



Appeal Decision

Site visit made on 24 March 2025

by R Bartlett PGDip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 April 2025

Appeal Ref: APP/P1560/W/24/3351623

Featherfields, Malting Lane, Kirby-Le-Soken, Frinton-On-Sea, Essex, CO13 0EH

- 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 Carl Chapman of Featherfields against the decision of Tendring District Council.
- The application Ref is 24/00019/FUL.
- The development proposed is change of use from agricultural land to a bird sanctuary and rescue including a maximum of 12 portacabins and aviaries with hardstanding, parking and planting.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposed development is described on the application form as *"We would like to have a change of use for this piece of land from Agricultural to a Parrot /bird sanctuary and rescue. The field has not been farmed for at least 25 years plus and would not be farmable due to the poor soil conditions. We will only need to use the top third of the land for our proposal and use portable building i.e. containers portacabins to a maximum of 12 single storey of which we would clad with natural coloured materials so would not impact the look of the area and also wire mesh aviaries. Any further buildings in the future if needed would have a further application put in. The site would not be open to the public except to local people who have already shown an interest in getting involved so would not have any real impact on use of the lane. We have spoken to many local people down Malting Lane and in the village and they have all been approving of what we would be doing on the land. Where the containers will be sited is not overlooked or visible from anywhere around the site so will not impact on views people may have. We already have good access to the site from Malting Lane and any vehicles would be parked inside the gates and not on the road. The site would be protected from CCTV cameras, gates, fences and natural borders already in place i.e. hedges and trees."*
3. I have amended the description in the banner heading above to that used by the Council, and on the appeal form, which is more succinct. However, I note that some of the structures referred to as portacabins are actually shipping containers.

Main Issues

4. The main issues are whether the site is a suitable location for the development having regard to i) the spatial strategy for the area; and ii) the Coastal Protection Belt; and iii) the effect of the development on the character and appearance of the area.

Reasons

Spatial Strategy

5. The site is located outside the settlement boundary for Kirby-Le-Soken, which I am advised is defined within the Tendring District Local Plan 2013-2033 and Beyond (the local plan), as a Smaller Rural Settlement. Policy SP3 of the local plan states, amongst other things, that future growth will be planned to ensure existing settlements maintain their distinctive character and role, to avoid coalescence between them and to conserve their setting. Growth needs to be carefully managed so as not to lead to unsustainable developments in remote and poorly accessible locations. The settlement hierarchy prioritises locations with access to the strategic road network, public transport and which have the potential to offer the widest range of services.
6. Whilst I understand that the spatial strategy seeks to direct most new growth towards the most sustainable locations, the appeal proposal relates to a bird sanctuary and rescue place. Such development, involving the keeping of birds or animals, would usually be expected to be located in a rural location, to avoid causing any harm to neighbouring businesses or to occupiers of residential properties, such as noise, odour or vermin.
7. The proposed use would not harm the distinctive character or role of any nearby settlement or its setting, and would not result in the coalescence of any settlements. As the use would be operated only by the appellant, and any local people that volunteer to help, would not generate any employment, and would not be open to the public or general visitors, I see no reason why it would need to have access to the strategic road network, public transport or a wide range of services. Furthermore, the site is only a very short distance outside of the built-up area of the settlement.
8. I therefore conclude that the location of the proposed development, outside of a settlement boundary, would not be unacceptable in principle, and would not harm the plan led approach to strategic growth.

Coastal Protection Belt

9. The site lies within the Walton Backwaters, Horsey Island and Irlams Beach Coastal Protection Belt (CPB) as shown on the local plan policies map. Policy PPL2 of the local plan states that within the CPB, the open character of the undeveloped coastline will be protected and planning permission refused for development which does not have a compelling functional or operational requirement to be located there.
10. I have not been provided with a Shoreline or Coastal Management Plan setting out what type of development is appropriate in the CPB and in what circumstances. Nor have I been advised whether any risk to the appeal site is long, medium or short term. However, the Planning Practice Guidance (PPG) refers to appropriate uses in such areas as being those that are directly linked to the coast, such as visitor and leisure facilities. Paragraph 185 of the National Planning Policy Framework (the Framework) lists the criteria that must be demonstrated for development in Coastal Change areas, and paragraph 186 states that the planned lifetime of development in such areas should be limited through the use of temporary permissions and restoration conditions.

11. Although I recognise why a bird rescue sanctuary may require a rural location, away from residential and other sensitive premises, there is no evidence before me to demonstrate any functional or operational requirement for the proposed use to be located within the CPB. I appreciate that the coastal area is home to and attracts large numbers of birds, which may for various reasons require care. However, as any rescued birds would most likely be transported to the proposed sanctuary by motor vehicle, and the only way of getting to the site by motor vehicle is via roads, settlements and other rural areas that are presumably outside of the CPB, I see no functional or operation need for the development to be within the CPB, as opposed to within any other rural area close by. Moreover, the emphasis on the application form is on Parrots, which are usually kept in domestic homes, as opposed to coastal birds.
12. Given the lack of information before me regarding the functional and operational requirements of the proposed use, I conclude that the location of the development, within a designated CPB, has not been justified and thus would not be appropriate. The proposal is therefore contrary to Policy PPL2(a) of the local plan. It would also conflict with the Framework and the PPG in relation to coastal development.

Character and Appearance

13. The site, which forms part of a larger field, comprises open grassland. A dense, high, mature hedgerow runs between the eastern boundary of the site and Malting Lane. Soken Wood, which is managed by the Woodland Trust and has public access through it, is located a short distance to the south of the site. Further open fields lie to the north and west of the site and on the opposite side of Malting Lane. A household waste and recycling centre is located to the northeast of the site, which is occupied by a large area of concrete hardstanding and numerous large steel containers.
14. The site lies within the Hamford Coastal Slopes Landscape Character Area (LCA) some of the key characteristics of which are described in the Tendring District Council Landscape Character Assessment as comprising: gently sloping land encircling and forming part of the setting of the open Marshes of Hamford Water (a National Nature Reserve), low, scrubby, and intermittent hedgerows dividing regimented fields, scattered farmsteads and manorial halls forming a dispersed settlement pattern.
15. I have been provided with very limited information regarding the nature of the proposed use. For example, it is unclear what type and number of birds would be kept on the site, where they would come from, how many would be kept in each aviary, how long for, what type of care they would require or receive, how often they would need to be attended to, fed, cleaned out, how any waste would be disposed of, how many volunteers would be on site at a time and for what purpose, what would be stored on site, if/how Parrots would be rehomed etc.
16. Without this information it is unclear why so many cabins/containers are required. I note that of the 12 structures proposed, only 6 would be used to house the birds. The other 6, which are supposedly ancillary to the main use of keeping birds, would be larger. Whilst a small office, kitchen area and toilet/washroom facilities could be considered reasonably necessary, it has not been explained why 4 offices, in 2 separate portacabins, would be required for what is described as a small family run use, with no employees or public visitors. The supporting

information states that visits would be only once or twice a day by the appellant, by local volunteers, and occasional visits by professionals, such as a Vet.

17. The submitted plans identify two large storage containers, but no information has been submitted to explain what these are required for, and whether such a large amount of supplies needing to be stored on site would be delivered to the site in large vehicles, and how often.
18. The buildings are proposed to be spread over a large irregular shaped area as opposed to being within a smaller more contained area, close to the existing boundary hedge, which would require less paving and would be more easily screened by new tree and hedge planting. The office and storage buildings in particular would be centrally located, approximately 15 metres away from the edge of the existing dense boundary hedgerow. Rather than being rotated 90 degrees and joined or sited closely together to form a single block adjacent to the boundary, the structures would form a long line of buildings as illustrated by the site elevations submitted.
19. I acknowledge that the portacabins and containers would be low level and would all be clad in timber weatherboarding to soften their appearance, the mesh aviary panels would be transparent, and pathways and parking areas would be created using paving slabs and permeable stone chippings. Accordingly, all above ground structures and hard surfaces could easily be removed in the future should the proposed use cease to operate.
20. The application form states that the site would be protected by CCTV cameras, gates and fences. No details of these have been submitted. Nor have any detailed landscaping proposals been provided. As such it is not clear how the use would be contained from the remainder of the field and screened from the open landscape surroundings. The existing high gates and fencing at the site entrance are clad with solid boarding. These are unsightly and fail to respect the rural surroundings. I note that the appellant owns the land between the site and the Soken Wood, and the remainder of the field which the site forms part of. As such offsite landscaping could be provided to screen the development from the public woodland area and surrounding open fields. No details of any lighting, which would inevitably be required particularly during winter months, has been submitted for assessment.
21. Whilst I acknowledge that the adjacent recycling centre, with its numerous large containers and large area of hardstanding is visible within, and harmfully detracts from its rural surroundings, I am not aware of the background to that site or the circumstances that led to its current use. I also acknowledge that subject to the existing eastern boundary hedge being retained at its current height and depth and subject to appropriate new landscaping the proposed development would be unlikely to be visible in the wider surrounding landscape or from Hamford Water.
22. However, the excessive number of portacabins/containers proposed, together with their siting, spread over a large area of land, would result in an unacceptable and unjustified loss of openness and encroachment into the countryside, which would diminish the existing quality of the rural landscape and largely undeveloped coastline.
23. I therefore conclude that based on the plans and information before me, the proposal would result in unacceptable harm to the character and appearance of the area contrary to Policies PPL3, SPL3 and SP7 of the local plan. These policies

seek to ensure that new development responds positively to local character and context, respects or enhances local landscape character, and results in no harm to the character or appearance of the rural landscape, having regard to the Council's Landscape Character Assessment.

Other Matters

24. I have had regard to the letters of support for the proposal and I note the alleged need for a bird rescue facility locally but given the lack of evidence before me to support these claims, I have afforded these little weight.
25. I acknowledge that the development would deliver some community benefits in terms of rehoming domestic Parrots and assisting other rescued birds. I also note the support in the Framework for businesses in rural areas, albeit the application did not suggest a business or commercial venture was proposed. Indeed, it is unclear how the development would be funded or operated other than by the goodwill of the appellant and volunteers. There is no evidence of any economic benefit being derived from the proposal, although I appreciate there potentially may be some limited benefits to the suppliers of products to be used in setting up the proposed use in the short term, and suppliers of products required for keeping the birds over the longer term. Depending upon the type and level of new landscaping, there may be some environmental and bio-diversity net gain benefits, but I do not have sufficient details before me to assess this. I therefore afford these factors only moderate weight.
26. Compliance with some policies does not mean that other policies can be disregarded or afforded less weight. Proposals must comply with the development plan taken as a whole unless material considerations indicate otherwise.

Conclusion

27. For the reasons given above, and having considered all matters raised, I conclude that the proposal conflicts with the development plan taken as a whole and there are no material considerations of sufficient weight which indicate a decision should be made other than in accordance with the development plan. The appeal is therefore dismissed.

R Bartlett

INSPECTOR