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# Appeal Decision

Site visit made on 15 September 2020

**by G Pannell BSc (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 7<sup>th</sup> October 2020**

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**Appeal Ref: APP/B1550/W/20/3253876**

**Ivanhoe Nursery, Ironwell Lane, Hawkwell, Rochford SS5 4JY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant permission in principle.
  - The appeal is made by Roger & Sons Ltd against the decision of Rochford District Council.
  - The application Ref 20/00290/PRINCI, dated 19 March 2020, was refused by notice dated 23 April 2020.
  - The development proposed is planning in principle for three to five to be self and custom build. Dwellings to be single storey of quality design, low impact and carbon neutral.
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## Decision

1. The appeal is dismissed.

## Procedural Matter

2. Under Article 5B of the Town and Country Planning (Permission in Principle) Order 2017 (as amended), Permission in Principle must not be granted for development which is habitats development. There is a specific process to deem what would constitute habitats development which I must assess. Therefore, as the effect of the proposal on European designated sites is potentially a determinative issue, I have elevated this matter to a main issue.

## Main Issues

3. In light of the above, I therefore identify the main issue to be whether the proposal would be habitats development under Article 5B of the Town and Country Planning (Permission in Principle) Order 2017 (as amended).

## Reasons

4. The appeal proposal is for a Permission in Principle. This consent route has two stages, the first stage establishes whether a site is suitable in principle and the second stage, the technical details consent, is where the detailed development proposals are assessed. The appeal proposal is at the first stage and therefore relates to the principle of the scheme which is limited in scope to location, land use and amount of development. The Planning Practice Guidance (PPG) states that it is not possible for conditions to be attached to a grant of Permission in Principle. Planning obligations also cannot be secured at this stage.
5. Permission in Principle must not be granted for development which is habitats development, which is likely to have a significant effect on a qualifying

European Site, unless the competent authority have ensured an appropriate assessment has been carried out.

6. As set out in the PPG, habitats development is defined as: i) Development which is likely to have a significant effect on a qualifying European site or a European offshore marine site, referred to as habitats sites in the National Planning Policy Framework (either alone or in combination with other plans or projects); ii) is not directly connected with or necessary to the management of the site, and; iii) the competent authority has not given consent, permission, or other authorisation in accordance with regulation 63 of the Conservation of Habitats and Species Regulations 2017.
7. The site is within the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy(RAMS) zone of influence for the Crouch and Roach Estuaries (Mid-Essex Phase 3) Special Protection Area (SPA) and Ramsar site, Foulness (Mid- Essex Coast Phase 5) SPA and Ramsar site , Benfleet and Southend Marshes SPA and Ramsar site and the Essex Estuaries Special Area of Conservation (SAC).
8. The Essex Estuaries SAC covers an area of 472 sq metres and contains the major estuaries of the Colne, Blackwater, Crouch and Roach, as well as extensive open coast tidal flats at Foulness, Maplin and the Dengie. It includes extensive mud-flats and sand-flats which are important in terms of flora and supports both breeding and wintering fauna. The Crouch and Roach Estuaries SPA and Ramsar Site, Foulness SPA and Ramsar Site, Benfleet and Southend Marshes SPA and Ramsar site all support a number of migratory species as well as breeding and wintering wetland birds.
9. The proposed development falls within the scope of the RAMS as relevant development. Given that the proposal is for additional housing, and its proximity to the SPAs and SAC there is a reasonable likelihood that it would be accessed for recreational purposes by future occupants of this development. This additional activity would have the potential, either alone or in combination with other development in the area, to have a likely significant effect on the European sites.
10. The Conservation of Habitat and Species Regulations 2017 (the Regulations) require that the competent authority must ensure that there are no effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of the SPAs and SAC. The likely significant effects arising from the proposal need to be considered in combination with other development in the area and adopting the precautionary principle.
11. The Essex Local Planning Authorities within the Zones of Influence have developed a mitigation strategy to deliver the measures to address direct and in-combination effects of recreational disturbance on SPA. The RAMS sets out a strategic approach to mitigation by several councils across the wider area. It details mitigation measures that would be funded by financial contributions at a specified tariff per dwelling. Since these include a range of habitat-based measures such as education, communication and monitoring, and have been endorsed by Natural England (NE), I am satisfied that the measures would adequately overcome any adverse effects of the proposal on the SPAs and SAC. A tariff to fund the mitigation, which is payable for all additional new dwellings is currently set at £125.58 per dwelling.

12. Whilst the appellant has indicated that they are willing to pay this contribution I have not been provided with a signed and dated Unilateral Undertaking making provision for the required contribution and as set out in the PPG, planning obligations cannot be secured against a Permission in Principle. Therefore, even if submitted, I would have been unable to take into account a planning obligation which provides the mechanism to secure the mitigation. Accordingly, without such mitigation, I am unable, therefore, to conclude other than that the proposed development would have an adverse effect on the integrity of the SPAs and SAC.
13. Overall, I conclude that the proposal would constitute habitats development which is excluded from a grant of Permission in Principle under Article 5B of the Town and Country Planning (Permission in Principle) Order 2017 (as amended). Consequently, it is development for which an application for planning permission is required. Such an application would be a matter for the local planning authority to consider in the first instance.
14. The Council's reason for refusal relate to the site being in the Green Belt. However, there is no reason for me to address this matter as Permission in Principle must not be granted for development which is habitats development regardless of whether or not the site is within the Green Belt.

### **Conclusion**

15. For the reasons given above I conclude that the appeal should be dismissed.

*G. Pannell*

INSPECTOR