



Appeal Decision

Site visit made on 8 October 2024

by G Dring BA (Hons) MA MRTPI MAUDE

an Inspector appointed by the Secretary of State

Decision date: 27th November 2024

Appeal Ref: APP/X1545/W/24/3339776

Land at Blackwater Trading Estate, The Causeway, Maldon CM9 4GG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Aquila EHS Ltd against the decision of Maldon District Council.
- The application Ref is VARM/MAL/23/00882.
- The application sought outline planning permission with the matters of access, layout and scale for consideration for the erection of warehouse units (Class B8) with associated vehicle parking & servicing without complying with conditions attached to planning permission Ref OUTM/MAL/21/00540, dated 9 June 2023.
- The conditions in dispute are Nos 6 and 12 which state that: No 6 *'No development hereby approved, including ground works or demolition, shall commence unless a footway/cycleway connecting the western part of the application site (west of approved Unit G) with the existing footway/cycleway along the north-eastern boundary of Aldi has been completed. The details of the footway/cycleway shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development, including ground works and demolition. The footway/cycleway shall then be retained as such in perpetuity.'*
No 12 *'The public's rights and ease of passage over public footpath No. 45 (Maldon) shall be maintained free and unobstructed at all times.'*
- The reasons given for the conditions are: No 6 *'To ensure that a safe and easily accessible footway/cycleway is provided in support of sustainable modes of transport in accordance with Policies S5, T1 and T2 of the Local Development Plan and the guidance contained in the Maldon and Heybridge Central Area Masterplan, the North Quay Regeneration Development Brief SPD and National Planning Policy Framework.'*; No 12 *'To ensure the continued safe passage of the public on the definitive right of way and accessibility in accordance with policy T2 of the Maldon District Local Development Plan.'*

Decision

1. The appeal is allowed and outline planning permission with the matters of access, layout and scale for consideration for the erection of warehouse units (Class B8) with associated vehicle parking & servicing at land at Blackwater Trading Estate, The Causeway, Maldon, CM9 4GG is granted in accordance with the application Ref VARM/MAL/23/00882 without compliance with condition numbers 6 and 12 previously imposed on planning permission Ref OUTM/MAL/21/00540 dated 9 June 2023 and subject to the conditions in the attached schedule.

Preliminary Matters

2. The Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations) require that, before deciding to give permission for a plan or project which is likely to have a significant effect on a European site,

the competent authority must make an appropriate assessment of the implications of the plan or project on its conservation objectives. I have had regard to this duty and will return to this matter later in my decision.

3. It has been identified that the original planning permission (OUTM/MAL/21/00540) granted by the Council was subject to a Unilateral Undertaking (UU) that secured a financial contribution towards the monitoring of a travel plan required by condition. The appellant asserts that this is no longer required as neither Essex County Council nor Maldon District Council have requested an amended UU in this regard in relation to the application subject to this appeal. The Council has been consulted on this matter and has not disputed the appellant's claim. I have therefore not taken the previous UU into account in considering this appeal.

Background and Main Issue

4. In June 2023 outline planning permission with the matters of access, layout and scale for consideration for the erection of warehouse units (Class B8) with associated vehicle parking and servicing was granted by the Council. The permission was subject to a number of conditions.
5. Condition 6 requires the details of a footway/cycleway, connecting the western part of the site with an existing footway/cycleway along the north-eastern boundary of Aldi to be submitted and approved by the Local Planning Authority and implemented prior to the commencement of development. Condition 12 requires that public footpath No. 45 (Maldon) is maintained free and unobstructed at all times.
6. The appellant is seeking to remove condition 6 attached to the planning permission so that a footway/cycleway is not required to be provided between the western part of the site and a footway/cycleway along the north-eastern boundary of Aldi.
7. The appellant also seeks the removal of condition 12 as they assert that it is not necessary, given the proposal would not affect public footpath No. 45 (Maldon). The Council has confirmed, following consultation with the Highways Authority that condition 12 is not necessary, given that public footpath No. 45 is removed from the appeal site and would not be affected by the proposed development. I can find no evidence before me to take a different view on this matter.
8. As the necessity of condition 12 is no longer disputed, the main issue in this case is whether condition 6 is reasonable and necessary in order to provide opportunities for the use of sustainable modes of transport.

Reasons

9. Policy S5 of the Maldon District Approved Local Development Plan 2014-2029 July 2017 (LDP) refers to the Maldon and Heybridge Central Area and identifies it as the focus of the District's retail, employment, transport, leisure and community functions. Criteria 6) of Policy S5 states that the regeneration strategy for the area includes maintaining and encouraging the wider use of walking and cycling across the area.
10. Policies T1 and T2 of the LDP refer to the need to secure provision for sustainable transport and create and maintain an accessible environment in

new development, including safe and direct walking and cycling routes. The Council declared a Climate Emergency in February 2021 and has pledged to 'kick the car habit', highlighting the need for walking and cycling infrastructure to link to and from new development. The Council's long term vision for Maldon District is to ensure it is well connected for people of all ages to live, work and visit.

11. No existing or proposed footpath or cycleway links are shown, connecting into the appeal site, as described by the Council in condition 6, on the plans or figures provided in the Maldon and Heybridge Central Area Masterplan Supplementary Planning Document November 2017 (CAMSPD) or the North Quay Regeneration Brief Supplementary Planning Document Adopted 17 December 2020 (NQRSPD). Nevertheless, I recognise that the CAMSPD and NQRSPD identify the importance of the need for good quality vehicular access as well as the provision of alternative and more sustainable travel choices in order to ensure growth is properly integrated.
12. The Council has confirmed that a footway/cycleway was approved as part of the adjacent Blackwater Retail Park development, alongside the boundary of the Aldi retail unit, terminating adjacent to land in the wider ownership of the appellant. A decision notice¹ and approved site layout plan for the adjacent development has been provided in this regard.
13. It is asserted that the footway/cycleway referred to in condition 6 is required to connect the appeal site into this adjacent footway/cycleway in order to provide a shorter pedestrian route between the appeal site and the bus stops along The Causeway and to provide a connection into the cycle network.
14. During my site visit I noted that the adjacent footway/cycleway was not in use for that purpose and that the area was fenced off and not accessible. The Council assert that enforcement action could be taken to ensure that the adjacent approved footway/cycleway is implemented in accordance with the approved site layout.
15. Nonetheless, no connection or potential connection is shown into the land owned by the appellant on that adjacent approved site layout, nor the layout approved under the initial outline planning permission subject to this appeal. There is no condition imposed on the planning permission for the adjacent site that requires a footpath/cycle connection to be made into the appeal site and there is no legal agreement before me which would require this.
16. The Council identify that the land required to make a footway/cycleway connection between this approved adjacent pedestrian/cycle route and the appeal site is outside of the red line area on the site location plan, but still under the ownership of the appellant and currently comprises a road used by drivers to exit the appeal site.
17. It is suggested that the existing road that could provide the footway/cycleway connection from the adjacent approved footway/cycleway to the appeal site would be wide enough to be used for both vehicles and pedestrians/cyclists. However, one key consideration of the relevant LDP policies outlined above is that walking and cycling routes are safe.

¹ FUL/MAL/14/00861

18. During my site visit I walked along the road to and from the appeal site and found it an uncomfortable experience. The route was busy with Heavy Goods Vehicles. I had to keep looking behind me on hearing vehicular noises to establish whether I needed to move across to stand along the fence line so I was out of the way of vehicular movements. I appreciate this could be improved by the provision of a separate or demarcated footpath, nevertheless, in my view the potential footway/cycleway route identified by the Council would represent an unpleasant route with users having to move cautiously.
19. The existing road provides part of the vehicular circulation route through the commercial area which is subject to barriers and security at the entrance. Specific pedestrian and vehicular routes through the wider site appear to be in operation currently, which would provide access to the appeal site. Opening the rear of the wider commercial area up so that there would be unrestricted access from the adjacent retail area, would be contrary to the aim of limiting the conflict between the movements of Heavy Goods Vehicles and pedestrians/cyclists by having an internal layout whereby movements are controlled and monitored. I note that additional security and a barrier system to restrict entry to employees only at this point would ensure that those not employed at the appeal site could not gain entry. Nevertheless, this does not overcome my concerns about the safety of the route overall.
20. In addition, based on the evidence before me, it has not been demonstrated that there is any specific requirement for a connection into the adjacent approved cycleway/footway to be provided, which would mean that there would be no onward route from the edge of the appellants land, into the adjacent retail park, along the adjacent footway/cycleway.
21. I therefore find that condition 6 is not reasonable or necessary in the interests of providing opportunities for the use of sustainable modes of transport. Accordingly, without the condition, there would be no conflict with Policies S5, T1 and T2 of the LDP or the guidance set out in the CAMSPD and NQRSPD, the aims of which are set out above.

European sites

22. The appeal site lies adjacent to the Blackwater Estuary Special Protection Area (SPA) and Ramsar site and the Essex Estuaries Special Area of Conservation (SAC). The qualifying features of these protected sites include the habitats within them and the species supported by them. Habitats within the SAC include sea inlets, tidal rivers, estuaries, mud flats, sand flats, lagoons (including saltwork basins), salt marshes, salt pastures, salt steps, shingle, sea cliffs, islets and improved grassland. The habitats present in relation to the SPA and Ramsar site include saltmarsh, mudflats, shingle and shell banks.
23. The site is designated as a SPA for supporting populations of importance of numerous bird species both breeding and non-breeding, including little tern, hen harrier, pochard, ringed plover, dark-bellied brent geese, grey plover, dunlin, black-tailed godwit, cormorant, shelduck, gadwall, teal, goldeneye, curlew, and redshank. The Ramsar site qualifying features include the extent and diversity of the habitat present, the invertebrate fauna, sequences of saltmarsh plant communities, bird assemblages of international importance and due to the species and populations present.

24. The conservation objectives are to ensure that, subject to natural change, the integrity of the site is maintained or restored as appropriate, and that the site contributes to achieving the Favourable Conservation Status of its qualifying features. This involves maintaining or restoring the extent and distribution of qualifying natural habitats and habitats of qualifying species, the structure and function of these habitats, the supporting processes on which the habitats rely and the populations and distribution of the qualifying species within the site.
25. The submitted Habitats Regulation Assessment (HRA) identifies that possible noise disturbance during construction, human and lighting disturbance during construction and when in operation and air and water-based pollution when in operation are unlikely to result in likely significant effects but are not excluded at the screening stage. The HRA also states that in the absence of a Construction Environmental Management Plan, the effects from dust and water-based pollutants are considered likely. The HRA states that in the absence of other nearby commercial development projects within the trading estate, in-combination effects are not anticipated. I can find no reason to disagree with this screening assessment. I am therefore required to carry out an Appropriate Assessment having regard to the interest features and conservation objectives for these European sites.
26. As the proposal is for commercial development and would not result in an increase in the number of permanent residents, it is unlikely that the proposal would result in increased recreational pressure on the European sites. Nevertheless, carrying out development directly adjacent to the European sites may result in some disturbance to species using the habitat, albeit mainly during the construction phase. However, a condition requiring a Construction and Operational Environmental Management Plan to be submitted, agreed and implemented can be attached to the permission, which would enable the management of noise, human disturbance and air and water-based pollution both during construction and when in operation. A condition requiring external illumination details to be submitted and agreed prior to installation could be imposed to limit any light disturbance.
27. A condition could also be imposed that restricts construction works from taking place during prolonged periods of cold weather between October and March inclusive which would ensure that construction works are not carried out during sensitive periods in the winter when the estuary supports a significant number of wintering waterbirds. A condition requiring the mitigation measures set out in the HRA and the Preliminary Ecological Appraisal (PEA) are carried out can also be imposed so that the recommendations of both reports are integrated into the scheme.
28. Therefore, subject to mitigation measures that could be secured by the imposition of appropriate planning conditions, I conclude that the proposed development, alone or in combination with other plans or projects, would not affect the achievement of the conservation objectives of the SPA, SAC or Ramsar site, and it would not adversely affect the integrity of these sites.

Conditions

29. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. A condition relating to reserved matters and the timeframes for the submission of details

and the commencement of development is imposed. I have amended the time limit element of the condition, as this cannot be extended through this appeal.

30. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
31. Conditions relating to boundary treatments, landscaping, ground and floor levels and materials are reimposed in the interests of the character and appearance of the area. I have reimposed conditions requiring a Construction Management Plan, the implementation of parking and turning, cycle parking and two wheeled parking facilities and to ensure that no surface water will discharge onto the highway in the interests of highway safety. Conditions relating to the submission of a workplace travel plan, location of electric car charging points and car parking spaces for disabled people are reimposed to ensure sufficient parking and to promote the use of sustainable modes of transport.
32. Conditions are reimposed in relation to hours of operation, the approved use of the premises and the use of external plant and machinery in order to protect the amenity of neighbouring properties and the area. Conditions are reimposed in relation to a flood action plan, restricting the siting of any buildings or fixed above ground structures within 20.5 metres of the landward toe of the defence and a surface water flooding scheme including maintenance arrangements and the requirement to maintain yearly logs to ensure the site is properly drained and to minimise the risk of flooding.
33. I have reimposed conditions relating to external illumination, a restriction on works during prolonged periods of cold weather, the requirement for Construction and Operational Environmental Management Plans, to ensure that works are carried out in accordance with measures identified in the HRA and PEA and a requirement for enhancement measures in the interests of biodiversity, ecology and the integrity of nearby protected sites. Two conditions are reimposed regarding requirements for an archaeological assessment and archaeological works in the interests of the historic environment.
34. I have not imposed the disputed conditions relating to the provision of a footway/cycleway link and public footpath No. 45. There were nine informatives on the original planning permission. I am satisfied that the appellant has had sight of these given they were provided within the Council's decision notice. I have not stated them here, given they have no legal effect.

Conclusion

35. For the reasons given above I conclude that the appeal should succeed. I will grant a new outline planning permission without the disputed conditions but restating those undisputed conditions that are still subsisting and capable of taking effect.

G Dring
INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, and landscaping, ("the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.

Application for approval of the reserved matters shall be made to the local planning authority not later than 9 June 2026.

The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.

- 2) As part of the reserved matters details of the siting, height, design and materials of the treatment of all boundaries including gates, fences, walls, railings and piers shall be submitted to and approved in writing by the Local Planning Authority. The screening as approved shall be constructed prior to the first use of the development to which it relates and be retained in perpetuity as such thereafter.
- 3) The landscaping details referred to in Condition 1 shall provide full details and specifications of both hard and soft landscape works, which shall be submitted to and approved in writing by the Local Planning Authority. Such details shall be submitted concurrently with the other reserved matters. These landscaping details shall include the layout of the hard landscaped areas with the materials and finishes to be used together with details of the means of enclosure, car parking layout, vehicle and pedestrian accesses.

The details of the soft landscape works shall include schedules of shrubs and trees to be planted, noting the species, stock size, proposed numbers / densities and details of the planting scheme's implementation, aftercare and maintenance programme.

The hard landscape works shall be carried out as approved prior to the beneficial first use of the development hereby approved unless otherwise first agreed in writing by the Local Planning Authority.

The soft landscape works shall be carried out as approved within the first available planting season (October to March inclusive) following the commencement of the development, unless otherwise first agreed in writing by the Local Planning Authority. If within a period of five years from the date of the planting of any tree or plant, or any tree or plant planted in its replacement, is removed, destroyed, dies, or becomes, in the opinion of the Local Planning Authority, seriously damaged or defective, another tree or plant of the same species and size as that originally planted shall be planted in the same place, unless the Local Planning Authority gives its written consent to any variation.

- 4) Prior to the commencement of development details of the existing and proposed ground levels together with proposed finished floor levels shall be submitted to and be approved in writing by the Local Planning Authority. The development hereby permitted shall then be constructed in accordance with the approved ground and finished floor levels.

- 5) Prior to their use in the construction of the development, product details or samples of all materials to be used in the construction of the external surfaces of the development hereby permitted shall have been submitted to and approved in writing by the local planning authority. The development shall be carried out using the materials and details as approved.
- 6) No development shall take place, including any ground works or demolition, until a Construction Management Plan has been submitted to, and approved in writing by, the local planning authority. The approved plan shall be adhered to throughout the construction period. The Plan shall provide for:
 - a) the parking of vehicles of site operatives and visitors
 - b) loading and unloading of plant and materials
 - c) storage of plant and materials used in constructing the development
 - d) wheel and underbody washing facilities
- 7) The development hereby approved shall not be occupied until such time as the vehicle parking and turning area indicated on planning application drawing number 21/02/03 REV B, has been hard surfaced, sealed and marked out in parking bays. The parking spaces shall have dimensions in accordance with the current parking standards. The vehicle parking area and associated turning area shall be retained in this form at all times. The vehicle parking shall not be used for any purpose other than the parking of vehicles that are related to the use of the development.
- 8) Cycle parking shall be provided prior to the first use of the development hereby approved in accordance with Maldon District Council's adopted standards. The approved facility, which details shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of the development hereby approved, shall be secure, convenient, covered and retained in perpetuity.
- 9) The powered two wheeler/cycle parking facilities as shown on the approved plan 21/02/03 REV B are to be provided prior to the first occupation of the development and retained at all times.
- 10) There shall be no discharge of surface water onto the Highway.
- 11) Prior to first occupation of the proposed development, the Developer shall submit a workplace travel plan to the Local Planning Authority for approval in consultation with Essex County Council. Such approved travel plan shall be actively implemented for a minimum period of 5 years.
- 12) No building hereby permitted shall be used until details of the number and location of electric car charging points in accordance with the adopted Vehicle Parking Standards SPD (2018) have been submitted to and approved in writing by the local planning authority. The charging points shall be provided in accordance with the approved details prior to the commencement of the beneficial use of the parking space within which they would be located.
- 13) No building hereby permitted shall be used until details of the number and location of car parking spaces for disabled people in accordance with the adopted Vehicle Parking Standards SPD (2018) have been submitted to and approved in writing by the local planning authority. The parking

spaces for disabled people shall be provided in accordance with the approved details prior to the commencement of the beneficial use of the parking space within which they would be located.

- 14) The hours of operation of the, B8 units hereby permitted shall be between: Monday to Saturday 0700 hours until 2300 hours only.
- 15) No external plant or machinery shall be used unless and until details of the equipment have been submitted to and approved by the local planning authority. Any measures required by the local planning authority to reduce noise from the plant or equipment shall be completed prior to the plant being brought into use and retained as such thereafter.
- 16) The applicant/occupier is required to have in place a flood action plan to respond to any flood warnings issued by the Environment Agency. Details of the flood evacuation plan shall previously have been submitted to and agreed in writing by the Local Planning Authority, in consultation with the Environment Agency, prior to first occupation of the development hereby permitted.
- 17) No means of external illumination of the site shall be installed unless otherwise agreed in writing by the local planning authority. The external illumination shall be retained as such thereafter.
- 18) The premises shall only be used for storage and distribution purposes which are defined within Class B8 of the Schedule to the Town & Country Planning Use Classes (Amendment) Order 1987 (or in any provision equivalent to that Class in any statutory instrument revoking or re-enacting that Order) and for no other purpose.
- 19) No buildings, or fixed above ground structures shall be placed within 20.5 metres of the landward toe of the defence, as detailed on drawing 21/02/03 revision B, dated Apr 21, provided within Appendix B of the Flood Risk Assessment Addendum No.2, dated January 2022, without written approval from the Environment Agency.
- 20) No works except demolition shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme should include but not be limited to:
 - Provide engineering site layout of the proposed drainage network at the site. This should include the following details: manholes cover levels, invert levels, pipes dimensions, slopes, basin top and base levels, and invert levels both at inlet and outlets, outflow rates, as well as top water level in the attenuation basins/ponds during 100 year plus 40 percent CC allowance.
 - Provide calculations for the conveyance and storage network for the proposed development. The network should not predict surcharge in 1yr events, and should not predict flooding in 30year events. During 100 year plus 40pc cc event if any marginal flooding is predicted then it should be directed away from the building using appropriate site grading.

- The appropriate level of treatment for all runoff leaving the site, in line with the Simple Index Approach in chapter 26 of the CIRIA SuDS Manual C753.
- Detailed engineering drawings of each component of the drainage scheme.
- A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features.
- A written report summarising the final strategy and highlighting any minor changes to the approved strategy.

The scheme shall subsequently be implemented prior to occupation. It should be noted that all outline applications are subject to the most up to date design criteria held by the LLFA.

- 21) No works shall take place until a scheme to minimise the risk of offsite flooding caused by surface water run-off and groundwater during construction works and prevent pollution has been submitted to, and approved in writing by, the local planning authority. The scheme shall subsequently be implemented as approved.
- 22) Prior to occupation a maintenance plan detailing the maintenance arrangements including who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies, has been submitted to and agreed, in writing, by the Local Planning Authority.
- 23) The applicant or any successor in title must maintain yearly logs of maintenance which should be carried out in accordance with any approved Maintenance Plan. These must be available for inspection upon a request by the Local Planning Authority.
- 24) No development, including ground works or demolition, shall take place during prolonged periods of cold weather between October - March inclusive. In the event of a works suspension due to prolonged cold weather, work can resume after three days of thaw. After a continuous week of cold weather (i.e. frozen conditions for seven consecutive days), advice should be sought from the Site Ecologist or Ornithologist who shall base their guidance on the advice contained within the website of the Joint Nature Conservation Committee regarding a "Scheme to reduce disturbance to waterfowl during severe winter weather" or any other advice amending or revoking that advice.
- 25) No development, including ground works or demolition, shall commence until a Construction Environmental Management Plan and an Operational Environmental Management Plan have been submitted to and approved in writing by the Local Planning authority.
- 26) The development shall be implemented in accordance with the mitigation measures included in the submitted Habitat Regulations Assessment Report, submitted by the applicant on 26 May 2021 and Preliminary Ecological Appraisal, dated 11 May 2021 prepared by Southern Ecological Solutions. The development hereby approved shall operate in accordance with the approved mitigation measures in perpetuity.

- 27) No development, including ground works or demolition, shall commence until details of enhancement measures have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details and retained as such in perpetuity.
- 28) No development including any site clearance or groundworks of any kind shall take place within the site until the applicant or their agents; the owner of the site or successors in title has submitted an archaeological assessment by an accredited archaeological consultant to establish the archaeological significance of the site. Such archaeological assessment shall be approved by the local planning authority and will inform the implementation of a programme of archaeological work. The development shall be carried out in a manner that accommodates such approved programme of archaeological work.
- 29) No development including any site clearance or groundworks of any kind shall take place within the site until the applicant or their agents; the owner of the site or successors in title has secured the implementation of a programme of archaeological work from an accredited archaeological contractor in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority. The development shall be carried out in a manner that accommodates the approved programme of archaeological work.

The archaeological work will comprise archaeological trial-trenching of the proposed development area, followed by full excavation if archaeological features are identified. All fieldwork should be conducted by a professionally recognised archaeological contractor.