
Appeal Decision

Site visit made on 30 July 2019

by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 August 2019

Appeal Ref: APP/X1545/W/18/3214360

The Lakes, Hall Road/Battle Rise, Heybridge CM9 4PH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr J Purdy against the decision of Maldon District Council.
 - The application Ref FUL/MAL/18/00061, dated 3 January 2018, was refused by notice dated 19 April 2018.
 - The development proposed is the use of lakes for informal recreational fishing purposes.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effects of the proposal on:
 - the bio-diversity value of the Blackwater Estuary Special Protection Area (SPA), the Essex Estuary Special Area of Conservation (SAC), the Blackwater Estuary Ramsar site and the Blackwater Estuary Site of Special Scientific Interest (SSSI) as well as protected species;
 - the character and appearance of the site;
 - the living conditions of neighbouring occupiers with particular regard to noise, disturbance and convenience;
 - highway safety with particular regard to the proposed parking provision.

Reasons

Bio-diversity

3. The appeal site comprises an extensive area of former gravel pits including a large, irregularly shaped lake. Lately it has been managed to enhance its bio-diversity value in accordance with an Ecological Management Plan which was approved as part of a S106 Agreement associated with the adjoining residential development¹.
4. The parties disagree over whether the site is formally designated as a Local Wildlife Site. However, it is entered onto the Essex Wildlife Trust register and is designated in the Maldon District Approved Local Development Plan 2017 (LDP). Moreover, there is no dispute that the site has bio-diversity value in its

¹ Application reference 06/00482/FUL

own right. Amongst other things, it supports nationally important populations of breeding bird species and habitats for a wide range of birds which are of identified conservation concern. Significantly, the site also adjoins the internationally designated SPA, SAC and Ramsar site and the nationally designated SSSI. Further, it is agreed that the site is also a supporting habitat for the adjoining SPA. These sites are protected under the Conservation of Habitats and Species Regulations 2010 (as amended) (the Habitat Regulations).

5. The SPA qualifies as an internationally important site due to its assemblage of breeding and over-wintering birds. The Ramsar site qualifies for protection on the basis of the extent and diversity of the saltmarsh habitat and plant communities, invertebrate fauna and overwintering bird assemblages. Amongst other things, the SPA and the Ramsar site require low levels of disturbance. The conservation objectives for the SPA include ensuring that the integrity of the site is maintained or restored. The SAC qualifies on the basis of its mudflat and sandbank habitats and associated plant communities. The SSSI supports nationally important numbers of breeding and wintering bird species.
6. Notwithstanding the appellant's characterisation of the proposed use as informal, the appeal proposal would be likely to increase the level of human activity in close proximity to the internationally designated sites and potentially reduce the amount of vegetation around the lake and alter the fish species in the lake. This may impact on the food sources available to SPA bird species as well as affecting the water quality of the lake itself. There is no firm evidence to demonstrate that the presence of the sea wall between the appeal site and the internationally protected sites would significantly diminish these effects.
7. Natural England (NE) has advised that the information submitted with the proposal is inadequate to properly assess its effects. The supporting surveys and reports² are around four years old or older. Government advice³ is that surveys should be up to date and ideally from the most recent survey season. The appellant's surveys are also limited in scope and do not record two of the bird species known to be present at the protected sites. Furthermore, the submitted reports assess an earlier proposal. Moreover, the Habitats Regulations Assessment Screening Report takes into account mitigation measures at the screening stage of the assessment. Subsequent case law⁴ has established that the screening process should be undertaken without taking mitigation measures into account. As such, I can give the ecological surveys and reports submitted by the appellant limited weight.
8. NE is concerned that the proposal is likely to increase disturbance to breeding and over-wintering birds and that this equates to damage to the interest features of the SPA. The appellant argues that the NE advice is based on a desktop study. However, I am required to take a precautionary approach to the matter. I also note that Essex Wildlife Trust objected to the proposal. Whilst its objection is not supported by documentary evidence, the Trust is an independent conservation charity with significant experience of nature

² DF Clark Bionomique Extended Phase 1 Habitat Survey 2 October 2014, Habitats Regulations Assessment 2 October 2014, Winter Wetland Bird Survey 30 April 2015, Breeding Bird Survey 31 July 2015, Habitats Regulations Assessment: Screening Report 12 August 2015, Water vole, Otter and Badger Survey 29 September 2015,

³ 'Protected species: how to review planning applications'

⁴ People Over Wind, Peter Sweetman v Coillte Teoranta -323/17

conservation matters and I have no reason to suppose that the concerns it has expressed have been exaggerated.

9. At the application stage, the Council was the 'competent authority' under the Habitat Regulations. It was, therefore, statutorily responsible for preparing an Appropriate Assessment (AA), notwithstanding the qualifications of the person producing the report. Amongst other things, the AA found that the proposal could have significant effects on the interest features of the adjacent international and nationally designated sites, that there were no conditions or restrictions which would enable it to be ascertained that the proposal would not affect the integrity of the designated sites and that there were no known alternative solutions. The subsequent appeal submissions do not provide additional substantive evidence to demonstrate that these concerns are unfounded or could be overcome.
10. The appellant states that no vegetation, apart from overhanging branches would be removed in connection with the proposed use. However, it also seeks to restrict the landscaping condition proposed by the Council to the area around the proposed car park and considers that a suggested condition to control where fishing would take place would be unnecessary, unenforceable and irrelevant. Rather it refers to an exclusion zone around the 'long island' as identified in the Habitat Regulations Assessment Screening Report 2015. However, I have already found that that report is out of date. In these circumstances, it is difficult to see how effective control over the removal of vegetation to create fishing swims would be enforced. Whilst it is proposed to limit the number of people fishing to 20 at any one time, there is the potential for incremental loss of vegetation over an extended period of use. Such loss could include the reedbeds which provide a supporting habitat for the SPA protected birds.
11. The site also supports water voles, provides a suitable habitat for otters and nesting opportunities for breeding birds of high conservation importance. The additional human activity, potential for inappropriate fishing stocking and loss of vegetation would diminish the ability of the site to support these protected species.
12. Since the appeal is being dismissed for other reasons, it is not necessary for me to undertake a further AA. Nevertheless, on the basis of the information available, I find that it has not been adequately demonstrated that the proposal would not have a harmful effect on the interest features of the adjoining internationally and nationally protected sites and on species of district and high conservation value. Consequently, the proposal would conflict with LDP Policies S1, S8, D1, N1 and N2. Together, these policies require proposals to make a positive contribution to the natural environment, particularly in relation to internationally, nationally and locally designated sites of bio-diversity value and to maximise opportunities to restore and enhance green infrastructure. Nor would the proposal accord with Framework paragraphs 170 and 175 which have similar aims.

Character and Appearance

13. The appeal site largely falls outside of the settlement boundary and within the countryside as defined in the LDP. Policy S8 seeks to protect the intrinsic character and beauty of the countryside and restricts the forms of development which will be acceptable there. These include rural diversification, recreation

and tourism in accordance with LDP Policies E4 and E5. Policy E5 supports tourism development subject to considerations including the impact on the character and appearance of the area and the natural and historic environments. It also requires an identified need for the development to be demonstrated. Policy S1 sets out key principles for sustainable development including supporting growth and maintaining the rural character of the District. Policy D1 requires development to respect local character and context and make a positive contribution in terms of landscape setting and the historic environment, amongst other things.

14. The appeal site is essentially free of built development. An informal area of compacted stone surfacing adjoins the site entrance although a gate at the site entrance restricts vehicular access to the site. The boundary with Battle Rise is marked by a low post and rail fence. The largest part of the site comprises water and low-level vegetation. Its openness and semi-natural character therefore reflects its countryside designation and represents a marked contrast with the modern housing at Battle Rise to the north-west. In other directions the site has an open setting formed by the Chelmer and Blackwater Navigation and the Rivers Chelmer and Blackwater.
15. The proposal includes the creation of a 10-space car park, surfaced with 'Grasscrete' in the approximate location of the existing surfacing. Notwithstanding the appearance of the 'Grasscrete', the laying out of the spaces would formalise the car park and the introduction of cars to the site on a regular basis would have an urbanising effect. A toilet and washbasin building is also proposed. The appellant's Design and Access Statement describes the building as timber clad and measuring 4m by 3m, although the appeal statement refers to a single portable toilet. In any event, no drawings have been provided and its proposed location has not been identified. Whilst the building may be relatively modest in size, inevitably it would be prominent in an otherwise open landscape.
16. I have already referred to the potential for the loss of vegetation around the lake. As well as its impact on bio-diversity, this loss would be detrimental to the site's semi-natural character.
17. Overall therefore, I consider that the proposal would have a harmful effect on the character and appearance of the area. As such, it would conflict with LDP Policies S1 and D1. Given my findings on this issue and the impact of the proposal on bio-diversity, would the rural diversification element of the scheme draw support from Policy S8.
18. The site falls within the Chelmer and Blackwater Navigation Conservation Area (CA). The CA covers an extensive, largely rural, area on both sides of the waterway, although it also takes in the modern housing development to the north-west of the appeal site. Whilst limited information has been provided on the heritage significance of the CA, the significance would appear to derive primarily from the Navigation itself. The Council's Conservation officer has advised that the proposal would not harm the heritage asset. Given that the proposed car park and likely location of the toilet building would be a significant distance from the Navigation, and the nature and scale of the use in relation to the designated area, I agree that the proposal would preserve the CA as a whole.

Living Conditions

19. Access to the appeal site is via Battle Rise. This road is closely lined by dwellings on one side, including directly opposite the site access. Apart from the appeal site, the road provides residential access only and is a cul de sac. I have not been made aware of other noise generating activities in the area and background noise levels are low. Whilst it is proposed to limit the number of people fishing at the lake at any one time, there would be no restriction on the time of day when that use could take place.
20. Irrespective of whether fishing would occur around the part of the lake closest to the dwellings, the car park and proposed access are fairly close to a number of the dwellings. Noise from vehicle engines and doors closing and disturbance caused by comings and goings from the site could be expected to reach the nearby dwellings. Such individual noise events (as opposed to steady background noise) would be particularly harmful during the night-time and when background noise levels are low.
21. The proposed car park would accommodate 10 cars. The appellant has indicated that no more than 20 fishing club members would use the facility at any one time, although it is not clear whether non-fishing non-members would visit in addition. The condition suggested by the Council would apply to anglers only.
22. The appellant argues that the number of spaces proposed was discussed at length with the local highway authority and that 10 spaces was considered appropriate. However, the highway authority's consultation response to the application recommends the imposition of an informative to secure an additional area of parking. There is nothing to indicate the size, location or form of this additional parking. In the absence of this information it is not possible to establish the potential effects of the additional parking and, therefore, it would not be appropriate to seek to secure it by condition. It would be reasonable to expect some anglers to share a car. Others may arrive by other travel modes, although no information has been provided on cycle or public transport provision. In any event, the number of spaces proposed is half the potential number of anglers who could use the facility and makes no provision for other visitors. As such, I consider that the number of proposed parking spaces would be unlikely to be sufficient to serve the facility.
23. The road leading to the appeal site is a narrow, single carriageway. A reserve area on one side is used for casual parking for the dwellings and to allow vehicles to pass one another. The congregation of overspill parking in the reserve area adjoining the site access would be likely to result in obstructions and inconvenience, particularly at weekends. As the appellant says, the facility is likely to be used most at that time and there would also likely be more casual parking in the reserve area.
24. Consequently, I find that the proposal would have a harmful impact on the living conditions of neighbouring occupiers by reason of noise, disturbance and inconvenience. As such, it would conflict with LDP Policy D1 insofar as it requires proposals to protect the amenity of surrounding areas with regard to noise, amongst other things. Nor would the proposal accord with Framework paragraph 127 which requires development to function well, add to the quality of the area, create accessible places and achieve a high standard of amenity for existing users.

Highway Safety

25. The Council has referred to its adopted parking standards in connection with its concerns regarding the highway safety effects of the proposal. However, the standards are expressed as maximum requirements and the Council has not adequately explained how the proposal fails to comply with them.
26. Notwithstanding my finding on the effect of the proposed parking provision on the living conditions of neighbouring occupiers, given the relatively low traffic speeds in the area, I consider that the proposal would be unlikely to pose a risk to highway safety. Therefore, the proposal would not conflict with LDP Policies D1 or T2 to the extent that they require development to provide safe and secure parking in accordance with the Council's adopted parking standards.

Other Matters

27. A public footpath runs through the site and other paths provide public access on a permissive basis. The appellant has referred to existing problems caused by informal use of the site by motorbikes, dog fouling, indiscriminate parking and unauthorised fishing and camping. The Council has served a Planning Contravention Notice on the landowner in respect of the latter activities. However, the appellant contends that the site is currently impossible to police and that the Council has not provided positive assistance.
28. The appellant argues that the proposed use would allow a club to be formed, and income derived, which could be used to maintain and police the site. The presence of authorised anglers would deter inappropriate activity by others. It is also suggested that a bailiff could be employed, although no details have been provided.
29. Whilst I recognise the problems faced by the landowner in managing the site, I also note that the Ecological Management Plan agreed in connection with the adjoining residential development was intended to address at least some of these issues. Little additional information has been provided with the appeal to demonstrate that the proposal would adequately address the problems identified. No further maintenance or management plans have been provided. It has not been shown that the income from a relatively small club membership of 80 persons would sustain the necessary level of maintenance. Nor has a mechanism been provided to ensure that income from the club would be used to maintain and police the site.
30. Consequently, I find that the claimed benefits of the proposal do not outweigh my concerns in respect of the first three main issues.
31. I have had regard to the other concerns expressed locally, but they have not led me to a different overall conclusion.

Conclusion

32. For the reasons set out above, the appeal should be dismissed.

Simon Warder

INSPECTOR