable to fully drain due to inconsistencies with the system's invert levels. The retained water that could not escape means that the water storage capacity would be lower than predicted in the modelling. It was also agreed that the proportion of the detention basin factored into the modelling as an impermeable surface was incorrect and underestimated the volume of rainfall that would flow into the drainage system after falling upon the basin.
26. Collectively, the modelling underestimates, during the design rainfall event, the amount of water entering the system and the rate at which it drains away through infiltration, as well as the volume of water that would need to be stored. Consequently, there would be a greater volume of water flooding the appeal site during the design rainfall event than shown by the modelling and potentially flowing onto land beyond its boundaries. Given that the modelling as submitted shows above ground flooding during the design rainfall event, this would be increased by a combination of the factors above.
27. Whilst a channel would be provided along the southern boundary of Phase 1, with the intention of intercepting the overland flow of water, the issues identified above create significant uncertainty over the volume of above ground flooding during the design event and thus the effects of overland flow. Together with the ground conditions and the absence of a positive connection of this channel into a drainage system, I have significant concerns over its effectiveness in protecting third party land from flooding.
28. Given the collective deficiencies with the drainage scheme, I am not convinced by the appellant's explanation that the safety factors inbuilt into the model means that sufficient capacity would be provided to store the additional

⁹ 1% annual exceedance probability with an allowance for climate change.

volume of water that is unaccounted for in the design event. Further doubt on this was cast by the LLFA's consultant who advised that several LLFAs require all schemes to apply those same safety factors as a default.

29. The main parties disagree on the correct Cv value to be used in Phase 1 drainage model. Additional evidence on this point was submitted by each party during the hearing^{10,11}. The appellant criticised the LLFA evidence as outdated, however the covering email from the supplier of the drainage model, as submitted by the appellant, referred to its document on Cv values as being very old. To my mind there is a strong logic to the LLFA's position, given the area of Phase 1 that would be covered by impermeable surfaces, that more or less all rain that would fall on it during the design event would flow into its drainage system. Even if I was to agree with the appellant that the multiplication of Cr by Cv represents a suitably precautionary proxy that obviates adjusting Cv from 0.84 to 1.0 in the model, it would not alter my findings on this main issue or alter the outcome of this appeal.
30. I have based my assessment of the appeal proposal on the evidence before me, including the Phase 1 drainage scheme. There is limited alternative technical evidence before me to demonstrate that further refinements to the submitted scheme, including increasing the volumetric capacity of surface water storage would be effective in preventing flooding of the site and land nearby. I am not satisfied on the evidence before me that amendments to the scheme would not have consequential effects, including on the above ground layout of the development, particularly as there is a likely requirement for soakaways to be set a certain distance away from other built features such as buildings.
31. Even if the surface water drainage scheme for Phase 2 of the proposed development, which does not involve deep infiltration, could be made acceptable through the imposition of conditions, it would not alter my conclusions on the Phase 1 drainage scheme.
32. For these reasons and on the evidence before me, I conclude on this issue that the proposed development would increase flood risk to the appeal site and nearby land with particular regard to surface water drainage. Therefore, it would be contrary to BLP Policy ENV09, which requires development to, amongst others, incorporate appropriate surface water drainage mitigation to minimise its own risk of flooding and should not materially increase risk to other areas. For the same reasons, it would be contrary to Paragraph 173 of the National Planning Policy Framework ("the Framework"), which states that when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere.

Other Matters

33. The proposed development is supported by the Town Council and by the Ward Councillor, subject to satisfactory resolution of the drainage scheme. The appeal site is allocated for employment development and would deliver significant economic benefits through job creation in a location adjacent to commercial uses, accessible from homes within the town and with convenient

¹⁰ The Susdrain Fact Sheet March 2014, submitted by the LLFA.

¹¹ Document from the supplier of the drainage modelling software on the theory behind Cv values and Cr values, submitted by the appellant.

access to the A47. The main parties agree that it would be capable of delivering an environmentally beneficial net gain in biodiversity. Those benefits would align with the Framework's economic and environmental objectives in Paragraph 8. However, I find that the environmental harms described above would not accord with the environmental objective of Paragraph 8, and are sufficient, in this instance, to outweigh those benefits.

34. The Council's assessment of the proposal, which is set out in the evidence before me, and includes a detailed report to the Planning Committee, found no other harms or objections to the scheme on grounds falling outside of the main issues in this appeal. On the evidence before me I see no basis to disagree with its assessment. However, an absence of harm on matters set out in the evidence, including in respect of highway safety, trees and protected species, do not weigh in favour or against the appeal scheme, being requirements of any well-designed scheme.

Conclusion

35. On the evidence before me, the appellant has failed to demonstrate that deep infiltration drainage is the only practicable option for the surface water drainage of Phase 1 of the proposed development, such that the elevated risk it poses to harmful pollution of groundwater in the aquifer could not be avoided. Furthermore, the proposed development would increase flood risk to the appeal site and nearby land.
36. These harms bring the development into conflict with BLP Policy ENV09, the requirements of which are set out above. I give very significant weight to the appeal proposal's conflict with BLP Policy ENV09, sufficient to outweigh its compliance with other policies in the BLP and bring the development into conflict with the development plan as a whole.
37. The appeal proposal would deliver significant economic benefits, as anticipated by the appeal site's allocation for employment development, and a net gain in biodiversity. However, those benefits are not of sufficient weight to outweigh the harms and the conflict with the development plan when read as a whole. I therefore conclude that the appeal should be dismissed.

G Sylvester

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Tony Aspbury BA MRTPI – Director - Planning Consultant (Aspbury Planning).

Mr Chris Cant – Senior Engineer – Drainage Consultant (Construction Design Solutions).

Mr Dale Spencer BSc.(Hons), CEng, MStructE – Director – Drainage Consultant (Construction Design Solutions).

FOR THE LOCAL PLANNING AUTHORITY:

Miss Rebecca Collins – Head of Development Management

Mr Chris Fitzgerald – Technical Support Officer

Mr Dean Shelton, Senior Flood Risk Officer, Statutory Consultee to Planning Team Leader, Lead Local Flood Authority.

Mr Lewis Chappell, BSc (Hons), MSc, Flood Risk Officer, Lead Local Flood Authority.

Mrs Katherine Waters MSc in Flood Risk Management, BSc (Hons) Geography and Sports Studies and a Chartered Member of CIWEM - Technical Director, Sustainable Water Management Team, WSP.

Mr Daniel Wright, BEng(Hons) Civil & Structural Engineering, Principal Engineer, WSP.

INTERESTED PARTIES:

Cllr Judy Anscombe – Ward Councillor

Cllr Les Scott – Swaffham Town Council