



Appeal Decision

Site visit made on 8 September 2020

by L Gilbert BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st October 2020

Appeal Ref: APP/P1560/W/20/3250789

Land rear of One Oak, Colchester Road, Thorpe Le Soken, CO16 0LB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by SPS Building Company Ltd against the decision of Tendring District Council.
 - The application Ref 19/00420/DETAIL, not dated, was approved on 1 November 2019 and planning permission was granted subject to conditions.
 - The development permitted is erection of 9 bungalows (submission of details following outline planning permission 17/00925/OUT allowed on appeal).
 - The condition in dispute is No 17 which states that: Prior to the commencement of development a detailed ecological enhancement and management scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme, which shall include a timetable for its implementation, shall be implemented in accordance with the approved works before occupation of the hereby approved development.
 - The reason given for the condition is: to preserve and enhance the biodiversity of the site.
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Decision

1. The appeal is allowed and the Reserved Matters approval Ref 19/00420/DETAIL for the erection of 9 bungalows (submission of details following outline planning permission 17/00925/OUT allowed on appeal) at Land rear of One Oak, Colchester Road, Thorpe Le Soken, CO16 0LB granted on 1 November 2019 by Tendring District Council is varied by deleting Condition 17.

Application for costs

2. An application for costs was made by SPS Building Company Ltd against Tendring District Council. This application is the subject of a separate Decision.

Procedural Matter

3. I have taken the description of development from the decision notice rather than the application form, as a matter of consistency.

Background and main issue

4. Outline planning permission (reference 17/00925/OUT) for the erection of 9 bungalows on the site, was originally allowed on appeal. All matters were reserved. A Reserved Matters application was subsequently granted under reference 19/00420/DETAIL and this included Condition 17 which is subject to this appeal.

5. I consider the main issue is whether or not Condition 17 of the Reserved Matters approval is reasonable and relevant to the reserved matters.

Reasons

6. I accept that the National Planning Policy Framework and the Planning Practice Guidance (PPG) encourage biodiversity net gains.
7. However, the PPG is clear that the only conditions which can be imposed when reserved matters are approved are conditions which directly relate to those reserved matters. Conditions relating to anything other than the matters to be reserved can only be imposed when outline planning permission is granted.
8. I note the Council's suggestion that the ecological enhancement and management scheme might include small features such as bee friendly planting and hedgehog friendly fencing. Whilst fencing and planting are related to the matter of landscaping, it is curious why these were not addressed when considering the landscaping details if they were considered important at the time of granting permission. Moreover, the condition is not specifically asking for such measures. Another example given by the Council of what they might require under the condition is the provision of bat boxes but these ecological features are not related to any of the reserved matters. The wording of the condition has no specifics or limitations of what would be required and it is not in any way apparent that the condition directly relates to any of the reserved matters.
9. I conclude that the condition is not relevant to the reserved matters so it is unreasonable and I allow the appeal.

L Gilbert

INSPECTOR