

**MINUTES OF THE MEETING OF THE PLANNING COMMITTEE,
HELD ON MONDAY, 18TH MARCH, 2024 AT 5.00 PM
IN THE COMMITTEE ROOM - TOWN HALL, STATION ROAD, CLACTON-ON-SEA,
CO15 1SE**

Present:	Councillors Fowler (Chairman), White (Vice-Chairman), Alexander, M Cossens, McWilliams, Smith and Sudra
Also Present:	Councillor Andy Baker, Councillor Bill Davidson, Councillor Richard Everett and Councillor Ivan Henderson (item 94 only)
In Attendance:	Gary Guiver (Director (Planning)), John Pateman-Gee (Head of Planning & Building Control), Joanne Fisher (Planning Solicitor), Jacob Jaarsma (Planning Team Leader), Bethany Jones (Committee Services Officer) and Hattie Dawson-Dragisic (Performance and Business Support Officer)

91. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

Apologies for absence were received from Councillor Placey (with Councillor Smith substituting) and Councillor Wiggins (with no substitution).

92. DECLARATIONS OF INTEREST

Councillor M Cossens declared a personal interest in Planning Application **A.1 – 21/02144/FUL – Land to the South East of Foulton Hall, Harwich Road, Little Oakley, CO12 5JA** due to his being a Councillor for the neighbouring Ward (Hamford & Kirby-le-Soken) and that he also appeared on Tendring District Council’s website as a member of the Naze Management Board but that had not been to any meetings and that as the Planning Application was following on from 20 years ago, he declared that he had also been a pasts Member of the Hamford Water Management Committee which he was no longer a Member of. He also declared that he was a Farm Manager for a farm bordering on the back waters as well.

93. QUESTIONS ON NOTICE PURSUANT TO COUNCIL PROCEDURE RULE 38

There were no such Questions on Notice submitted by Councillors on this occasion.

94. REPORT OF THE DIRECTOR (PLANNING) - A.1 - 21/02144/FUL - LAND TO THE SOUTH EAST OF FOULTON HALL, HARWICH ROAD, LITTLE OAKLEY, CO12 5JA

Before the Planning Officer presented this application, the Planning Solicitor made a statement on the Guidance for Members of the Planning Committee on the cancellation of the site visit. This was as follows:

“With the agreement of the Chairman of the Planning Committee (Councillor Fowler), it has been agreed that the organised site visit for the Agenda Item A.1 – 21/02144/FUL Land to the South East of Foulton Hall, Harwich Road, Little Oakley has been cancelled but the Committee meeting to determine this application will go ahead.

Whilst it is the Council’s standard local practice to undertake site visits, section 7 of the Planning Code and Protocol makes provision for an organised site visit to not be held

where it is not possible due to exceptional circumstances and guidance has been given by the Council's Monitoring Officer.

Site visits are not legally required for the determination of planning applications, but form part of local practice. It has been determined by the Council that it is not possible to organise a site visit for this application because many of the Members will be unable to walk to this site and visit key areas as the Committee bus will not be able to access the site. The closest drop off point is 2.68km away from where the works proposed would mainly take place and any attempts to visit the site may result in health and safety risks for that individual given the distance and uneven ground conditions likely to be encountered.

Instead, arrangements have been made by Officers to ensure that Members can gain a full understanding of the impact of the proposed development through additional supporting material that will be presented to Members of the Committee this evening."

Members were informed that the application had been referred to the Planning Committee because it had been called in by the local Ward Councillor for The Oakleys and Wix. Moreover, the application had also been referred to the Planning Committee due to its strategic importance and interrelated nature with the Bathside Bay Container Terminal Development (from hereon in referred to as the BBCT development). Moreover, there was significant public interest in this development.

It was reported that in 2003, Hutchison Ports (UK) Limited ("HPUK") had applied for planning permission for the construction of a new container terminal and related works at Bathside Bay, Harwich, and the provision of compensatory habitats at Little Oakley and Hamford Water. On 29 March 2006, permissions, inter alia, for reclamation works and a container terminal; a small boat harbour; the managed realignment of the coastline and creation of compensatory inter-tidal habitats off-site, and listed building consent in respect of the partial demolition of the long berthing arm attached to a listed Train Ferry Gantry had been granted by the Secretary of State, following concurrent Public Inquiries held between 20 April 2004 and 21 October 2004. Those developments (which included a similar realignment scheme the subject of this Officer report) had been subjected to rigorous assessments and had been found on balance to be acceptable. In particular, with regard to the then Habitats Regulations, the Secretary of State had found that Imperative Reasons of Overriding Public Interest (IROPI) outweighed the identified harm to the integrity of a European site (the Stour and Orwell Estuaries SPA).

The Committee was told that the habitat creation scheme, purely from a land use perspective, resulted in no policy conflict insofar as the principle of development was concerned. Indeed, key statutory consultees had not challenged the use or suitability of the application site for that purpose.

The Committee was made aware that, some statutory consultees and a number of third parties had raised concerns in respect of whether this development would provide suitable and/or adequate natural habitat and compensatory measures that would be effective in compensating for the BBCT development. For the extensive reasons given in the Officer report, Officers were satisfied, with the imposition of various planning conditions, that the proposal was capable of ultimately providing suitable and adequate natural habitat and compensatory measures.

Members were also told that, Condition 55 of the Bathside Bay Container Terminal planning permission (LPA ref. 21/01810/VOC) had been specifically imposed to ensure the provision of adequate compensatory measures. Concurrently, the Habitats Regulations would also play a key role in evaluating the forthcoming Marine Licence application imminently due to be submitted by the Developer to the Marine Management Organisation (MMO). Therefore, any perceived outstanding concerns regarding the adequacy of compensation could and should be addressed through the submission of details under the above-mentioned Condition 55, the submission of necessary and reasonable further information required under the recommended planning conditions of the proposal, as well as the subsequent determination of the Marine Licence application. Therefore, the proposal and its sufficiency for Bathside Bay mitigation would be looked at separately twice.

Members heard that, in addition to the above, a previous planning application for a near identical realignment and habitat creation scheme had been granted by the Secretary of State in March 2006 (under planning reference 03/01200/FUL). That planning permission had been granted subject to a 10-year time limit for commencement work, however that permission had expired in 2016 – that was the sole reason why there was now a requirement to resubmit an application that had already been previously approved, and this was considered to be a significant planning consideration by Officers.

The Committee was also informed that, given the clear and robust procedural and historic framework, any outstanding concerns regarding the suitability of the compensation in respect of the separate planning application should not serve as grounds for rejecting the habitat creation scheme, because in accordance with the NPPF, there were planning conditions and another separate process (the MMO licence application) that had to be complied with, and would ultimately ensure that the proposal was fully compliant with the relevant Local Plan policies, the relevant provisions in the National Planning Policy Framework (from here on in referred to as 'The Framework') and any other relevant provisions, policy guidance or documents.

It was also reported that, all other material planning considerations, including statutory and third-party concerns had been adequately addressed through the submission of revised information or would be covered in forthcoming submission of details applications or indeed the MMO licence application.

Finally, Members heard that, the proposal as it stood was deemed by Officers to be acceptable in principle and therefore it was recommended for approval for the detailed reasons set out in the Officer report.

The Committee had before it the published Officer report containing the key planning issues, relevant planning policies, planning history, any response from consultees, written representations received and a recommendation of approval.

At the meeting, an oral presentation was made by the Council's Planning Team Leader (JJ) in respect of the application.

An Officer Update Sheet had been circulated to the Committee prior to the meeting, with details about an updated assessment against paragraph 180 of the NPPF ("the Framework"), an update on the Habitats Regulations Assessment (HRA) and considerations and concerns from Titchmarsh Marina. This was as follows:-

“Loss of Agricultural land - updated assessment against paragraph 180 of the NPPF (‘the Framework’)

Paragraph 6.23 of the committee report states the proposal will result in clear conflict with the last part of paragraph 180b of the Framework – this statement is INCORRECT. Following a review of the published committee report, and for the reasons set out below, the updated position is that the proposal will result in no conflict with paragraph 180b of the Framework because:

Under the government’s Agricultural Land Classification (ALC), land is graded on a scale from 1 to 5, with 1 being the highest quality land. Land graded from 1 to 3a is categorised as Best and Most Versatile (BMV) land. The application site is comprised primarily of arable farmland, all of which is Grade 4, or poor-quality agricultural land according to the ALC. Under paragraph 180 b) of the Framework, where the development of agricultural land is necessary, there is a policy preference for poor quality agricultural land to be developed over BMV. As the application site is Grade 4 land, the proposed development results in NO CONFLICT with paragraph 180 b) of the NPPF – Grade 4 and 5 agricultural land is not BMV and proposal will therefore result in no loss of BMV.

Given the (erroneous) conflict with paragraph 180b is the only area of clear policy conflict, having regard to the above there proposal, when assessed against the relevant provisions of the Framework as a whole and the Local Plan as a whole, insofar as the principle of development is concerned, officers consider the scheme will result in no conflict with any of these policies or provisions, subject to conditions as set out in section 8 of the committee report.

Update on the Habitats Regulations Assessment (HRA)

As the site is partially located within the Hamford Water Special Protection Area (SPA), Special Area of Conservation (SAC) and Ramsar site, TDC is required to carry out an HRA. To support TDC in making their assessment, the applicant has provided a ‘shadow’ HRA. The relevant information is contained within the following documents:

- Section 17 of the Hamford Water Realignment Environmental Statement (ES)(26 November 2021)*
- Sections 3 and 6 of the Supplementary Environmental Information (SEI) Report (15 December 2023)*

The LPA has duties under the Conservation of Species and Habitats Regulations 2017. First, the LPA must determine whether the project is likely to have a significant effect on the Hamford Water SPA and Ramsar site and/or the Hamford Water SAC (the “protected sites”). In relation to each site, if it concludes that the project would not have such an effect, it need not carry out any further assessment of the site. If it finds that there may be a likely significant effect, the LPA must carry out an appropriate

assessment of the project to determine whether it will have an adverse effect on the integrity of the protected site.

*Since the publication of the committee report the LPA has now received a detailed response from ECC Ecology whose ecologists have reviewed the shadow HRA. ECC Ecology has stated that the LPA do not need to prepare a standalone HRA report to support a decision on this application. **Moreover, ECC Ecology confirmed that they are satisfied that Tendring District Council can conclude that the project will avoid an Adverse Effect on the Integrity of the Habitats sites listed in committee report, either alone or in combination with other plan and projects.***

In the interest of transparency, the full consultation response form ECC's Principle Ecological Consultant is included below – this response was received AFTER the publication of the committee report:

ECC Ecology Response dated 12/03/2024

Given the complexity and scale of this scheme, we recommend that the LPA adopts the updated shadow HRA report submitted by the applicant for this realignment project. The updated information to support HRA indicates that the Compensation, Mitigation and Monitoring Agreement (CMMA) and Compensation Mitigation and Monitoring Deed (CMMD) will retain the timing requirement for commencement of compensatory habitat creation before Phase 2 marine works of the development at Bathside Bay.

We welcome Section 25 of the Environmental Statement (shadow Habitats Regulations Assessment) prepared by Royal Haskoning DHV (13 October 2021) for this application related to Phase 1 of this development. This has revisited the information in the 2003 ES - which triggered Stage 2 (Appropriate Assessment to consider if mitigation can avoid Adverse Effect on Integrity (AEOI), Stage 3 Alternative solutions and then Stage 4 Imperative Reasons for Over-riding Public Interest (IROPI) and compensatory measures to ensure the development protects the overall coherence of Habitats sites network. Section 25 therefore provides information to support the competent authority's Habitats Regulations Assessment (HRA) decision on this development either alone or in combination with other plans and projects.

We support the LPA's view that the proposal is capable of ultimately providing suitable and adequate natural habitat and compensatory measures and the mitigation package can be secured for delivery by the LPA with the imposition of appropriately worded conditions of any consent.

Having considered the proposed avoidance and mitigation measures, we are satisfied that Tendring District Council can conclude that, the project will avoid an Adverse Effect on the Integrity of the Habitats sites listed in this assessment, either alone or in combination with other plan and projects and we advise that the LPA needs to record its HRA conclusion.

By adopting the shadow appropriate assessment of the implications of the project for the Habitats sites, in view of those sites' conservation objectives and having consulted

Natural England and fully considered any representation received where necessary, we consider that the authority may as recommended in the Committee report, agree to the project under Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended). As the mitigation has been considered after HRA screening, this HRA Appropriate Assessment is in line with the People over Wind CJEU Court ruling.

I trust that the above text provides reassurance that as the competent authority, the LPA does not need to prepare a standalone HRA report to support a decision on this application

Heritage and Archaeology

LPA officers concur with Historic England in that the proposal would cause 'less than substantial harm' to the setting of the designated heritage assets as set out in the committee report. LPA officers have also considered the impact of the proposal on the non-designated heritage assets in the vicinity and as set out in the report.

Framework paragraph 205 states great weight should be given to a heritage asset's conservation and Framework paragraph 208 states where there is less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. For the affected non-designated heritage assets, Framework paragraph 209 applies and states a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

The heritage impact of the application proposal should therefore be weighed against the public benefits of the scheme, and insofar as the non-designated heritage assets impact – a decision maker should apply a balanced judgement (Officers Committee Report paras. 7.1. to 7.4) – these exercises have been carried out. For the avoidance of any doubt, as part of the assessment (which led officers to agree with the Historic England position of harm) Officers undertook an assessment based on the following steps:

- 1. A thorough understanding that the application site is located within the setting of the scheduled Monument 'Heavy Anti-aircraft gun site 350m north east of Little Oakley Hall' (LEN: 1019486) and the Grade II* building (St Mary's House, LEN: 1112098) – as clearly set out in the report; and*
- 2. An appreciation of the the historic and cultural significance of these heritage assets and the contribution their setting makes to their significance – as part of this appreciation due regard is given to sections 12.5.2 and 12.5.3 of the Environmental Statement (26 November 2021)*

The LPAs position on the impact of the proposal on the identified heritage assets and non-designated heritage assets remains unchanged as well as the position that the public benefits of the scheme will outweigh the less than substantial harm to the designated heritage assets, and that the overriding need for the compensatory habitat in this location will also outweigh the scale of the harm to the non-designated heritage assets.

In terms of archaeology, ECC Archaeology raise no objection subject to, amongst other things, a programme of archaeological evaluation to be submitted to the LPA – this, including the evidence and the mitigation strategy have been secured in recommended condition 16.

Considerations and concerns from Titchmarsh Marina

The above organisation submitted a letter dated 11 March 2024 raising the following concerns:

- 1. Erosion*
- 2. Impact of proposal on navigation channels at sea and in the Special Protection Areas (SPA's)/on shore, also the applicants alleged 'failure to 'protect' navigational channels'*
- 3. They argue that there are no consideration of recreational value of the Backwaters Area in the context of responsibility of keeping navigations channels free of silt etc*
- 4. Loss of habitat for existing species*
- 5. Various questions relating to the quality and quantity of the submission and the finding of the various reports, studies and data*

In response points 1-3 these areas will be comprehensively covered and dealt with in the pending Marine Management Organisation (MMO) License application. For completeness, MMO Licence application process will cover things like:

- Compliance with the adopted marine plan*
- The national Marine Policy Statement*
- The need to protect the environment and human health*
- The need to prevent interference with legitimate uses of the sea*
- The need for the scheme*
- Hydrodynamic and Sedimentary Regime - Potential effects during construction and operation*
- Marine Water and Sediment Quality - Potential effects during construction and operation*
- Estuarine and Coastal Ecology - Potential effects during construction and operation*
- Ornithology - Potential effects during construction and operation*
- Fish and Shellfish - Potential effects during construction and operation*
- Commercial Fisheries - Potential effects during construction and operation*
- Marine Mammals - Potential effects during construction and operation, and transboundary effects*
- Commercial and Recreational Navigation - Potential effects during construction and operation*
- Archaeology and Cultural Heritage - Potential effects during construction and operation*
- Marine Infrastructure - Potential effects during construction and operation*

- *Terrestrial and Freshwater Ecology - Potential effects during construction and operation*
- *Landscape and Visual Character - Potential effects during construction and operation*
- *Tourism, Recreation and Local Community - Potential effects during construction and operation*
- *Land Drainage and Coastal Defence - Potential effects during construction and operation*
- *Major Accidents and Disasters - Potential effects during operation*
- *Cumulative Effects Assessment*
- *Water Environment Regulations Compliance Assessment*
- *Habitats Regulations Assessment*

In response to points 4 and 5, these elements have been comprehensively covered in the committee report as well as, where relevant, in the recommended conditions.

Conclusion

Having regard to the above updated sheet, and for the reasons set out above and in the published committee report, Officers recommendation remains unchanged and as per sections 1 and 8 of the original committee report.”

John Bowles, the agent, spoke in favour of the application.

Steve Beel, member of the public, spoke in favour of the application.

Neil Marples, member of the public, spoke against the application.

Parish Councillor Nicola Coates, on behalf of Little Oakley Parish Council, spoke against the application.

Matters raised by Members of the Committee:-	Officer’s response thereto:-
<i>Could you show Councillors where the red hills are?</i>	<i>In respect of the salt making sites referred to as red hills, non-designated archaeological sites, Officers cannot find any specific reference to show where these are on the map. It is referenced because Historic England have picked up on it being a non-designated site where there are possible Roman salt making sites which are within the red line site.</i>
<i>Can Councillors have clarification that they haven’t got to decide whether the compensation is adequate for the Bathside Bay development, Councillors are only looking at this application as a stand-alone application to see if Councillors think it is acceptable?</i>	<i>Yes, that is correct. There is Condition 55 on the Bathside Bay permission which deals exclusively with the sufficiency and adequacy of the compensation scheme.</i>

<p><i>Should TDC be looking at compensation for the loss of habitats on this site?</i></p>	<p><i>The first thing to point out is that the aim of this proposal is to provide better habitat creation and compared to what is there at the moment. The applicants have provided extensive bird survey data. There will be areas that will be suitable for skylarks. Officers are not sure on how many hectares that is. The key thing is that the Conditions (Condition 3) recommended requiring the applicants to submit wildlife compensation implementation and management plan which the applicants will need to provide a programme of monitoring of the potential disturbance of water birds within the alignment site as well as other species in consultation with the Royal Society for the Protection of Birds (RSPB), Natural England, the Environment Agency and an adaptive Management Plan will need to be prepared in consultation with the RSPB including Natural England. If there is any monitoring to be needed, such measures will be reflected in updates in the compensation implementation and management plan. So, there is a safeguard under Condition 3 of the report.</i></p>
<p><i>Could the Officer tell Councillors where the warning came for the people walking on the seawall causing problems for the nesting birds?</i></p>	<p><i>This is a wildlife development site. It is to improve the biodiversity net gain. There is a conflict between people enjoying the walk around that area and also keeping them clear of sensitive areas for birdlife and so on. The idea behind that is you don't allow the footpath to go across or all the way around because if it does then a circular walk is created which will encourage people to disturb the wildlife more. If people can go all along the top of the seawall, then this also encourages them to disturb the wildlife. There are viewing points that the public can view the wildlife from without disturbing it.</i></p>
<p><i>In 1.5 of the Executive Summary of the Officer report, it mentions 'near identical realignment' – is it near or identical?</i></p>	<p><i>Officers cannot be sure that this application is identical and that is why the word 'near' is used. It is certainly near identical to the site area.</i></p>
<p><i>Does this mean that Natural England have moved on from the red hills as it wasn't highlighted in the recent communication with them?</i></p>	<p><i>Officers see it as, Natural England have raised that concern and stated that those red hills are non-designated heritage assets, and because they have raised it, the relevant paragraph in the NPPF is engaged. I believe in paragraph 209, it requires to have balanced judgement.</i></p>
<p><i>Within the compensation scheme, could Officers assure us that all of these will be covered and not be put into the material consideration tonight?</i></p>	<p><i>The proposal is for the breaking of the seawall, brand new seawalls and in consequence a creation of a new habitat within those areas. It is all within the Conditions and recommendations within the Officer report.</i></p>
<p><i>Can Councillors assume that all</i></p>	<p><i>Some of the concerns of other interests, relate to</i></p>

<i>the concerns raised are being looked at and being dealt with for the future?</i>	<i>whether or not there is enough mitigation/compensation for Bathside Bay. There are other mechanisms in the future, in terms of, a planning condition and a separate application requirement. This application is a planning application to be determined on its own merits. If there was not enough biodiversity uplift on this site, there is an opportunity to be able to improve it even further because they won't be able to get past the planning condition or the separate application later.</i>
<i>Why can people not walk on top of the seawall?</i>	<i>You have to account for the water that is also being brought in as well as the drainage for that extra water. There are also areas on biodiversity improvement outside of the wall which birds will be nesting on and using. There are 2 environments on either side of the wall to the other. The nature reserve has the existing seawall that people can walk on top of. The southern bend is an elevated wall where the public can enjoy the views at those points. The new seawall will be 4.8m high and the footpath will be outside of the wall, just above sea level.</i>
<i>Will there be any need to recharge the area in years to come?</i>	<i>I refer you to paragraph 285 of the Environmental Advisement.</i>
<i>Can Officers explain the statement from the Environment Agency?</i>	<i>Biodiversity net gain does not apply to this case.</i>
<i>If there is an area to play rather than observing, is there anything the Council can do to make sure that they are quiet areas?</i>	<i>The plan is to have viewing platforms. LPA Officers are very keen to have these structures to be as discreet as possible.</i>
<i>Is Seal rescue and rehabilitation something TDC is exploring?</i>	<i>It is not something Officers are actively exploring as part of this application. Members can recommend a Condition around when the construction can take place, so it is suitably phased.</i>

It was moved by Councillor Alexander, seconded by Councillor McWilliams and unanimously:-

RESOLVED that:-

- 1) the Head of Planning and Building Control be authorised to grant planning permission, subject to the conditions as stated at paragraph 8.2 of the Officer report (A.1), the Officers' additional condition to ensure permissive paths remain available, unobstructed and available for public access, an additional condition to add a construction phasing plan to the construction management condition to ensure development takes place at least in sensitive times to protect wildlife and seals, another further condition for the agreement of surface material and appearance for new paths created, an advisory to encourage the developer to

work with Seal Medic Unit locally and the updated Conditions in the Officer Update Sheet, or varied as is necessary to ensure the wording is enforceable, precise, and reasonable in all other respects, including appropriate updates, so long as the principle of the conditions as referenced is retained; and,

- 2) the sending to the applicant of any informative notes as may be deemed necessary.

The meeting was declared closed at 7.07 pm

Chairman