



Appeal Decision

Site visit made on 24 March 2025

by R Bartlett PGDip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 April 2025

Appeal Ref: APP/P1560/W/24/3349919

Site of 1 & 2 Bridge Cottages, Parkeston Road, Dovercourt, Harwich, CO12 4HE

- 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.
 - The appeal is made by G and P Schelvis against the decision of Tendring District Council.
 - The application Ref is 18/01592/OUT.
 - The development proposed is two detached houses.
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Decision

1. The appeal is allowed, and planning permission is granted for two detached houses at Site of 1 & 2 Bridge Cottages, Parkeston Road, Dovercourt, Harwich, CO12 4HE, in accordance with the terms of the application, Ref 18/01592/OUT, subject to the conditions in the attached schedule.

Applications for costs

2. An application for an award of costs was made by G and P Schelvis against Tendring District Council (the Council). The Council has also made an application for an award of costs against G and P Schelvis. These applications form the subject of separate decisions.

Procedural Matters

3. The application was submitted in outline form with all matters reserved. I have therefore treated the submitted site plan as being indicative only.
4. The application was refused for two reasons. The first was the absence of sufficient information to demonstrate that Hazel Dormice, which are a European protected species, would not be harmed due to a loss of on-site habitat. Additional information, submitted with the appeal, has satisfactorily addressed the Council's concerns relating to this matter, subject to conditions. I have no reason to reach a different view on this matter and as such, I have not considered it further in my decision.
5. The second reason for refusal was the absence of any suitable mechanism to secure mitigation, to address the harm that would result from the development, on an area afforded protection under The Conservation of Habitats and Species Regulations 2017 as amended (the Habitats Regulations). The Council now considers that this can be addressed by a suitably worded planning condition. However, as the Competent Authority, I may only grant planning permission after having ascertained for myself that the proposed development would not affect the integrity of any protected site.

Main Issue

6. The main issue is the effect of the development on the integrity of European designated habitats sites along the Essex Coast.

Reasons

7. The appeal site falls within the Zone of Influence (Zol) of European designated sites, being approximately 800 metres from the Stour and Orwell Estuaries Ramsar, SSSI and SPA, which are scoped into the Essex Coast Recreational Disturbance Avoidance Mitigation Strategy (RAMS). These sites are recognised as wetlands of international importance for endangered and migrating birds and are designated due to the internationally important numbers of breeding and non-breeding birds and their coastal habitats. The specific reasons for the designation of these sites and the features of note for each, is detailed in full, in Section 4 of the submitted Ecological Impact Assessment (July 2022), which I have had regard to.
8. The Habitats Regulations require the decision maker to undertake an Appropriate Assessment where there are likely significant effects from the proposal, either alone, or in combination with other plans or projects. Although the site has previously been occupied by a pair of houses, these were demolished over 20 years ago. The proposed development for two new houses on the site would, on its own, have a negligible effect on the designated sites. However, it is also necessary to consider the cumulative effects of such developments in the area. The increased recreational visitor pressure arising from future occupiers of the new housing development, in-combination with other developments in the area, is likely to result in significant effects within the Zol,
9. The Council, in conjunction with other nearby Council's and Natural England, have produced a mitigation strategy to manage the effects of new development within the Zol. Details of this are set out in the Essex Coast RAMS Supplementary Planning Document (SPD) and the Tendring District Local Plan 2013-2033 (the local plan). Consequently, I am satisfied that the effect of the proposed development could be mitigated by way of a proportionate financial contribution towards the Essex Coast RAMS.
10. The main parties agree that the proposed mitigation can be secured by way of a planning condition, which would require that detailed proposals addressing the mitigation of the development's impact on protected sites is submitted to and approved in writing by the local planning authority. Such proposals must provide for mitigation in accordance with the joint Habitats Regulations Assessment Essex Coast RAMS or demonstrate mitigation measures of an equivalent effectiveness. These proposals may require on site or off-site mitigation, but in either case must include the completion of a legal agreement to secure the proposed mitigation and/or contribution. I acknowledge that the provision of a legal agreement has been problematic for the appellant to date, due to the land being unregistered. However, I have been advised that this matter has recently been resolved.
11. I therefore conclude that subject to a condition to secure adequate mitigation, the proposal would not have an adverse effect on the integrity of the European sites included within the Essex Coast RAMS. As such, it would accord with Policies SP2 and PPL4 of the local plan, which require contributions to be secured from

development in accordance with the Essex Coast RAMS. The proposal would also accord with the Framework and the Habitats Regulations.

Conditions

12. I have considered the conditions suggested by the Council and consultees, having regard to the relevant legal and policy tests and comments made on behalf of the appellant. Conditions specifying the reserved matters that need to be approved, the timeframe for their submission, and the timeframe for the commencement of the development, are necessary to provide certainty on these matters.
13. As sustainability, and water and energy efficiency measures are not necessarily part and parcel of the layout and appearance of the dwellings, a condition relating to such matters is necessary to ensure the development will accord with policies PPL5 and PPL10 of the local plan.
14. To safeguard protected species that may be present in the vicinity of the site and to protect the integrity of designated habitat sites and their special features, it is necessary to impose conditions to secure the provision and implementation of appropriate mitigation measures.
15. As a risk of potential contamination has been identified from the Council's contaminated land database register, a precautionary condition is necessary to ensure that any contamination discovered during the course of the development is dealt with appropriately. However, given the scale of the development and its distance from the nearest noise sensitive properties, I do not consider conditions relating to construction hours, noise and disturbance to be necessary.
16. As access and layout are reserved for future consideration, and the access and parking arrangements shown on the indicative plan could be amended at the reserved matters stage, I do not consider the proposed highway conditions to be necessary at this time. As I have not been provided with any policy reason or justification as to how a condition requiring a travel pack to be provided for two dwellings in this sustainable location would meet the relevant tests, I have not imposed this condition.

Conclusion

17. For the reasons given above and having had regard to all matters raised, I conclude that the appeal should be allowed.

R Bartlett

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Details of the access, appearance, landscaping, layout, and scale, "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.
- 2) Any application(s) for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall commence not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) Prior to the commencement of the development hereby permitted, full details of the sustainability, water and energy efficiency measures to be used in the development shall be submitted to and approved in writing by the local planning authority. The development shall be constructed in accordance with the agreed details, and the agreed measures shall be provided and made available for use prior to the first occupation of the permitted dwellings and retained thereafter.
- 5) Prior to the commencement of the development hereby permitted, detailed proposals addressing the mitigation of the development's impact on protected Essex Habitats Sites shall be submitted to and approved in writing by the local planning authority. Such proposals must provide for mitigation in accordance with the joint Habitats Regulations Assessment Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) or demonstrate mitigation measures of an equivalent effectiveness. These proposals may require on site or off-site mitigation, but in either case must include evidence of the completion of a necessary legal agreement to secure the proposed mitigation and/or contribution towards mitigation. The approved mitigation shall be provided prior to the first occupation of the dwellings hereby permitted.
- 6) The development hereby permitted, shall be carried out in accordance with the recommendations, mitigation and enhancement measures set out in the Ecological Impact Assessment (Liz Lord Ecology, July 2022) and any updates and addendums to this report. The enhancement measures identified in these documents shall be provided prior to the first occupation of the permitted dwellings and all features shall be retained thereafter.
- 7) Any contamination that is found during the construction of the development hereby permitted shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended until a risk assessment has been carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found, the development shall not resume or continue until remediation and verification schemes have been carried out in accordance with details that shall first have been submitted to and approved in writing by the local planning authority.

END OF SCHEDULE