



Appeal Decision

Site visit made on 20 October 2025

by **T Bennett BA(Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28th October 2025

Appeal Ref: APP/B1550/W/25/3367226

Moat Farm, Chelmsford Road, Rawreth SS11 8SJ

- 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 Chris Lynch against the decision of Rochford District Council.
 - The application Ref is 24/00373/FUL
 - The development proposed is to demolish existing outbuildings and change of use from motor vehicle repair, storage, breaking, sales, painting, sales of parts, build specialist vehicles and storage of salvage vehicles into residential and construct detached dwelling, revised proposal.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the determination of the application Planning Practice Guidance (PPG) has been updated in relation to flood risk. Parties have had the opportunity to comment on the revisions and I have taken any comments into account in my decision.
3. Reference has been made to the proposed dwelling being a self-build. I do not have a legal agreement, which is the appropriate method to secure such development, before me. Furthermore, the application form indicates that the proposal is for market-housing. I have therefore assessed the proposal as market-housing.

Main Issues

4. The main issues are:
 - whether the proposed development passes the sequential test in relation to flood risk; and
 - the effect of the proposal on ecology with particular regard to great crested newts.

Reasons

Flood risk

5. The revised PPG states where a site-specific flood risk assessment demonstrates clearly that the proposed layout, design and mitigation measures would ensure that occupiers and users would remain safe from current and future *surface water flood risk* (my emphasis) for the lifetime of the development (taking climate change into account), without increasing flood risk elsewhere, then the Sequential Test need not be applied. The appellant opines that flood risk at the site is only

from surface water and as such the sequential test is not required. However, the site is located within Flood Zone 3a, at risk from river flooding. Planning Practice Guidance (PPG) defines this zone as having a 'high probability' of flooding.

6. The proposed development would provide one new dwelling, which for the purposes of assessment would be classified as a 'more vulnerable' use. Consequently, the proposal is subject to the Sequential Test, and if passed, the Exception Test.
7. The aim of the Sequential Test is to steer new development to areas with the lowest risk of flooding from any source. The Framework explains that development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
8. Although it is for the Council to consider whether the exception test is passed, the PPG requires the applicant to identify whether there are any other 'reasonably available' sites within the area of search that have not already been identified by the local planning authority in site allocations or relevant housing availability assessments, such as sites currently available on the open market. Alternative sites do not need to be owned by the applicant to be considered 'reasonably available.'
9. The appellant has submitted a Sequential and Exception Test Assessment, dated May 2023, covering the entire district. It has considered land available for a 6-bedroom dwelling in a rural location. One concern of the Council is that the search criteria of a rural location has artificially constrained the search. I am mindful that the revised PPG outlines that for non-major housing development it would not usually be appropriate for the area of search to extend beyond the specific area of a town or city in which the proposal is located, or beyond an individual village and its immediate neighbouring settlements. Therefore, given the rural nature of the site and of nearby settlements, the fact the assessment seeks a rural location does not seem unreasonable.
10. However, from the information before me, the appellant's requirement specifically for a 6-bedroom dwelling, appears to have limited the search of reasonably available sites by restricting sites to sizes of between 0.5 and 0.7 HA. It has not been demonstrated why sites below this threshold would not be able to accommodate a detached residential dwelling or be designed in such a way as to facilitate a six-bedroom dwelling. I cannot therefore be certain that all reasonably available sites have been considered.
11. Moreover, notwithstanding the above, section 2.2.1 of the Sequential Assessment, outlines that sites from the Strategic Housing and Economic Land Availability Assessment (2017) below 0.5HA and above 0.7HA were screened out, with those passing the initial screening discussed in further detail at Appendix 2 of the Sequential Assessment, against a wider list of criteria. However, Appendix 2 contains very limited analysis on the suitability of the sites, with inconsistencies in the flagging of site suitability. For example, a site identified as 0.61 HA has been flagged as unsuitable on the size metric, yet another site of the same size has been flagged as suitable on that particular metric. Another site has also been flagged as unsuitable on size, yet is 0.7 HA. Similarly, some sites recorded as suburban have been flagged as suitable, while others on that same metric have

been flagged as unsuitable. I therefore have concerns over the accuracy and robustness of this aspect of the assessment.

12. The Sequential Test report also fails to assess other sites that have extant permission, which the Council informed the appellant of in June 2023. I acknowledge that the appellant in their statement of case has now set out why these sites are not suitable. However, the Council also highlight how no assessment appears to have been undertaken of two strategic allocation sites which are within Flood Zone 1. No justification has been given for not considering these.
13. Given the shortcomings with the Sequential Test that I have already highlighted and the failure to adequately assess the strategic sites or provide reasons to exclude them, means I find the Sequential Test has not been passed. In these circumstances, it is not necessary for me to go on and examine the Exception Test.
14. I note the appellant states the site has not experienced flooding in 26 years, that the Flood Risk Assessment indicates that there would be a net reduction to the impermeable area of the site due to a reduced building footprint, and that the ground floor would be above predicted fluvial and surface flood levels. Nevertheless, these factors do not overcome the need to meet the requirements of the Sequential Test.
15. For the reasons above, I conclude that the proposal would not pass the Sequential Test and therefore it has not been shown that the proposed dwelling could be located in an area with a lower risk of flooding. The proposal would therefore be contrary to the aims of national policy which is to steer development to such areas by applying the Sequential and Exception Test. The scheme would also conflict with Policy ENV3 of the Rochford District Council Core Strategy (2011) (CS) which has similar expectations.

Protected species

16. Great crested newts (GCN) are a European Protected Species (EPS). Under the provisions of the Conservation of Habitats and Species Regulations 2017 (as amended), I am required to consider whether any EPS, such as great crested newts, would be affected by the proposed development and whether any measures would be effective in mitigating any harm.
17. The appellant has submitted an ecology survey and assessment report, dated July 2024. This report outlines that previous surveys in March 2016 and March 2021, conducted for earlier applications at the appeal site, found no evidence of protected species at the site. I have no information on the extent of those surveys before me. The report further states that a third survey, undertaken in July 2024 again confirmed no evidence of protected species nor that there was any suitable terrestrial dispersal habitat for GCN, with no records of GCN being observed within the last 15 years.
18. Notwithstanding the above, the County ecologist advises that the site is within an amber zone for GCN's with a GCN license return approximately 600m away from the appeal site. Moreover, the submitted ecology report identifies two water bodies: a pond at a neighbouring property which was inaccessible at the time of the survey, and a moat at the property immediately adjacent to the appeal site.

The report notes that the moat contained little water at the time of the survey in late July, despite a mild, wet winter. However, the time of the survey in July was some months after the winter period and I cannot therefore be certain that the moat did not contain more water earlier in the year.

19. The standing advice from Natural England for GCN, outlines several criteria for when it is appropriate to seek a survey. One criterion is where there is a suitable water body such as a pond or ditch within 500m of the development, even if it only holds water for some of the year. The County ecologist advises that any survey should ideally include a Habitat Suitability Index of the nearby ponds and reference to Natural England's Great Crested Newt Rapid Risk Calculator.
20. Circular 06/2005¹ states that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by development, is established before planning permission is granted otherwise all relevant material considerations may not have been addressed in making the decision.
21. Given the presence of waterbodies within 500m and that no specific survey for GCN has been undertaken, I cannot be satisfied that GCN's are not present in the area and I am unable to make an informed decision about the effect of the proposal on the protected species, including assessing whether any mitigation measures would adequately safeguard against any harm.
22. Consequently, on this issue, I am not satisfied that sufficient evidence has been submitted to demonstrate that the proposal would have an acceptable effect on ecology with regard to great crested newts. The proposal thus conflicts with Policy ENV1 of the CS, this seeks to ensure proposals conserve and enhance biodiversity and that demonstrate that there would be no adverse impact on biodiversity assets. The proposal would also conflict with Policy DM27 of the Development Management Plan (2014) which requires the impact of development on protected species and habitats to be fully considered.

Other Matter

23. I acknowledge the appellant's concerns over the Council's handling of the application. However, this is not a matter that I can consider under a Section 78 planning appeal and does not alter my findings, in which I have had regard solely to the planning merits of the proposal.

Planning Balance and Conclusion

24. The Council has confirmed that they can only demonstrate a housing land supply of 4.53 years. However, because the proposal is within an area at risk of flooding and as the Sequential Test has not been passed, the application of policies in the Framework that protect areas at risk of flooding, provides a strong reason for refusing the development. Consequently, the presumption in favour of sustainable development, as set out at paragraph 11 of the Framework, does not apply
25. The proposal must therefore be considered under a normal planning balance. Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise.

¹ Circular 06/2005: Biodiversity and Geological Conservation

26. The proposal would help to boost the supply of homes within the District on a small-medium site in an accessible location. The proposed dwelling and associated landscaping would visually enhance the site compared to its current use, and no concerns have been raised regarding the appearance of the proposal. Furthermore, it would meet the required space standards and provide sufficient parking.
27. Social and economic benefits would ensue, related to its construction and from future occupiers spending in the local economy. However, with a net gain of one dwelling, the extent of such benefits, both individually and cumulatively would be limited, and therefore carry no more than moderate weight in favour of approval.
28. The proposal would introduce a dwelling in a location that does not accord with the policy approach to reducing flood risk. It also does not demonstrate that it would have an acceptable effect on protected species. These factors collectively weigh substantially against the proposal.
29. The proposal conflicts with the development plan considered as a whole. The identified harms and policy conflicts are not outweighed by any material considerations, including the benefits, which would indicate that the appeal proposal should be decided other than in accordance with the development plan. The appeal is therefore dismissed.

T Bennett

INSPECTOR