

**TENDRING DISTRICT COUNCIL**

**PLANNING COMMITTEE**

**ALTERATIONS AND ADDITIONS TO PLANNING COMMITTEE**

**18<sup>th</sup> March 2024**

**Item A.1- Land to the South East of Foulton Hall, Harwich Road, Little Oakley, CO12 5JA**

Following the publication of the committee report for the above-mentioned item there have been additional correspondence received by the Local Planning Authority (LPA) which require further clarification, updates or both – as set below:

**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 who's 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 (in *Italic*) – 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 stand alone 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.