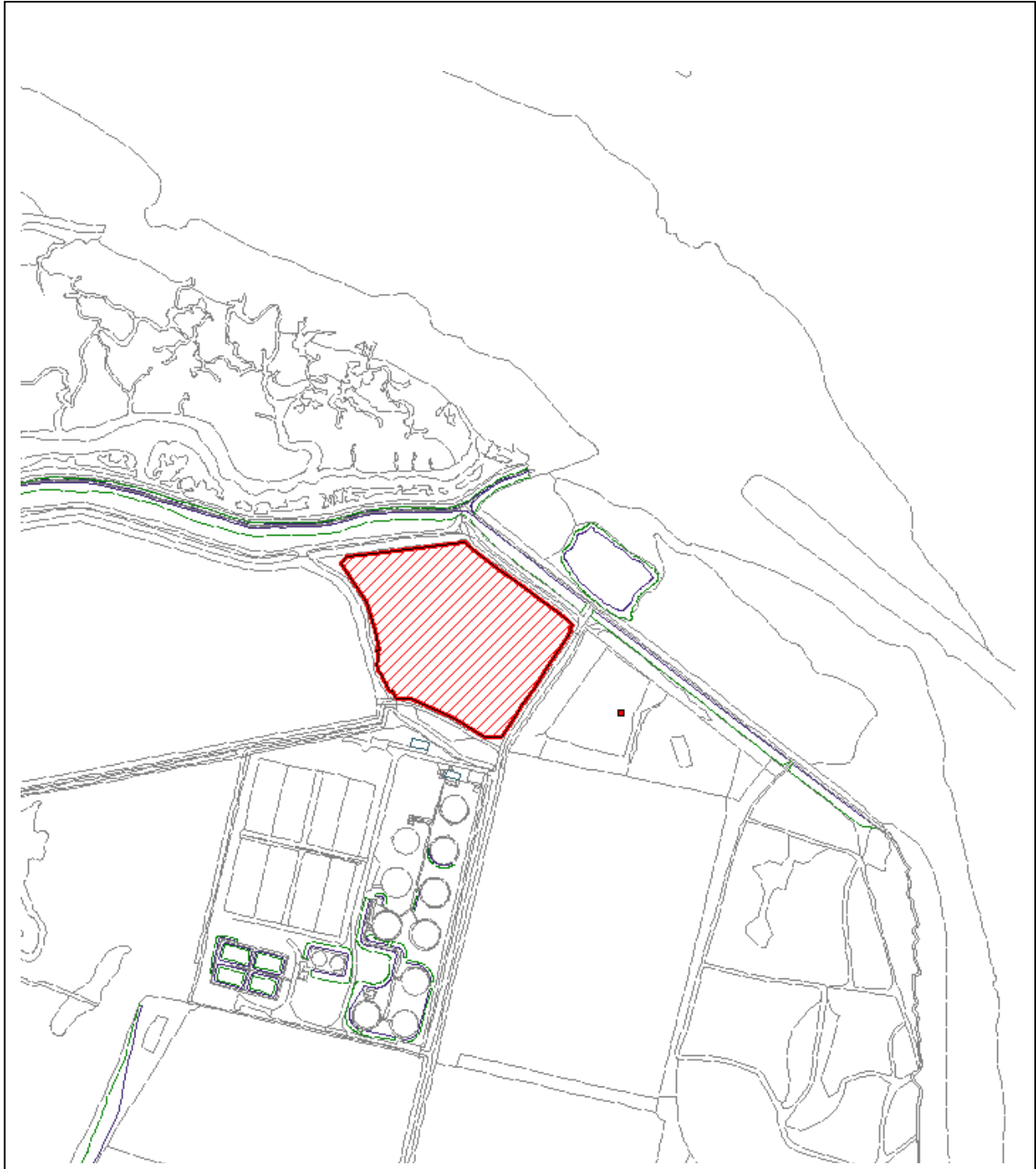


PLANNING COMMITTEE

23RD NOVEMBER 2021

REPORT OF THE ASSISTANT DIRECTOR FOR PLANNING

**A.4 PLANNING APPLICATION – 21/01374/FUL – JOHN WESTON NATURE RESERVE
ACCESSED VIA OLD HALL LANE LOCATED NORTH OF PUMPING STATION
WALTON-ON-THE-NAZE CO14 8LQ**



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Application: 21/01374/FUL

Town / Parish: Frinton & Walton Town Council

Applicant: Emma Ormond-Bones - Essex Wildlife Trust Limited

Address: John Weston Nature Reserve Accessed Via Old Hall Lane Located North of Pumping Station Walton-on-the-Naze CO14 8LQ

Development: Proposed creation of a network of small ponds (1 - 3) to complement the existing water features on site for the benefit of wildlife.

1. Executive Summary

- 1.1 This application is before Members as Tendring District Council is the land owner.
- 1.2 The proposal involves the formation of a number of ponds within the John Weston Nature Reserve in order to provide additional feeding opportunities for waders and increase the biodiversity of the overall site. The nature reserve forms part of 'Hamford Water'.
- 1.3 The proposal is considered to be acceptable and there are no objections from ECC Archaeology, ECC Ecology or Natural England, subject to recommended conditions to ensure biodiversity mitigation and enhancement measures are secured.

Recommendation:

That the Head of Planning be authorised to grant planning permission for the development subject to:-

- a) Subject to the conditions stated in section 8.2

2. Planning Policy

- 2.1 The following Local and National Planning Policies are relevant to this planning application.

NPPF National Planning Policy Framework July 2021
National Planning Practice Guidance

Adopted Tendring District Local Plan 2007 (part superseded)

QL3	Minimising and Managing Flood Risk
QL11	Environmental Impacts and Compatibility of Uses (part superseded)
EN3	Coastal Protection Belt
EN6	Biodiversity
EN6A	Protected Species
EN6B	Habitat Creation
EN11A	Protection of International Sites European Sites and RAMSAR Sites
EN29	Archaeology
COM33	Flood Protection

Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017) (Section 1 adopted on 26th January 2021)

Relevant Section 1 Policies (adopted)

SP2	Recreational disturbance Avoidance and Mitigation Strategy (RAMS)
SP7	Place Shaping Principles

Relevant Section 2 Policies (emerging)

PPL1	Development and Flood Risk
PPL2	Coastal Protection Belt
PPL4	Biodiversity and Geodiversity
PPL7	Archaeology

Status of the Local Plan

- 2.2 Planning law requires that decisions on planning applications must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (Section 70(2) of the 1990 Town and Country Planning Act and Section 38(6) of the Planning and Compulsory Purchase Act 2004). This is set out in Paragraph 2 of the National Planning Policy Framework 2021 (the Framework).
- 2.3 The 'development plan' for Tendring comprises, in part, the 'saved' policies of the 2007 Local Plan. Paragraph 219 of the Framework allows local planning authorities to give due weight to policies adopted prior to its publication according to their degree of consistency with the policies in the Framework. On the 26th January 2021 Section 1 of the 2013-2033 Local Plan was adopted and now also forms part of the 'development plan' for Tendring, superseding some of the more strategic policies in the 2007 Local Plan. Notably, the housing and employment targets were found sound and have been fixed, including the housing requirement of 550 dwellings per annum.
- 2.4 Paragraph 48 of the Framework allows weight to be given to policies in emerging plans, according to their stage of preparation, the extent to which there are unresolved objections to relevant policies, and the degree of consistency with the policies of the Framework. In this regard 'Proposed Modifications' to the emerging Section 2 of the 2013-33 Local Plan, which contains more specific policies and proposals for Tendring, has been examined and hearing sessions have now closed. The main modifications recommended to make the plan legally compliant and sound were considered at the Council's Planning Policy and Local Plan Committee on 29th June 2021. The Council held a six-week public consultation on the Main Modifications and associated documents which began on 16th July 2021. The consultation closed at 5pm on 31st August 2021 and adoption is expected later this year. Section 2 will then join Section 1 as part of the development plan, superseding in full the 2007 Local Plan. Section 2 of the 2013-33 Local Plan is therefore at a very advanced stage of preparation and should be afforded considerable weight.

3. Relevant Planning History

06/01049/TPO	Thinning of Elder and Hawthorn among fruit trees.	Approved	07.08.2006
05/00215/TPO	Cut down 10 Hawthorn trees on eastern side and crown lift 5 Poplar trees	Approved	07.03.2005
00/01972/TPO	Coppicing of 20 trees on western boundary of the reserve and 10 Hawthorns in area B on plan (TPO	Approved	21.12.2000

17/77)

99/01285/FUL	Replace existing timber building with similar size and type of construction. Building is used as a site hut by the warden and for reserve open days and site a refurbished freight container for use as a secure tool store for mowing equipment	Approved	20.10.1999
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4. Consultations

Essex County Council Archaeology 20.09.2021	The proposed application site lies within an area of archaeological potential.
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Studies along this stretch of coast have uncovered evidence for occupation and activity since Neolithic times, pottery and flints have been recovered and remains of 'red hills', industrial salt making sites, are recorded along this coastline. Elements of military history and possible prehistoric activity are likely to be preserved below ground and may be impacted upon by the proposed development.

There is no objection subject to a condition requiring an Archaeological evaluation to be undertaken.

Essex County Council Ecology 16.09.2021	No objection subject to securing biodiversity mitigation and enhancement measures
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The species records and supporting statement relating to the likely impacts of development on designated sites, protected species and Priority species & habitats has been reviewed and are satisfied that there is sufficient ecological information available for determination.

This provides certainty for the LPA of the likely impacts on protected and Priority species & habitats and, with appropriate mitigation measures secured, the development can be made acceptable.

As no mitigation measures are identified in the documents submitted and it is recommended that a Construction Environmental Management Plan for Biodiversity (CEMP: Biodiversity) should be secured as a condition of any consent. This should detail appropriate measures for the protection of the reptile species identified onsite, and appropriate timings for the works to ensure that they will avoid the sensitive timings for the bird species that utilise the site.

The development is within the boundary of the Hamford Water Site of Special Scientific Interest (SSSI) and Special Area of Conservation (SAC) and the proposals have Natural England consent. Therefore the LPA will not need to prepare a bespoke HRA for this development given that the proposals are "directly connected with or

necessary to the conservation management of the site" as reported by The Habitats and Wild Birds Directives in England report (DEFRA, 2012)

The aim of the proposal is to increase the habitat for wintering and breeding wildfowl and waders, in particular species such as Little Ringed Plover. This should secure measurable net gains for biodiversity, as outlined under Paragraph 174 [d] of the National Planning Policy Framework 2021.

This will enable the LPA to demonstrate its compliance with its statutory duties including its biodiversity duty under s40 NERC Act 2006.

Impacts will be minimised such that the proposal is acceptable subject to a condition requiring a CEMP based on BS42020:2013.

Natural England
10.09.2021

No objection

Based on the plans submitted, Natural England considers that the proposed development will not have significant adverse impacts on statutorily protected sites.

Hamford Water Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar - Based on the plans submitted, Natural England considers that the proposed development will not have likely significant effects on the above sites and has no objection to the proposed development. Natural England have already provided consent for this project and have no further comments to make. To meet the requirements of the Habitats Regulations, NE advise the Council to record their decision that a likely significant effect can be ruled out.

Hamford Water Site of Special Scientific Interest

Based on the plans submitted, Natural England considers that the proposed development will not damage or destroy the interest features for which the site has been notified and has no objection.

Environment Agency
01.10.2021

No objection – proposal subject to standing advice

5. **Representations**

- 5.1 No representations have been received following public consultation, which included a site notice posted close to the site along the access road and neighbouring consultation letters sent out to the adjacent properties. The Frinton and Walton Town Council support the application.

6. **Assessment**

Site Context

- 6.1 The application site relates to the western part of the John Weston Nature Reserve, which is located on the coast, north of the Naze Tower, Walton-on-the-Naze and is in the ownership of Tendring District Council and managed by the Essex Wildlife Trust. The nature reserve is covered by the Hamford Water's designation as both a Site of Special Scientific Interest (SSSI) and Special Area of Conservation (SAC). These designations reflect the area's significance in terms of breeding waders and migratory over-wintering wildfowl as the site comprises of intertidal mudflats as well as areas of wet grassland.
- 6.2 This western part of the Nature Reserve is managed for the benefit of wildfowl and waders and is made up of a pond, approximately 250 sq. metres in area as well as a small number of low ways and boundary ditch. The site is also located within Flood Zone 3 (protected by sea defences).

Proposal

- 6.3 The application seeks planning permission to construct three additional ponds, each approximately 100 sq. metres in area which will provide additional feeding opportunities for waders as well as increasing the overall biodiversity on site.

Principle of Development

- 6.4 Chapter 6 of the Saved Local Plan outlines the Council's Strategic aim to protect the environment for the benefit of present and future generations and to protect and enhance the natural environment of the District to ensure that the area's biodiversity and landscape are enjoyed by future generations
- 6.5 Saved Policy EN6 states that proposals will not be granted planning permission unless the existing local biodiversity and geodiversity is protected and enhanced, where appropriate, conditions or planning obligations will be sought to protect the biodiversity interest of the site and to provide appropriate compensatory or mitigation measures and long-term site management. Saved Policies EN11a gives further protection to International Sites: European Sites and Ramsar Sites. However, development directly connected with or necessary to the management of the site for nature conservation is likely to be permitted
- 6.6 Where appropriate the Council will consider the use of conditions and/or planning obligations to provide appropriate mitigation and compensatory measures. Policy SP7 and Emerging Policy PPL4 reflect these considerations.
- 6.7 Therefore, it is considered that the proposal is directly connected with a site for nature conservation and the principle of development is acceptable in this sensitive location, subject to the detailed considerations outlined below.

Main Considerations

- 6.8 The main considerations for this application are: the impacts on the biodiversity, habitats and protected species in this SSSI and SAC location of Hamford Water; the Coastal Protection Belt; flood risk; and, the archaeological potential of the site.

Biodiversity

- 6.9 Paragraph 174 of the Framework states that planning policies and decisions should contribute to and enhance the natural and local environment by: a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan)

- 6.10 Paragraph 179 seeks to protect and enhance biodiversity and geodiversity by promoting the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable net gains for biodiversity and development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate.
- 6.11 The application is for the formation of three additional ponds to enhance the natural environment and provide additional feeding opportunities for visiting and breeding wildfowl and waders. The application has been submitted with supporting information with regard to protected species, the stewardship agreement, the capital works proposed and a letter from Natural England granting their consent for the works. Consequently, there is no objection raised from Natural England.
- 6.12 There are no objections to the development raised by ECC Ecology subject to a condition that prior to commencement a Construction Environmental Management Plan for Biodiversity (CEMP: Biodiversity) is submitted as no details have been submitted with regard to mitigation measures proposed. The CEMP should detail appropriate measures for the protection of the reptile species identified on-site, and appropriate timings for the works to ensure that they will avoid the sensitive timings for the bird species that utilise the site.

Archaeological potential of the site

- 6.13 Saved Policy EN29 and Emerging Policy PPL7 relate to the archaeological potential of a site and seek to protect any archaeological remains. In this case, it has been indicated by ECC Archaeology, that there may be archaeological remains within the site area. Studies along this stretch of coast have uncovered evidence of occupation and activity since Neolithic times, pottery and flints have been recovered and remains of 'red hills', industrial salt making sites, are also recorded along this coastline. Furthermore, elements of military history and possible prehistoric activity are likely to be preserved below ground and may be impacted upon by the proposed development. Therefore, prior to the commencement of development a full programme of archaeological investigation is to be undertaken in accordance with a written scheme of investigation and submitted to and approved in writing by the Local Planning Authority.

Impact on Flood Risk and the Coastal Protection Belt

- 6.14 The nature reserve is located within Flood Zone 3, which has the highest risk of flooding, however the majority of the site is protected by flood defences. Saved Policy COM33 and Emerging Policy PPL1 seek to provide development away from areas of high risk of flooding, however given the location and nature of the development the proposal is considered to be acceptable with regard to flooding impacts.
- 6.15 Given the specific nature of the development and its role in improving the diversity on the site, it is not considered that the ponds would significantly harm the landscape character and quality of this area of undeveloped coastline.

7. Conclusion

- 7.1 It is considered that the proposed development is consistent with the National and Local Plan Policies identified above. In the absence of any material harm resulting from the proposal the application is recommended for approval.

8. Recommendation

8.1 The Planning Committee is recommended to grant planning permission subject to the following conditions and informative.

8.2 Conditions and Reasons

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason - To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the following approved drawings:

2008/00	Site Layout Plan
2008/02A	Proposed Elevations and Floor Plans

Reason – For the avoidance of doubt and in the interests of proper planning.

3. Prior to commencement of the development hereby approved, a construction environmental management plan for biodiversity (CEMP: Biodiversity) shall be submitted to and approved in writing by the Local Planning Authority. The CEMP (Biodiversity) shall include the following:

- a) Risk assessment of potentially damaging construction activities.
- b) Identification of "biodiversity protection zones".
- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).
- d) The location and timing of sensitive works to avoid harm to biodiversity features.
- e) The times during construction when specialist ecologists need to be present on site to oversee works.
- f) Responsible persons and lines of communication.
- g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
- h) Use of protective fences, exclusion barriers and warning signs.

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

Reason: To conserve protected and priority species and allow the Local Planning Authority to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 (as amended) and s40 of the NERC Act 2006 (Priority habitats & species).

4. No development or preliminary groundworks of any kind shall take place until a programme of archaeological investigation has been secured in accordance with a written scheme of investigation which has been submitted by the applicant, and approved in writing by the local planning authority.

No development or preliminary groundworks of any kind shall take place until the completion of the programme of archaeological investigation identified in the written scheme of investigation defined above.

The applicant will submit to the local planning authority a post excavation assessment (to be submitted within six months of the completion of the fieldwork). This will result in the

completion of post excavation analysis, preparation of a full site archive and report ready for deposition at the local museum, and submission of a publication report.

Reason: To allow proper investigation and recording of the site which is potentially of archaeological and historic significance.

Informatives

Positive and Proactive Statement

The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

9. Additional Considerations

Public Sector Equality Duty (PSED)

- 9.1 In making your decision you must have regard to the PSED under section 149 of the Equality Act 2010 (as amended). This means that the Council must have due regard to the need in discharging its functions to:
 - 9.2 A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
 - 9.3 B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s); and
 - 9.4 C. Foster good relations between people who share a protected characteristic and those who do not, including tackling prejudice and promoting understanding.
- 9.5 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, being married or in a civil partnership, race including colour, nationality and ethnic or national origin, religion or belief, sex and sexual orientation.
- 9.6 The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in section 149 and section 149 is only one factor that needs to be considered, and may be balanced against other relevant factors.
- 9.7 It is considered that the recommendation to grant permission in this case would not have a disproportionately adverse impact on a protected characteristic.

Human Rights

- 9.8 In making your decision, you should be aware of and take into account any implications that may arise from the Human Rights Act 1998 (as amended). Under the Act, it is unlawful for a public authority such as the Tendring District Council to act in a manner that is incompatible with the European Convention on Human Rights.
- 9.9 You are referred specifically to Article 8 (right to respect for private and family life), Article 1 of the First Protocol (protection of property) and Article 14 (right to freedom from discrimination).

- 9.10 It is not considered that the recommendation to grant permission in this case interferes with local residents' right to respect for their private and family life, home and correspondence or freedom from discrimination except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation to grant permission is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

Finance Implications

- 9.11 Local finance considerations are a matter to which local planning authorities are to have regard in determining planning applications, as far as they are material to the application.

10. Background Papers

- 10.1 In making this recommendation, officers have considered all plans, documents, reports and supporting information submitted with the application together with any amended documentation. Additional information considered relevant to the assessment of the application (as referenced within the report) also form background papers. All such information is available to view on the planning file using the application reference number via the Council's Public Access system by following this link <https://idox.tendringdc.gov.uk/online-applications/>.