
Appeal Decision

Site visit made on 23 November 2021

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd December 2021

Appeal Ref: APP/X1545/W/21/3274431

Land South Of Woodham Walter Primary School, Woodham Walter, CM9 6RF

- 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 Mr D Mountier against the decision of Maldon District Council.
 - The application Ref PIP/MAL/20/01284, dated 7 December 2020, was refused by notice dated 1 February 2021.
 - The development proposed is permission in principle for up to 9 discounted market dwellings, enabling extension of school playing fields and car park.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the address from the appeal form, as only a grid reference was given on the original application form.
3. 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 Issue

4. 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

5. 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.

6. 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.
7. 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.
8. The site is within the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy(RAMS) zone of influence for the Crouch and Roach Estuaries Special Protection Area (SPA) and Ramsar site; Essex Estuaries Special Area of Conservation (SAC); Blackwater Estuary SPA and Ramsar Site and the Dengie SPA and Ramsar site.
9. The Essex coastline is one of importance for birds and their habitat. It is home to internationally important numbers of breeding and non-breeding birds and their coastal habitats.
10. 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.
11. 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.
12. 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.
13. 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.

14. 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.
15. The Council's reason for refusal refer to a number of other matters, including the proposed location of the development, the effect on the character and appearance of the area, including the Woodham Walter Conservation Area and the loss of Grade 2 agricultural land. However, it would not be appropriate for me to address these matters as Permission in Principle must not be granted for development which is habitats development and the consideration of these matters may not be the same if an application for planning permission were to be made to the local planning authority in the future.

Conclusion

16. For the reasons given above I conclude that the appeal should be dismissed as it does not comply with Article 5B (1) of the Town and Country Planning (Permission in Principle) Order 2017 (as amended).

G Pannell

INSPECTOR