
Appeal Decision

Site Visit made on 26 October 2021

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th November 2021

Appeal Ref: APP/X1545/W/21/3272881

Ferry Boat Inn, North Fambridge, CHELMSFORD, CM3 6LR

- 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 Yacht Havens Ltd against the decision of Maldon District Council.
 - The application Ref FUL/MAL/20/00762, dated 14 July 2020, was refused by notice dated 12 October 2020.
 - The development proposed is hardstanding and formation of an extension to the car park.
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Decision

1. The appeal is allowed and planning permission is granted for hardstanding and formation of an extension to the car park at Ferry Boat Inn, North Fambridge, Chelmsford, CM3 6LR in accordance with the terms of the application, Ref FUL/MAL/20/00762, dated 14 July 2020, and the plans submitted with it, subject to the following conditions:

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan and 0757_A_DD_100
- 2) Unless within 3 months of the date of this decision a scheme for biodiversity enhancement of the site is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 12 months of the local planning authority's approval, the use of the site for parking, within the area indicated on drawing 0757_A_DD_100, shall cease until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 9 months of the date of this decision, the use of the site for parking, within the area indicated on drawing 0757_A_DD_100, shall cease until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

Preliminary Matters

2. The hardstanding and car park are already in place. The reference to the proposal being retrospective is superfluous and I have left it out of my description of development within the banner heading and my decision.

Main Issues

3. The main issues are:

- the effect of the proposed development on protected species; and
- the effect of the proposed development on the character and appearance of the area and on the setting of The Ferry Boat Inn, a Grade II Listed Building.

Reasons

Ecology

4. The appeal site previously accommodated a duck pond within the grounds of the existing Public House, close to the vehicular access and adjacent to the public right of way. The pond has been infilled during the construction works carried out as part of development permitted under 18/01255/FUL and it is not within the scope of this appeal to determine whether these works were carried out lawfully or otherwise.
5. The appellant has provided a copy of Ecological Appraisal (Dated December 2017) (EA) which was submitted as part of the earlier application. This considers the potential for any impacts on Great Crested Newts (GCN), a species which is protected through the Wildlife and Countryside Act 1981. The advice from the Council's ecologist indicates there are several Amber Risk Zones for GCN in the vicinity of the development site.
6. Evidence submitted with the appeal indicates that the pond was approximately 275 sq metres in size, with minimal marginal vegetation but adjacent to the vegetation which separates the site from the public right of way. The EA states there were no notable findings and it was rated poor for its suitability for GCN, due to the poor water quality and the presence of ducks. The report concluded that it did not expect any significant impact on wildlife as a result of the removal of the pond. Adherence to the Ecological Appraisal (Dated December 2017) was subject to a planning condition, as part of a wider proposal for the extensions and renovation of the existing Public House.
7. The EA also identifies that there are ten ponds within 500m of the site and some of these are considered to have a high suitability for use by GCN as breeding sites. A further report by Essex Ecology Services Ltd, October 2020 notes that if GCN did make use of these ponds, they would also make use of nearby suitable areas as terrestrial habitat and move between them on a regular basis. This concludes that as the areas of potential terrestrial newt habitat within the site, including the hedgerow adjacent to the infilled pond are to be retained that the risk of the infilling of the pond having had any significant impacts on GCN and their habitat is low.
8. Paragraph 99 of Circular 06/2005 states that the presence of a protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established

before any planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.

9. Paragraph 180 of the National Planning Policy Framework (the Framework) advises that if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less than harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused. The evidence before me indicates that it is unlikely that harm has resulted to a protected species or habitat as part of the works to infill the existing pond. The Council's Ecologist also acknowledges that there is no evidence that the infilling caused harm to protected species but suggests there would be a need for a replacement pond.
10. Paragraph 174 of the Framework requires planning decisions to contribute to and enhance the natural and local environment and whilst it has been put to me that wider enhancements have already taken place within the site, insufficient evidence has been provided which identifies the scope and nature of any enhancement and in particular its relevance to Great Crested Newts.
11. Although a replacement pond would enable wider ecological benefits for protected species, it would place an unnecessary burden on the appellant to identify a site for an additional pond, given the lack of harm identified. However, there is sufficient space within the site to enable terrestrial habitat enhancements and this can be secured by an appropriately worded condition. Therefore, I am satisfied that the development would accord with the requirements of the Framework and policy N2 of the Maldon District Approved Local Development Plan 2014-2029 (LDP) which seeks to ensure that all new developments deliver net biodiversity and geodiversity gain where possible.

Character and appearance

12. The Ferry Boat Inn is a Grade II Listed Building with evidence of an earlier medieval house, but dates mainly from the 18th and 19th centuries. Views of the public house from the entrance from Ferry Road are across a large expanse of tarmacked road with a large parking area to the front of the building. The extension to the car park is partially screened by existing landscaping and is located discreetly to the side of the building.
13. In accordance with the duty imposed by Section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 I am required to pay special attention to the desirability of preserving the setting of listed buildings or any features of special architectural or historic interest. Furthermore, paragraph 199 of the Framework states that when considering the impact of new development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
14. The Ferry Boat Inns significance is derived from its vernacular architecture, with the building retaining numerous architectural features of interest, traditional materials and detailing. The Council's Conservation Officer noted that whilst the pond was a part of landscaping within the setting of the listed building, it contributed little to the building's heritage significance and would not have featured prominently in views of the building. I have no reason to disagree with this assessment.

15. Having regard to the prominence of the existing car parking and access road which the building fronts onto, I conclude that the infilling of the pond and introduction of further hardstanding and car parking would not result in harm to the building's significance, in accordance with policy D3 of the LDP which states that development that affects a heritage asset will be required to preserve or enhance its setting.
16. Furthermore, the proposal would not result in harm to the overall character and appearance of the area, taking into account the existing car park and access road which is a dominant feature within the immediate landscape. The extension to the car park is partially screened by the existing landscaping and is in a relatively discreet location in comparison to the remainder of the parking which is located to the front of the site. Therefore, the development accords with policy D1 and H4 of the LDP which seeks to respect and enhance the character and local context of the historic environment and requires development to optimise the use of land.

Other matters

17. It has been put to me that the infilling of the pond could have an impact on surface water drainage and increase the risk of flooding nearby. The appellant has provided a SuDS Strategy by JMS Civil and Structural Consulting Engineers which demonstrates that the surface water management design of the parking area should minimise the risks of flooding. I am content to rely on the expert views provided within the appellant's evidence. This is supported by both the Council's Environmental Health Specialist and the overall conclusions of the appellant's SuDs strategy which has been carried out by a suitably qualified person.

Conditions

18. The Council has suggested two conditions and I have considered these in light of the Planning Practice Guide and the tests of the Framework and where necessary amended them for clarity.
19. It is necessary, for the avoidance of doubt, to define the plans with which the scheme should accord. I also consider that a condition to agree a scheme of biodiversity enhancement, would also be necessary in order to ensure these are obtained and implemented as approved.

Conclusion

20. For the reasons given I conclude that the appeal should succeed.

G Pannell

INSPECTOR