



Appeal Decision

Site visit made on 21 November 2023

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th December 2023

Appeal Ref: APP/X1545/W/23/3316615

Land West of 8 Captains Wood Road, Great Totham, Essex CM9 8PU

- 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 Mr Nicholas Carlton against the decision of Maldon District Council.
- The application Ref PIP/MAL/22/00236, dated 1 July 2022, was refused by notice dated 16 August 2022.
- The development proposed is self-build house, detached garage and vehicle access.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal application is for permission in principle, as provided for in the Town and Country Planning (Permission in Principle) Order 2017 (the Order). The Planning Practice Guidance (PPG)¹ advises that this is an alternative way of obtaining planning permission for housing-led development which separates the consideration of matters of principle from the technical detail. Planning permission does not exist unless both the permission in principle and the technical details are approved. This appeal relates to the first of these two stages.
3. The PPG sets out that the scope of permission in principle applications is limited to location, land use and amount of development. In respect of residential development, an applicant can apply for permission in principle for a range of dwellings by expressing a minimum and maximum net number of dwellings as part of the application.

Main Issue

4. The main issue is the effect of the proposed development upon the Blackwater Estuary Special Protection Area (SPA) and Ramsar, Dengie SPA and Ramsar sites.

Reasons

5. The appeal site comprises an elongated parcel of land accommodating miscellaneous items. The site neighbours existing residential development on one side and open countryside on the other.
6. The site is located within the zone of influence for the Blackwater Estuary SPA and Ramsar, Dengie SPA and Ramsar sites. The Essex coast is home to a

¹ Paragraph: 001 Reference ID: 58-001-20180615

- number of internationally important breeding and non-breeding birds and their habitats. As such, these habitat sites are recognised by the Conservation of Habitats and Species Regulations 2017 as areas of international importance.
7. The Essex Coast recreational disturbance avoidance mitigation strategy (RAMS) aims to strike a balance between new residential development and mitigating additional recreational pressures on these habitat sites associated with this growth.
 8. Adopting a precautionary principle and without mitigation new residential development is likely to have a significant effect on the sensitive interest features of the habitat sites, through increased recreational effects 'in combination' with other plans and projects causing harm to nature conservation.
 9. The RAMS sets out that provided mitigation can be secured, in the form of a developer contribution, it can be concluded proposals would not have an adverse effect on the integrity of the habitat sites from recreational disturbance, when considered 'in combination' with other developments.
 10. Therefore, in the absence of a planning obligation securing such a financial contribution I am not satisfied that the impact of the development would be mitigated and that a likely significant effect on the integrity of the habitat sites would not occur. In such circumstances the PPG is clear that permission in principle must not be granted.
 11. Whilst I note that a direct payment has subsequently been made, there is no accompanying mechanism to ensure this would be used towards mitigation measures and therefore this does not lead me to reach a different conclusion on the matter.
 12. I acknowledge the appellant's comments suggesting that the payment or the mechanism to secure the payment could be secured by condition under a section 111 agreement. However, the PPG sets out that it is not possible to impose conditions on a permission in principle, and in any event a positively worded condition which requires the applicant to enter into a planning obligation or an agreement under other powers, is unlikely to pass the test of enforceability.
 13. I conclude that the proposed development would adversely affect the integrity of the Blackwater Estuary SPA and Ramsar, Dengie SPA and Ramsar sites contrary to Article 5B(1) of the Order; Policies S1 and N2 of the Maldon District Local Development Plan (2017) and the National Planning Policy Framework which, amongst other things, seek to avoid negative impacts on habitat sites and to conserve and enhance the natural environment.

Other Matters

14. I acknowledge the appellant's frustration with regard to the application process and the apparent absence of published information. However, these are not matters for me in consideration of this appeal.

Conclusion

15. For the reasons set out above the appeal does not succeed.

B Thandi

INSPECTOR