



Appeal Decision

Site visit made on 4 January 2022

by Andrew Owen MA BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 January 2022

Appeal Ref: APP/X1545/W/21/3273450

Montrose, Birchwood Road, Cock Clarks CM3 6RF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Mr Shaun McSpadden against Maldon District Council.
 - The application Ref 20/01102/FUL, is dated 29 October 2020.
 - The development proposed is a pond on a former equestrian site.
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Decision

1. The appeal is dismissed.

Main Issue

2. Although the Council failed to make a formal decision on the application, they have produced an officer report which recommended refusal for two reasons. From this, I consider the main issues to be; the effect of the development on the character and appearance of the area, and its effect on the living conditions of nearby occupiers in terms of disturbance.

Reasons

Character and appearance

3. The appeal site primarily accommodates a large, roughly square, grassed area which slopes very slightly down to its rear. There are some trees and hedges along the rear and side boundaries, but the agricultural land beyond is visible through and above this vegetation, as are the neighbouring dwellings and their large rear gardens. This openness and the generally flat landscape are strongly positive characteristics of the locality.
4. The proposal is to excavate material to create a pond for the appellant's personal fishing use. It would measure 2.1 acres (around 8,500 square metres), be 2 - 3 metres deep and contain a small island. The plans show that the excavated material would be used to create screening bunds at the east, west and south sides of the pond. The cross section plans show the southern bund would measure just over 3 metres high with the east and west bunds being around 1.5 metres high.
5. No calculations of the volume of material that would need to be excavated to create the pond have been provided, and there is also no plan indicating the length of the bunds. However, even without these calculations and even assuming the bunds would run the whole length of the pond, it is patently clear from the sections that the bunds would need to be substantially taller or deeper

than shown to accommodate all the material. There is no indication material will be taken off site and in fact there is an annotation on the plans to say that the height of the bunds will depend on the excavation of the lake. It is accepted that there may be a margin of error in calculating the heights of the bunds. Nonetheless, the bunds would appear to be substantially undersized.

6. The southern bund as shown on the plans would be a significant feature. Larger bunds would appear as alien engineered features in the otherwise open and natural landscape. As such I cannot conclude that the bunds would not harm the character and appearance of the area.
7. The pond itself would be larger than a domestic ornamental pond, such as that already in the rear garden of Montrose, and would be an uncommon land use in the area. Nonetheless, waterbodies are natural rural features and by virtue of the screening provided by the bunds (even if as shown on the sections), it would have no harmful impact on the character or appearance of the wider area.
8. I accept the site previously contained equestrian infrastructure associated with the previous occupiers' personal equine hobby, and that the pond and bunds would simply be forms of development associated with the appellant's personal fishing hobby. Nonetheless, stables and other types of equestrian built form are common in this area and generally in the countryside, whereas large earth bunds, even if landscaped, are not. Hence they would appear visually incongruous. Furthermore, as the previous equestrian infrastructure has now been substantially removed from the site, any benefit to openness from their removal has already been achieved without the proposal.
9. Consequently, the development would fail to accord with policies D1, S1 and S8 of the Maldon District Approved Local Development Plan (2017) (the 'LDP') which together state that development should respect the character of the local context, the natural environment and the countryside. I find no conflict with LDP policy H4, as referred to by the Council, as that relates to housing development.

Living conditions

10. The Council consider the proposal could potentially be disturbing to nearby residents as there was a lack of information regarding the long-term operation and maintenance of the development. They specifically refer to a lack of detail on water quality, aeration practices, cleansing regime, fish management, lighting, safety measures and landscaping. In response, the appellant states that due to the size of the pond, it will aerate naturally satisfactorily without mechanical assistance. Furthermore, there is no indication that lighting would be required, and if it were, the submission of such details could be secured by a condition. Similarly, the submission of a scheme of landscaping and its management could also be ensured by a condition.
11. Overall, I consider that there is no evidence to suggest the development would necessarily be disturbing to the living conditions of neighbouring residents, and much of the detail required by the Council could be submitted before the operations commenced as required by a suitably worded condition attached to a planning permission. As such, the development would not be harmful to the living conditions of nearby occupiers. On this issue therefore, it would accord with policy LDP D1 which seeks to protect the amenity of surrounding areas.

Other Matters

12. The benefits of the development to biodiversity, both in terms of conserving carp populations and supporting other species which may use the pond as part of their feeding, breeding or general habitat, are noted. I give this moderate weight.

Conclusion

13. Although the proposal would not be likely to harm the living conditions of nearby residents, and would provide ecological benefits, it would be likely to significantly harm the character and appearance of the area.
14. It is considered that the proposal would conflict with the development plan as a whole and the other considerations set out above do not outweigh this. Therefore, for the reasons given, the appeal is dismissed.

Andrew Owen

INSPECTOR