APPEAL BY MR J PURDY AGAINST THE DECISION OF MALDON DISTRICT COUNCIL TO REFUSE PLANNING PERMISSION FOR USE OF LAKES FOR INFORMAL RECREATIONAL FISHING PURPOSES

AT

GRAVEL PITS, HALL ROAD, HEYBRIDGE, ESSEX

STATEMENT OF MALDON DISTRICT COUNCIL
1.0 **Background Information and Policies**

1.1 This statement should be read in conjunction with the following documentation, which has been previously sent out by the Council with the appeal questionnaire:

- Officers report
- Relevant extracts of the Maldon District Approved Local Development Plan 2017
- Consultee responses, in particular, Natural England, Essex Wildlife Trust, RSPB and Environmental Health Officer

2.0 **The Appeal**

2.1 This appeal arises from the decision of Maldon District Council to refuse planning permission for the use of lakes for informal recreational fishing purposes at the Gravel Pits, Hall Road, Heybridge, Essex (reference FUL/MAL/18/00061) by Notice of Decision dated 19 April 2019.

2.2 Planning permission was refused for the development the subject of this appeal for the following reasons:

1. The information which has been submitted as part of the application fails to demonstrate that the proposal would not have a direct, adverse effect on the interest features of the local, national and European designated sites at and within the vicinity of the site and protected species. The development proposal cannot be deemed necessary for reasons of overriding public interest. The proposal is, therefore, contrary to Policies S1, S8, D1, N1 and N2 of the Maldon District Approved Local Development Plan, the NPPF and NPPG.

2. The proposal would result in harm to the character and appearance of the area through a loss of vegetation and the increased provision and formalization of the car parking area required. Moreover, insufficient
information has been provided to demonstrate that the proposed toilet/shower block would not cause harm the character and appearance of the site and the surrounding area. Therefore, the proposal would fail to protect, conserve and enhance the rural character and appearance of the locality, contrary to Policies S1, S8 and D1 of the Maldon District Approved Local Development Plan and the NPPF.

3. The car parking proposed on site is considered to be insufficient, failing to accommodate the demand generated by the proposed use of the site which in turn will lead to cars parking within Battle Rise and adjoining streets causing conditions of obstruction, congestion and inconvenience to other road users, failing to accord with policies D1 and T2 of the Maldon District Approved Local Development Plan.

4. The proposal would introduce noise and disturbance, in close proximity to existing residential properties, at unsociable times of the day, causing material harm to the amenity of the occupiers of residential properties in Battle Rise, Northey View and adjoining streets, contrary to Policy D1 of the Maldon District Approved Local Development Plan and the NPPF.

2.3 A description of the site and the proposal forms part of the Officer Report previously submitted as part of the appeal questionnaire. The Officer Report also sets out the relevant planning history for the site along with the relevant planning policy context. A list of all the representations received in response to the proposal and a summary of the issues raised is also included in the same Officer Report.

2.4 Since the determination of the application the subject of this appeal, a revised NPPF has been issued. Although much of the content has been re-ordered and re-phrased it is considered that, as far as is relevant to these proposals, the content of most of the revised NPPF does not have any major implications for the proposed developments. It is considered that ‘Achieving sustainable development’ has been replaced by paragraphs 7-11 and section 7 (Requiring good design) has largely been replaced by section 12 (Achieving well
designed places), without any substantial change in direction of relevance to the assessment of these proposals. ‘Building a strong, competitive economy’ (paragraphs 80-84) replaces paragraphs 18-22 of the 2012 NPPF. The issue of nature conservation is covered in paragraphs 170-183 (Conserving and enhancing the natural environment) but, again, there has been no significant change in direction which would have resulted in a different conclusion being reached to the assessment of these proposals.

3.0  **Response to Appellant’s Written Statement**

3.1  In response to the matters raised in the Appellant’s written statement, which have not been addressed in the Officer report or above, the following comments are made:–

   o  In paragraph 3.2, evidence of problems being caused through existing informal use of lakes for fishing is provided i.e. sections of reed bed are regularly deliberately damaged to create swims and a considerable amount of litter is discarded by anglers around these areas as well as overnight camping. It is also stated that the landowner has not taken action against any member of the public who has strayed from the public or permissive footpaths for informal recreation (paragraph 3.5) and that no action has been taken to remove the carp which have been introduced into the lakes (paragraph 3.9). Reference is made to the use of footpaths within the site for cyclists and motorbikes but that this is not a use authorised by the appellant (paragraph 3.2). It is considered that these are all issues which could and should be addressed by a responsible landowner without planning permission needing to be granted for any development at the site. Granting planning permission for the proposal the subject of this appeal is not necessary to resolve these problems, as claimed. It does not appear that the owner of the site has introduced any measures to prevent unauthorised trespass over the site, not even signs to advise members of the public that no fishing is allowed or that members of the public need to keep to the designated footpaths etc.
In paragraph 3.7, reference is made to a warden or bailiff being employed if planning permission were to be granted for the development proposed to ensure that only members can fish at the site. However, no details have been provided regarding how the warden system would operate, a warden/bailiff is not going to be on site 24/7 and it is also stated that fishing would take place at any time of the day or night. Furthermore, in paragraph 3.3, it is admitted that the site is ‘impossible for the landowner or appellant to police’ – ‘the site extends to more than 50 hectares, is open land with public access permitted from various directions’. Therefore, the appellant would not be able to ensure, as claimed, that only members would fish at the site.

Based on the above, the local planning authority is of the view that authorising fishing at the Gravel Pits would not resolve the issues identified by the appellant and is likely to increase the harm caused as the use of the site for fishing would increase. Therefore, the claim that ‘all illegal angling would cease, together any other indiscriminate activity that currently takes place’ if planning permission were to be granted for informal fishing through the employment of a warden/bailiff and that no evidence of the activity would remain once the angler has left the site (paragraph 3.13), is misplaced.

In paragraph 3.4, it is stated that the Council has made no attempt to prevent damage to the ecological interests, but any illegal damage to habitats and/or fauna would be a police matter. The Council has investigated and continues to investigate the potentially unauthorised use of the Gravel Pits as part of its enforcement role as local planning authority, and a Planning Contravention Notice has been served in June 2018 in relation to a reported breach of planning control. Therefore, it is considered that the Council, as local planning authority, is doing all that can be done within the powers and duties conferred through planning legislation.

In paragraph 3.9, it is claimed that the Council has not had regard to the presence of a sea wall and embankment, with public footpath, between the site and the formally designated European sites. However, the appellant
acknowledges that the appeal site accommodates wildlife habitats including reed beds, stands of willow, soil embankments and sand pits (paragraph 1.1) and that the lakes have developed as a ‘significant wildlife habitat’ (paragraph 3.2), even with the sea wall and embankment. Therefore, the importance of the appeal site for nature conservation in its own right is not in dispute. In paragraph 3.4, the appellant states that no part of the site has any formal nature conservation designation, but this is incorrect as the site is designated as a Local Wildlife Site (Ma57 Essex Gravel Pit). The site is described by Essex Wildlife Trust, as follows:

This flooded gravel pit is situated south of the Chelmer and Blackwater Navigation canal. Partly enclosed by seawalls and adjacent to the Blackwater estuary, it forms an extensive open water habitat of particular value to roosting and bathing coastal birds. The reed bed habitat also supports breeding birds.

The surrounding habitat is grassland of varying character related to the substrate and the amount of recent disturbance. On the eastern side of the pit the folding between the seawall and the borrowdyke has an older sward. Areas of exposed sands and gravels support a sparsely vegetated community featuring a range of leguminous species.

The site is likely to support an interesting invertebrate community, but little survey work appears to have been carried out.

And the reedbeds are noted in relation to UK BAP Priority Habitats. Furthermore, as referred to in the Officer report, the site is supporting habitat for the neighbouring Special Protection Area (SPA) and European case law has established that “supporting habitat” required by the interest features of a SPA receives the same level of protection as the SPA habitat itself.

- The appellant claims that there was no formal requirement to provide the ecology reports which were submitted as part of the planning application
the subject of this appeal (paragraph 3.10). The local planning authority does not agree as the Council's Planning Validation Requirements List requires that a Preliminary Ecological Appraisal survey and report as well as an Extended Phase 1 Habitat Survey are submitted for all applications where the proposal may have an impact on wildlife and biodiversity, and where the development affects international sites (Special Areas of Conservation, Special Protection Area and RAMSAR Sites), national sites (Sites of Special Scientific Interest) and locally designated sites including Local Wildlife Sites. A copy of the relevant extract of the Planning Validation Requirements List is provided as Appendix 1.

- In paragraph 3.6, reference is made to the 2016 scheme having been designed by a ‘competent authority’. However, under the Conservation of Habitats and Species Regulations 2017 (‘the Habitats Regulations’) it is the local planning authority which is the ‘Competent Authority’ in this case for the purposes of carrying-out a Habitats Regulation Assessment (HRA). An HRA was completed by the local planning authority for the development the subject of this appeal. A copy of this Assessment is provided as Appendix 2.

- In paragraph 3.11, it is noted that the local planning authority referred to a shower block being proposed but the appellant confirms that only a single portable toilet is suggested. However, it is noted that, in the Design and Access Statement submitted with the planning application, reference is made to a ‘small timber clad building to house a toilet and washbasin’.

- In response to paragraph 3.12, the appellant is not correct as the local planning authority is the determining authority with respect to the implementation of the adopted Maldon District Parking Standards 2018 not Essex County Council (the Highways Authority).

- Whilst it may not be the appellant’s intention to allow any fishing within 100m of the existing dwellings in Battle Rise (paragraph 3.14), there is no explanation or details of how this would be ensured and the local planning authority’s concerns regarding noise impact predominately relate to the arrival and departure of fishermen, rather than when fishing is taking place. The vehicular access to the site would be directly adjacent to the
neighbouring housing estate to the north-west and the car park proposed would be less than 20m from the closest dwelling in Battle Rise.

o The local planning authority is unable to respond to the appellant’s claim made in paragraph 4.1 that ‘there are other gravel workings within the district with similar conservation interests where fishing takes place’ as no details of the sites being referred to have been provided.

o In paragraph 4.1, reference is made to planning application reference FUL/MAL/16/00150. This application proposed the ‘Relocation and provision of new Heybridge Swifts Football Club facilities including an all-weather pitch, practice pitch and youth team pitch. New access road, car parking, sound attenuation bund, landscaping & ancillary and associated development’. Planning permission was refused for a number of reasons. Part of one of the reasons was the potential adverse impact the use of the football pitches proposed could have on night fishing at Chigborough Lakes. However, concerns regarding the use of a number of football pitches in close proximity to the fishing lakes at Chigborough Lakes does not demonstrate that the fishing activity proposed would not cause harm to the amenity of the residents who live adjacent to the Gravel Pits by reason of noise and disturbance as the uses involved and the sites are not comparable.

5.2 No additional information or reasons have been put forward as part of the appellant’s appeal statement which would lead the local planning authority to conclude that the reasons for refusal was unsubstantiated.

6.0 Conclusion

6.1 The information which has been submitted as part of the application fails to demonstrate that the proposal would not have a direct, adverse effect on the interest features of the local, national and European designated sites at and within the vicinity of the site and protected species. The development proposal cannot be deemed necessary for impending reasons of overriding public interest (IROPI test).
6.2 Under Article 6 of the Habitats Directive a precautionary principle is binding on the Inspector following the prevailing settled case law, *Waddenzee*\(^1\) C-127/02 and the case of *Sweetman*\(^2\) C-323/17.

6.3 The proposal would result in harm to the character and appearance of the area through a loss of vegetation and the increased provision and formalization of the car parking area required. Moreover, insufficient information has been provided to demonstrate that the proposed toilet block would not cause harm the character and appearance of the site and the surrounding area. Therefore, the proposal would fail to protect, conserve and enhance the rural character and appearance of the locality.

6.4 The car parking proposed on site is considered to be insufficient, failing to accommodate the demand generated by the proposed use of the site which in turn will lead to cars parking within Battle Rise and adjoining streets causing conditions of obstruction, congestion and inconvenience to other road users.

6.5 The proposal would introduce noise and disturbance, in close proximity to existing residential properties, at unsociable times of the day, causing material harm to the amenity of the occupiers of residential properties in Battle Rise, Northey View and adjoining streets.

6.6 As a result, the development is not considered sustainable development, which weighs very heavily in the appropriate planning balance against the proposed development.

6.6 The appeal proposal, if permitted, it would be required to be subject to an Appropriate Assessment (HRA) in the first instance and would in the opinion of the LPA cause demonstrable harm to matters of acknowledged importance contrary to national planning policy and development plan policy and Habitats Regulations. Therefore, the Inspector is respectfully requested to dismiss this appeal.

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\(^1\) Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v. Staatssecretaris van Landbouw, Natuurbeheer en Visserij C-127/02

\(^2\) People Over Wind, Peter Sweetman v Coillte Teoranta C-323/17
6.7 The local planning authority considers that there are no measures which could be reasonably and practically required to prevent harm being caused. However, without prejudice, if the Inspector is minded to allow the appeal, it is requested that full weight is given to the conditions as set out in the document submitted simultaneously with this Statement entitled ‘Questionnaire Paper 24.J’.