



The Ordnance Survey map data included within this publication is provided by Colchester Borough Council of Rowan House, 33 Sheepen Road, Colchester CO3 3WG under licence from the Ordnance Survey in order to fulfil its public function to act as a planning authority. Persons viewing this mapping should contact Ordnance Survey copyright for advice where they wish to licence Ordnance Survey map data for their own use. This map is reproduced from Ordnance Survey Material with the permission of Ordnance Survey on behalf of the Controller Of Her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Crown Copyright 100023706 2017

Item No: 7.1

Application: 213315

Applicant: Colchester BC

Agent: Mr Martin Liddell

Proposal: West Mersea floating pontoon erosion control works.

Location: West Mersea Floating Pontoon, Coast Road, West Mersea, Colchester

Ward: Mersea & Pyefleet

Officer: John Miles

Recommendation: Approval of planning permission subject to conditions

1.0 Reason for Referral to the Planning Committee

- 1.1 This application is referred to the Planning Committee because the applicant is Colchester Borough Council.

2.0 Synopsis

- 2.1 The key issues for consideration are the principle of the development, impact on the character and appearance of the area (including impact on heritage assets) and impacts on ecology and flood risk.
- 2.2 This report describes the site, its setting and planning history, the proposal itself and any consultation responses received. The planning merits of the case are then assessed, leading to the conclusion that the proposal is acceptable in planning terms and that a conditional approval is recommended.

3.0 Site Description and Context

- 3.1 The site is an existing pontoon, stretching into the Blackwater Estuary, from a public site in West Mersea. The site is within the West Mersea Conservation Area and the Coastal Protection Belt.

4.0 Description of the Proposal

- 4.1 The proposal is to construct a king post retaining wall comprising driven steel piles, with precast concrete panels set between the posts. The wall is to be set at the level of the riverbed on the rear face and the eroded area infilled to create an approximately level surface to support the pontoon.

5.0 Land Use Allocation

- 5.1 Unallocated Foreshore.
- 5.2 The stretch of water belongs to the Blackwater Estuary Special Protection Area, Ramsar (an international treaty for the conservation and sustainable use of wetlands) which is by extension an SSSI, Essex Estuaries Special Area of Conservation and the Estuaries Marine Conservation Zone.

6.0 Relevant Planning History

- 6.1 The installation of the existing pontoon was approved by the Planning Committee in 2007 (application 071418), with subsequent extensions to the structure approved in 2017 under application 170230.

7.0 Principal Policies

- 7.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework (NPPF) must be taken into account in planning decisions and is a material

consideration, setting out national planning policy. Colchester's Development Plan is in accordance with these national policies and is made up of several documents as follows below.

7.2 Local Plan 2017-2033 Section 1

The shared Section 1 of the Colchester Local Plan covers strategic matters with cross-boundary impacts in North Essex. This includes a strategic vision and policy for Colchester. The Section 1 Local Plan was adopted on 1 February 2021. The following policies are considered to be relevant in this case:

- SP1 Presumption in Favour of Sustainable Development
- SP2 Recreational disturbance Avoidance and Mitigation Strategy (RAMS)
- SP7 Place Shaping Principles

7.3 Local Plan 2017-2033 Section 2

Section 2 of the Colchester Local Plan was adopted in July 2022. The following policies are of relevance to the determination of the current application:

- SG8 Neighbourhood Plan
- ENV1 Environment
- ENV2 Coastal Areas
- DM5 Tourism, leisure, Culture and Heritage
- DM15 Design and Amenity
- DM16 Historic Environment
- DM18 Provision of Open Space and Recreation Facilities
- DM23 Flood Risk and Water Management

7.4 Some “allocated sites” also have specific policies applicable to them. The adopted local plan policies set out below are of direct relevance to the decision making process:

- SS12b Coast Road West Mersea

7.5 The Neighbourhood Plan for West Mersea is also relevant. This forms part of the Development Plan in this area of the Borough.

8.0 Consultations

8.1 The stakeholders who have been consulted and who have given consultation responses are as set out below. More information may be set out on our website.

8.2 **Environment Agency:** No objection.

8.3 **Environmental Protection:** No comments.

8.4 **Natural England:** Natural England is of the view that it cannot be excluded, on the basis of the objective information supplied by the applicant, that the application will have significant effects on the Essex Estuaries SAC and adjacent Blackwater Estuary SPA and Ramsar site. This is because there is a risk that it will affect the following features of the designated site(s) :

- Overwintering birds which are an interest feature of the SPA
- Priority habitats including sandbanks which are slightly covered by seawater at all times (an interest feature of the SAC and SPA)

Officer Comment: It is important to note that this consultation response was received on 17th January 2022. Since this time a detailed Ecological Impact Assessment has since been submitted and mitigation proposed. As outlined at Paragraphs 15.9 - 15.18 it is considered this matter has now been suitably resolved and Natural England have indicated they are now in agreement that the proposal will not have significant effects on the Essex Estuaries SAC and adjacent Blackwater Estuary SPA and Ramsar site, subject to outlined mitigation being secured.

9.0 Parish Council Response

9.1 West Mersea Town Council have commented in support of the application.

10.0 Representations from Notified Parties

10.1 The application resulted in a number of notifications to interested third parties including neighbouring properties. One general comment has been received from a local resident making suggestions on the form of any erosion control works and highlighting the requirement for permission from the Marine Management Organisation and Natural England to carry out the works. The full text of all of the representations received are available to view on the Council's website.

11.0 Parking Provision

11.1 The pontoon is served by the existing public car park accessed from Coast Road. No changes to the existing arrangements are proposed.

12.0 Accessibility

12.1 The Equality Act 2010 legally protects people from discrimination in the workplace and in wider society. The proposed development concerns works below the publicly accessible pontoon platform and will therefore have no material impact on the public's use of, or access to, the pontoon. Based on the submitted information, the scheme is not considered to cause discrimination in terms of The Equality Act.

13.0 Air Quality

13.1 The site is outside of any Air Quality Management Area and will not generate significant impacts upon the zones.

14.0 Planning Obligations

- 14.1 This application is not classed as a “Major” application and therefore there was no requirement for it to be considered by the Development Team and it is considered that no Planning Obligations should be sought via Section 106 (s.106) of the Town and Country Planning Act 1990.

15.0 Report

- 15.1 The main issues in this case are:
- The Principle of Development
 - Design and Impact on the Surrounding Area (Including Heritage Assets)
 - Ecology Impacts
 - Flood Risk

The Principle of Development

- 15.2 Section 2 Local Plan Policy SS12b, sets general Policy requirements for development on Coast Road, including that any new development on the seaward side of Coast Road should require a coastal location and that proposals that would result in the development of existing undeveloped areas of foreshore will not generally be supported unless they accord with criteria in the Coastal Areas Policy ENV2, which includes further criteria for development within the defined Coastal Protection Belt. West Mersea Neighbourhood Plan Policy WM15 provides general support for development that support the retention of the fishing and oyster industries, sailing and boating activities around Coast Road, subject to similar requirements as Policies SS12b and ENV2.
- 15.3 The principle of the pontoon being erected was established in 2007 and the pontoon now forms an established feature of the Coast Road foreshore, and is understood to be well used by the local community. The proposal clearly requires a coastal location as this is where the existing pontoon is located. The development also looks to support existing development, rather than developing undeveloped areas of the coast.
- 15.4 Taking into account the above the proposal is considered acceptable in principle.

Design and Impact on the Surrounding Area (Including Heritage Assets)

- 15.5 Section 1 Policy SP7 states that all new development should respond positively to local character while Section 2 Policy DM15 sets similar requirements for high quality design. Section 2 Policy SS12b requires development on Coast Road to enhance heritage assets and the traditional maritime character of Coast Road, as well as the landscape character of the coast. Policy ENV2 sets similar requirements. The National Planning Policy Framework (the Framework) (2021) and the Planning Practice Guidance recognise the importance of good design and sets further design requirements.

- 15.6 With the site located within the West Mersea Conservation Area, consideration must also be given to potential impacts to the character and appearance of the conservation area. Section 1 Policy DM16 reflects the statutory obligations as set out in S.72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, which requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of a conservation area. Section 1 Policy SP7, Section 2 Policy DM16 and West Mersea Neighbourhood Plan Policy WM26 require development to protect and enhance assets of historical value. In a similar vein, the Framework gives great weight to the conservation of designated heritage assets, noting that the more important the asset, the greater the weight should be. This is irrespective of the level of harm.
- 15.7 The proposed retaining wall, posts and associated engineering operations will take place well below the existing pontoon platform and are not inappropriate in visual terms taking into account their anticipated very limited visibility, with the seabed submerged in all but the lowest tides.
- 15.8 There are therefore no concerns from a design perspective and the proposal is not anticipated to have any material impact on the character and appearance of the conservation area, the setting of any listed buildings fronting Coast Road, or the wider landscape or seascape character of the coast. The proposal is therefore also held to meet the statutory tests for the preservation or enhancement of conservation areas and the setting of listed buildings.

Ecology Impacts

- 15.9 Section 1 Policy ENV1 seek to conserve or enhance biodiversity of the Borough. Section 2 Policies SS12b and ENV2, and West Mersea Neighbourhood Plan Policy WM15, require development on Coast Road and in the Coastal Protection Belt more widely to avoid adverse impacts on Habitat sites. The NPPF states that the planning system should contribute to and enhance the natural and local environment by minimizing impacts on biodiversity. Consideration must also be given to the NERC Act 2006 which places a duty to conserve biodiversity on public authorities in England.
- 15.10 The Council also has statutory obligations under the Habitats Directive and Birds Directive to protect important habitats and species designated as habitats sites. Specifically, under the Conservation of Habitats and Species Regulations 2017 (as amended)(the 'Habitats regulations'), as the Competent Authority for the purposes of this legislation for a proposal that is likely to have a significant effect on a designated site an appropriate assessment of the implications of a project on any such sites must be undertaken. The onus is on the applicant to provide sufficient information for it to be concluded adverse impacts will not occur. In this instance an Ecological Impact Assessment has been submitted by the applicant and informs, in part, the conclusions drawn below.
- 15.11 There is a clear potential for works on site to impact upon the interest features of Habitat Sites [Colne Estuary SPA and Ramsar site, Blackwater Estuary SPA and Ramsar site, Dengie SPA and Ramsar site, Stour and Orwell Estuaries SPA and Ramsar site (south shore) and Essex Estuaries SAC], with the site both forming part of, and close to, a number of such sites.

- 15.12 A detailed Habitat Regulation Assessment [HRA] (held on the planning file) has therefore been made by the Council and assess the potential for both direct impacts (the works themselves) and indirect impacts (associated activity i.e. recreational pressure) to Habitat Sites.
- 15.13 In this instance no indirect impacts are expected. In terms of the potential for increased recreational pressures it is important to note that the pontoon is existing and currently operational. While the proposal will prevent the pontoon falling into a state of disrepair such that it is not operational, it is not considered the works proposed will in and of themselves increase recreational pressure on Habitat Sites. Likely significant effects as a result of recreational pressure can therefore be ruled out.
- 15.14 With regard to direct impacts, without proper care being taken during construction and without appropriate construction methodologies in place there is the potential for direct damage to habitats that form part of the aforementioned Habitat Sites.
- 15.15 A number of proposed mitigation methods have however been proposed, as detailed within the submitted Ecological Impact Assessment, to ensure the proposal will not result in adverse effects on the integrity of any designated sites. These include considerations for the occurrence of exceptionally cold weather, restrictions that only existing access routes to the site must be utilised and the use of specific soft-start piling methods. It is also noted that the worst-case scenario where 19 piles maximum would be installed would equate to 0.000001% habitat loss of the total area of the relevant designated sites
- 15.16 It is understood that in addition to planning permission a license is required from the Marine Management Organisation [MMO] for the works proposed. The MMO have previously confirmed that they are in agreement with the mitigation proposed and consider the mitigation proposed will ensure the proposal will not result in adverse effects on the integrity of any of the sites in question. Natural England have also advised (through the MMO licensing process) that they agree with the conclusions drawn on such matters and that the proposal will not have an adverse impact on the integrity of Habitat Sites, providing that all mitigation measures are appropriately secured in any permission given.

N.B. A copy of correspondence between the MMO and Natural England on these matters can be found in the appendices of the submitted Ecological Impact Assessment dated July 2022.

- 15.17 A license was granted by the MMO on 27th July 2022, with the implementation of the necessary ecological mitigation measures included as conditions of the license. A copy of the license is held on the planning file. Given any works must take place in accordance with the conditions of this license this provides certainty that necessary mitigation measures will be implemented. Compliance with the submitted Ecological Impact Assessment can also be conditioned to provide further security that appropriate mitigation measures are implemented.

- 15.18 It is considered that with the secured on-site mitigation, the scheme will not have an adverse impact on the integrity of designated sites, nor does the proposal give rise to any wider concerns from an ecology perspective.

Flood Risk

- 15.19 Planning policy seeks to direct development away from areas of flood risk (both fluvial and coastal), towards sites with the lowest risk from flooding. Section 2 Policy DM23 seeks to promote flood mitigation, while Section 2 Policy SS12b and West Mersea Neighbourhood Plan Policy WM15 require development on Coast Road specifically to be appropriate for its location with regards to flood risk. The NPPF requires a detailed flood risk assessment (FRA) to be produced for all development located within a flood zone.
- 15.20 In this case the site is within Flood Zone 3, being within a functional tidal area and a proportionate Flood Risk Assessment has been provided, in accordance with the requirements of the NPPF.
- 15.21 With due regard to Planning Practice Guidance the proposed development is considered water compatible and taking into account the limited proposed built form the proposal is also not expected to increase flood risk elsewhere. The proposal is therefore considered acceptable from a flood risk perspective.

Other Matters

- 15.22 Finally, in terms of other usual planning considerations (e.g. archaeology, contaminated land, parking and highways etc.) the proposed development does not raise any concerns.

16.0 Conclusion

- 16.1 Taken as a whole the proposed development is found to accord with Council policy, including relevant policies of the West Mersea Neighbourhood Plan. The proposal will prolong the life of the existing pontoon, without resulting in any wider harm in terms of the character and appearance of the area, ecology, flood risk or any other relevant material planning considerations. Accordingly, a conditional approval is recommended.

17.0 Recommendation to the Committee

- 17.1 The Officer recommendation to the Committee is for:

APPROVAL of planning permission subject to the following conditions:

1. ZAA - Time Limit for Full Permissions

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. ZAM – Development to Accord with Approved Plan

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers 66203003-SWE-ZZ-00-DR-S-0001 and 66203003-SWE-ZZ-00-DR-S-0002.

Reason: For the avoidance of doubt and to ensure that the proposed development is carried out as approved.

3. Z00 – Ecology Impact Assessment

The proposed development shall be carried out in accordance with the submitted Ecological Impact Assessment (Produced by SWECO, Dated July 2022), including the ecological mitigation measures outlined within this document.

Reason: In the interests of ecology and as this is the basis on which the application has been considered.

18.0 Informatives

18.1 The following informatives are also recommended:

ZTB - Informative on Any Application With a Site Notice

PLEASE NOTE that a site notice was erected in a publicly visible location at the site. Colchester Borough Council would appreciate your co-operation in taking the site notice down and disposing of it properly, in the interests of the environment.