



Appeal Decision

Site visit made on 1 April 2025

by I A Dyer BSc (Eng) FCIHT

an Inspector appointed by the Secretary of State

Decision date: 09 April 2025

Appeal Ref: APP/Z1510/W/24/3355253

OS 7271 Land South West Of Fox and Pheasant Farm, Colchester Road, White Colne CO6 2PS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Mr S Prater against the decision of Braintree District Council.
 - The application reference 24/01232/DAC sought approval of details pursuant to condition No 7 of a planning permission reference 21/02421/FUL, granted on 11 December 2023.
 - The application was refused by notice dated 3 September 2024.
 - The development proposed is change of use of land for the creation of 4no. Gypsy/Traveller pitches, comprising the siting of 1 mobile home, 1 touring caravan and the erection of a utility building per pitch, alongside the erection of a stables building comprising 2no. stable boxes, feed store and tack room).
 - The details for which approval is sought are: -
 - a) all hard and soft landscaping of the site, including tree, hedge and shrub planting with details of species, plant sizes and proposed numbers and densities as well as a schedule of maintenance for a period of 5 years to include provision for the replacement, in the same position, of any tree, hedge or shrub that is removed, uprooted or destroyed or dies within 5 years of planting or, in the opinion of the local planning authority, becomes seriously damaged or defective, with another of the same species and size as that originally planted;
 - b) replacement planting details of any and all vegetation, hedge, and shrub planting required to be removed to achieve and maintain the visibility splays,
 - c) details of the external lighting;
 - d) details of surface water drainage, to be based on sustainable drainage principles and to include management and maintenance arrangements; and
 - e) details of foul water drainage, including management and maintenance arrangements.
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Decision

1. The appeal is allowed and the details submitted pursuant to condition No 7 attached to planning permission Ref 21/02421/FUL granted on 11 December 2023 in accordance with the application dated 24/01232/DAC and the plans submitted with it are approved.

Preliminary Matters

2. At the time of my site visit there was no-one to meet me at the appeal site. However, I was able to view the site and surroundings from the public highway and, from these observations, I am satisfied that I have the information required to proceed in determining the appeal.
3. Since the Council's determination of the application, the Government published a revised National Planning Policy Framework (the Framework) on 12 December 2024 and updated it on 7 February 2025. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I have not sought

further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by taking this approach.

Main Issue

4. Condition 7 of the planning permission requires the submission of five matters for approval by the Council.
5. The Council has confirmed that it is content that sufficient information has been supplied to allow the discharge of parts a), b), c) and d) of Condition 7. Thus, the only part of Condition 7 that is still in dispute is part e), which relates to details of foul water drainage.
6. Accordingly, the main issue in this appeal is, therefore, whether there would be appropriate means of foul water drainage for the development.

Reasons

7. The appeal site lies between the settlements of White Colne and Wakes Colne. It abuts the A1124 Colchester Road. There is sporadic development along this route.
8. Policy LLP 34 of the Braintree District Local Plan 2013-2033 (adopted 2022) (the Local Plan) requires Gypsy and Traveller sites to be capable of being provided with, amongst other things, appropriate drainage. However, it states that, for sewerage, a connection to the main sewer system will be preferable, except when it is impractical to achieve.
9. Policy LLP 70 seeks to ensure that all new developments should prevent unacceptable risks from pollution and ensure no deterioration to water quality. The policy requires that all applications for development where the potential for creation of pollution is suspected must contain sufficient information for the Local Planning Authority to make a full assessment of potential hazards. The policy advises that development will not be permitted where, individually or cumulatively and after mitigation, there are likely to be unacceptable impacts arising from the development on, amongst other things, surface water and groundwater quality.
10. Paragraph 187e) of the Framework, amongst other things, states that planning decisions should contribute to and enhance the local environment by preventing new and existing development from contributing to unacceptable levels of soil and water pollution.
11. The Planning Practise Guidance (PPG)¹ sets out a hierarchy of provision for foul drainage systems, identifying discharge to a system of foul drainage discharging into a public sewer to be treated at a public sewage treatment works as being the most desirable solution. If such discharge is not feasible, taking into account cost and/or practicability and whether the package treatment plant poses a risk to a designated site, a package treatment or septic tank may be considered.
12. The development was approved following an appeal². At the Hearing the appellant confirmed that the proposed use of cess pits would apply only if the appeal were to be allowed on a temporary basis, but indicated that otherwise, a condition was acceptable to them to secure an appropriate means of foul drainage whereby the risk of water pollution was satisfactorily addressed.

¹ Paragraph: 020 Reference ID: 34-020-20140306

² PINS Ref: APP/Z1510/W/21/3289767

13. As, at that time, the Inspector considered that there was insufficient information to understand the potential water environment implications and was minded to grant a permanent permission, he followed this latter course and imposed a retrospective condition to secure the detailed agreement and implementation of suitable foul water drainage arrangements.
14. Whilst the appellant was clear that a solution involving the use of a cesspit was their proposed option should a temporary permission be granted, the scope of the condition allows a proposal for a solution to be reviewed holistically and does not rule out the possibility that a cesspit would, should sufficient evidence be provided to justify it, be the appropriate solution.
15. In support of their proposed solution, the appellant has submitted a Drainage Strategy (the Strategy), provided by a Consulting Engineer. This identifies an absence of local sewer infrastructure. From my observations during my visit, and given the location in open countryside, I have no reason to doubt this. The Strategy goes on to assess the possible solutions available for foul water discharge on the hierarchical basis set out in the PPG, determining that no suitable outlet is available to receive the system discharge. The Strategy therefore concludes that a cess pit, although the least desirable solution within the hierarchy, is the only practicable solution. The Strategy also provides construction details and a maintenance strategy.
16. The Council does not consider that the appellant has, within the Strategy, provided sufficient detail to justify dismissal of the options above cess pits in the foul drainage hierarchy in regard to the absence of local sewer infrastructure, and lack of information regarding the easements from any building and distances from soakaways. They also question the appellant's premise that a treatment plant would be unsuitable as the site would be subject to intermittent occupation.
17. It is identified within the Strategy that sewage treatment is an ongoing process and that the micro-organisms that break down the matter need to remain active for the system to work. The Council assert that the crux of the appellant's case at the Hearing was that planning permission should be granted based upon the needs of the site's occupants, which would include children who attend the local schools and those who have ceased travelling due to ill health.
18. I do not have all of the evidence previously presented at the Hearing, but I note that there is no condition on the planning permission restricting the use of the pitches to any specific individuals. Occupation may include persons who on grounds only of their own or their family's or dependents' educational or health needs or old age have ceased to travel temporarily or permanently but is otherwise open to any Gypsies and Travellers as defined within the condition. All of the occupants of the pitches may, therefore, continue to travel.
19. Given the number of pitches provided, the probability that the site would be completely vacant for a prolonged period of time is reduced, yet this may still occur in the future. However, even were it to be the case that the site is permanently occupied, and the organisms in the treatment plant have a suitable environment to thrive, this would not overcome the lack of a suitable discharge point for the effluent as identified by the consultant within the Strategy.
20. The maintenance strategy incorporates measures within it to ensure that the residents would be alerted to the need for the tank to be emptied. Whilst the use of

cesspits is the means of last resort for the disposal of foul waste, I find, on the basis of the evidence before me, that it is, through the incorporation of such measures, the only suitable, practicable option left.

21. I therefore conclude that there would be appropriate means of foul water drainage provision for the development and through such provision the proposal satisfies the requirements of Policies LLP 34 and LLP70 of the Local Plan.
22. The proposal would also, therefore, accord with the aims of Paragraph 187e) of the Framework.

Conclusion

23. For the reasons given above the appeal should be allowed.

I A Dyer

INSPECTOR