



Appeal Decision

Site visit made on 16 March 2022

by M L Milliken BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 April 2022

Appeal Ref: APP/H2733/W/21/3282996

Land off Green Lane, Whitby, Scarborough YO22 4JP (Easting 490516, Northing 510550)

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Wharfedale Homes Limited against the decision of Scarborough Borough Council.
 - The application Ref 19/02258/FL, dated 20 September 2019, was refused by notice dated 13 August 2021.
 - The development proposed was originally described as '*New build development of 70 residential buildings*'.
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Decision

1. The appeal is allowed and planning permission granted for the erection of 62 dwellings at Land off Green Lane, Whitby, Scarborough YO22 4JP (Easting 490516, Northing 510550) in accordance with the terms of the application Ref 19/02258/FL dated 20 September 2019, subject to the Conditions set out in the accompanying Schedule.

Procedural Matters

2. Notwithstanding the description of development in the banner, which was taken from the application form as submitted, it is clear from the evidence before me that, during the determination process, the proposal was revised to comprise 62 dwellings and was subsequently publicised and determined by the Council on that basis. This amendment is also reflected in the Council's decision and is the basis upon which I determine this appeal.
3. A Section 106 Agreement has been submitted by the appellant which provides for affordable housing. I am satisfied that the agreement provided in evidence is fit for purpose as a deed and I am therefore proceeding to determine the appeal on that basis. I will address the provisions of the Agreement later in this decision.

Application for costs

4. An application for costs was made by Wharfedale Homes Limited against Scarborough Borough Council. This application is the subject of a separate Decision.

Main Issue

5. The main issue is whether or not the proposed development makes provision for safe vehicular, pedestrian and cycle access, with particular regard to the proximity of the proposed site access to existing junctions along Green Lane, and its role as a highway connecting key visitor attractions to the town of Whitby.

Reasons

6. The appeal site is allocated for housing through Policy HA19 of the Scarborough Borough Local Plan (SBLP) (adopted July 2017). I therefore consider that the principle of residential development on the site is well established.
7. The proposed development would involve the creation of a new priority 'T' junction onto Green Lane from the north west corner of the site, with associated footways on both sides of the carriageway. I consider that the necessary visibility splays can be provided, the details of which are set out in the Transport Assessment dated September 2019 and the Highways Appeal Statement dated September 2021.
8. With regards to junction spacing, I have reviewed the drawings and data submitted by the appellant in support of the appeal and I am satisfied that the proposed junction would operate in a safe manner, and that relatively few cross movements between the new site access and existing junctions would occur.
9. Whilst I recognise concerns with regards to increased tourism related traffic, particularly as a result of the Covid 19 pandemic, there is little evidence before me to conclude that the impact of tourism related activity on Green Lane is such that the vehicular, pedestrian and cycle access arrangements proposed are not acceptable in highway safety terms. I also note that the local Highway Authority did not object to the proposals as presented and determined the access proposals to be satisfactory, subject to the use of planning conditions.
10. I have had regard to evidence submitted by the Council with regards to temporary closures of the swing bridge in the centre of Whitby, including a table detailing temporary closures between April to October 2021. The Council asserts that the information provided in evidence was known at the point of determination of the planning application, however it is not cited within the Report to Planning Committee dated 5 August 2021 or on the Decision Notice.
11. The Council proposes that, at the times of swing bridge closure, the increase in traffic was such that the proposed pedestrian and vehicular access arrangements put forward for the development would not be acceptable. However, the Council have provided no further evidence in support of this assertion, and I note that the issue was not raised by the Local Highway Authority in their consultation responses to the planning application.
12. I note evidence provided by the appellant regarding the decision of North Yorkshire County Council dated 21 January 2022 to end the temporary, experimental closures of the Whitby swing bridge and to not make the closure permanent. Therefore, in the absence of this matter being substantiated in evidence by the Council and whilst I note anecdotal evidence with regards to increased traffic movements along Green Lane, I therefore have little reason to

conclude that the pedestrian and vehicular access arrangements proposed are not suitable or fit for purpose.

13. For the reasons given, I consider that the proposed development makes provision for safe vehicular, pedestrian and cycle access and therefore accords with Policy DEC1 of the SBLP (2017) which states that, in part, new development proposals should provide suitable and safe vehicular access and that developments should be well-connected, safe and accessible.

Other Matters

14. I have considered the effect of the proposed development on the settings of nearby designated and non-designated heritage assets. In so doing, I concur with the overall conclusions of the Council and find no significant harm in this respect and, as such, not sufficient for me to make an alternative finding.
15. I have had regard to a number of objections raised, including Whitby Town Council, where these relate to planning matters for consideration. Such objections include, but are not limited to, the potential effect of the development on ecology, traffic generation, the design of the proposed housing and the impact on local character, increased pressure on local services and residential amenity, together with the potential for the houses to be bought as second homes or as holiday lets and a lack of jobs for future homeowners.
16. However, I find none have been substantiated in evidence before me, and the Council does not cite any of these reasons as matters of concern. I am satisfied, from what I have seen and read, that the proposed development would have an acceptable effect in relation to the technical issues outlined above and that other matters can be addressed through the imposition of appropriately worded planning conditions. It is also noted that the appeal site is allocated for housing in an up-to-date local plan, which would have been subject to a lengthy and detailed consultation process to determine the suitability of the site for housing. I therefore attribute little weight to such objections in the determination of this appeal.
17. I note that Policy HA19 of the SBLP (2017) states the allocation of the site as for 60 dwellings, however I do not consider the proposed 62 dwellings to be inappropriate, based on the evidence submitted with regards to the scale and design of the proposed development. I also note that the Council do not raise any issues in this regard.

Planning Obligations

18. The first obligation relates to the provision of affordable housing, which is proposed at a rate of 31% or 19 dwellings, of which 13 would be for rent and 6 would be offered as discount-for-sale dwellings. On the evidence before me I am satisfied that the need for the affordable housing contribution sought by the Council directly arises from the development and therefore satisfies the three tests contained in Regulation 122(2) of The Community Infrastructure Levy (CIL) Regulations 2010 (the CIL regulations). In addition, the need for affordable housing in this case also accords with paragraph 57 of the National Planning Policy Framework (the Framework), namely that it is necessary to ensure that the development is acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development.

19. The second obligation relates to the sum of £53,070.40 towards the improvement of children's play infrastructure, to be ringfenced for spending on facilities in the near vicinity and the sum of £26,274.43 towards the improvement of the Borough's parks and gardens, to be ring-fenced for spending on facilities local to the application site.
20. The third obligation relates to sum of £6,000 for each discount for sale dwelling, towards the costs of managing and administering the processes for persons wishing to apply to purchase.
21. The fourth obligation relates to the sum of £25,876, towards health infrastructure, to help offset the cost of providing primary health care infrastructure to deal with the development-related increase in population.
22. The fifth obligation relates to the sum of £15,000 towards the upgrade of the pedestrian link (right of way) between New Gardens and Green Lane.
23. The sixth obligation relates to the sum of £2,000 to help offset the cost of implementing construction phase temporary waiting restrictions, as required through planning condition.
24. The seventh obligation relates to the sum of £3,250 to be utilised for monitoring of the Section 106 Agreement, payable to the Council on or before the commencement of development.
25. On the evidence before me, it appears that, in relation to the second, third, fourth, fifth, sixth and seventh obligations, the need for the obligations and contributions sought by the Council directly arises from the development, satisfies the three tests of the CIL Regulations and accords with paragraph 57 of the Framework.

Conditions

26. A schedule of conditions for the proposed development is provided by the Council and I am satisfied that the appellant has had the opportunity to comment in this regard. I have therefore reviewed the conditions and considered them in line with the Framework and PPG. The wording of some conditions has been adjusted where necessary, in the interests of clarity and to ensure compliance with relevant guidance. In the interests of brevity and to avoid repetition, I have also combined some conditions. I have imposed the statutory time limit condition regarding the deadline for commencement of development.
27. Condition 2 defining the approved plans is necessary in the interests of certainty. Condition 3 is a pre-commencement condition necessary to manage the effects of construction of the site access on the local highway network and in the interests of protecting residential amenity.
28. Condition 4 is necessary to ensure adequate site access and in the interests of highway safety. Condition 5 is necessary to ensure the protection of residential amenity and to preserve the character and appearance of the area.
29. Condition 6 is necessary in the interests of sustainable drainage and to minimise flood risk. Conditions 7 and 8 are necessary to ensure that the site access, crossings and internal roads are constructed to a satisfactory standard, in the interests of highway safety and to ensure adequate drainage.

- 30. Condition 9 is necessary in the interests of ensuring connectivity and public access. Condition 10 is necessary in the interests of health and safety and residential amenity.
- 31. Conditions 11 and 12 are necessary in the interests of ensuring adequate open space provision and maintenance. Conditions 13 and 14 are required in order to ensure the preservation of features of local interest.
- 32. Conditions 15 and 16 are necessary to ensure the protection of biodiversity.
- 33. Condition 17 is necessary in the interests of residential amenity and the health and safety of highway users. Condition 18 is necessary to ensure adequate parking provision.
- 34. Condition 19 is necessary in the interests of residential amenity. Condition 20 is necessary in the interests of ensuring sustainability.

Conclusion

- 35. For the reasons set out, I conclude that the appeal should be allowed.

M L Milliken

INSPECTOR

Schedule of Conditions

- 1) The proposed development shall begin not later than three years from the date of this permission.
- 2) Except where may be modified by the conditions of this consent, the development shall be carried out in accordance with the following approved plans and drawings:

WGLW-PHS-XX-XX-DR-A-10, Site Location Plan, rev P05 - 27 April 2021

WGLW-PHS-XX-XX-DR-A-90-001, Proposed Site Plan, rev P15 - 6 March 2020

WGLW-PHS-XX-XX-DR-A-002, Proposed Street Scenes 1&2, rev PO4 - 6 March 2020

WGLW-PHS-XX-XX-DR-A-003, Proposed Site Sections, rev P3 - 6 March 2020

WGLW-PHS-XX-XX-DR-A-005, Hard Standing Materials Plan, rev P04 - 6 March 2020

WGLW-PHS-XX-XX-DR-A-011, Boundary Treatment Plan, rev P03 - 6 March 2020

WGLW-PHS-XX-XX-DR-A-012, Materials and character Plan, rev P03 - 6 March 2020

WGLW-PHS-XX-XX-DR-A-2030, Dwelling Type C (2B 4P) - Plans, rev P05 - 17 March 2020

WGLW-PHS-XX-XX-DR-A-2060, Dwelling Type H (3B5P) - Plans, rev P05 - 6 March 2020

WGLW-PHS-XX-XX-DR-A-2070, Dwelling Type J (3B5P) - Plans, rev P04 - 6 March 2020

WGLW-PHS-XX-XX-DR-A-2090, Dwelling Type O (3B6P) - Plans, rev P05 - 6 March 2020

WGLW-PHS-XX-XX-DR-A-2010, Dwelling Type K (3B 5P) - Plans, rev P06 - 6 March 2020

WGLW-PHS-XX-XX-DR-A-2110, Dwelling Type S (4B7P) - Plans, rev P05 - 6 March 2020

WGLW-PHS-XX-XX-DR-A-2120, Dwelling Type N (3B 6P) - Plans, rev P04 - 6 March 2020

WGLW-PHS-02-XX-DR-A-2200, Block Type 2 - Floor Plans, rev P04 - 6 March 2020

WGLW-PHS-02-XX-DR-A-2203, Block Type 2 - Floor Plans - M, rev P01 - 6 March 2020

WGLW-PHS-05-XX-DR-A-2500, Block Type 5 - Floor Plans, rev P03 - 6 March 2020

WGLW-PHS-07-XX-DR-A-2700, Block Type 7 - Floor Plans, rev P03 - 6 March 2020

WGLW-PHS-07-XX-DR-A-3100, Block Type 11 - Floor Plans, rev P01 - 6 March 2020

WGLW-PHS-XX-XX-DR-A-2032, Type C - Elevations, rev P04 - 6 March 2020

WGLW-PHS-XX-XX-DR-A-2033, Type C - Elevations, rev P04 - 6 March 2020

WGLW-PHS-XX-XX-DR-A-2034, Type C - Elevations, rev P05 - 6 March 2020

WGLW-PHS-XX-XX-DR-A-2062, Type H - Elevations, rev P03 - 6 March 2020

WGLW-PHS-XX-XX-DR-A-2063, Type H - Elevations, rev P03 - 6 March 2020

WGLW-PHS-XX-XX-DR-A-2065, Type H - Elevations, rev P01 - 6 March 2020

WGLW-PHS-XX-XX-DR-A-2072, Type J - Elevations, rev P03 - 6 March 2020

WGLW-PHS-XX-XX-DR-A-2073, Type J - Elevations, rev P03 - 6 March 2020)

WGLW-PHS-XX-XX-DR-A-2012, Type K - Elevations, rev P04 - 6 March 2020

WGLW-PHS-XX-XX-DR-A-2013, Type K - Elevations, rev P03 - 6 March 2020

WGLW-PHS-XX-XX-DR-A-2014, Type K - Elevations, rev P03 - 6 March 2020

WGLW-PHS-XX-XX-DR-A-2093, Type O - Elevations, rev P04 - 6 March 2020

WGLW-PHS-XX-XX-DR-A-2112, Type S - Elevations, rev P04 - 6 March 2020

WGLW-PHS-XX-XX-DR-A-2122, Type N - Elevations, rev P04 - 6 March 2020

WGLW-PHS-XX-XX-DR-A-2123, Type N - Elevations, rev P04 - 6 March 2020

WGLW-PHS-02-XX-DR-A-2202, Block Type 2 Elevations, rev P04- 6 March 2020

WGLW-PHS-02-XX-DR-A-2204, Block Type 2 Elevations - M, rev P01- 6 March 2020

WGLW-PHS-05-XX-DR-A-2501, Block Type 5 Elevations, rev P03 - 6 March 2020

WGLW-PHS-05-XX-DR-A-2502, Block Type 5 Elevations, rev P01 - 6 March 2020

WGLW-PHS-07-XX-DR-A-2701, Block Type 7 Elevations, rev P03 - 6 March 2020

WGLW-PHS-07-XX-DR-A-3101, Block Type 11 Elevations, rev P01 - 6 March 2020

WGLW-PHS-XX-XX-DR-A-3000, Detached Garage & Bin Store, rev P02 - 6 March 2020

R-2279-1C, Landscape Masterplan, rev C - 6 March 2020

19/178/TR/007, Proposed Site Access Junction, Rev B, 27 April 2021

- 3) No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The statement shall provide for the following:

- a) the parking of vehicles of site operatives and visitors
- b) loading and unloading of plant and materials
- c) storage of plant and materials used in constructing the development
- d) wheel washing facilities
- e) HGV routing to minimise large vehicles travelling in opposite directions along Green Lane and Hawsker Lane
- f) Measures to protect the Spital Beck from construction related pollution during the construction phase
- g) A scheme for temporary waiting restrictions in the vicinity of the site access which shall include:
 - On Green Lane, the introduction and subsequent removal or extension in time, of a temporary traffic regulation order (TRO) for no waiting at any time (NWAAT) restrictions on Green Lane, so that there would be a continuous NWAAT restriction on the south eastern side of Green Lane, stretching between the proposed site access and the junction with Church Street
 - On Green Lane, uphill of the development access, the introduction and subsequent removal or extension in time, of a temporary traffic regulation order (TRO) for no waiting at any time (NWAAT) restrictions to extend the current permanent restriction by 40 metres
- 4) There shall be no access or egress by any vehicles between the highway and the application site (except for the purposes of constructing the initial site access) until splays are provided giving clear visibility of 29 metres measured along both channel lines of the major road Green Lane from a point measured 2.4 metres down the centre line of the access road. The eye height will be 1.05 metres and the object height shall be 0.6 metres. Once created, these visibility areas shall be maintained clear of any obstruction and retained for their intended purpose at all times.
- 5) Notwithstanding the submitted details, development shall not continue beyond preliminary groundworks until a precise schedule of all external materials of construction of buildings and hard-surfaced areas (including brand names, model references and colour specifications) has been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved schedule.
- 6) The site shall be developed with separate systems of drainage for foul and surface water on and off site. Development shall not continue beyond preliminary ground groundworks, which means before any foundations are laid or any drainage infrastructure is set in place, until a detailed surface water drainage scheme for the site restricting the rate of development flow runoff from the site and identifying the outfall has been submitted to and approved in writing by the Local Planning Authority. The flowrate from the site shall be restricted to the greenfield run-off rate for up to the 1 in 100 year flood event. Water storage shall be provided to accommodate the minimum 1 in 100 year

plus a 40% allowance shall be included for climate change effects and a further 10% for urban creep for the lifetime of the development. The scheme shall:

- Include a detailed maintenance and management regime for the surface water drainage system and a phasing plan for its implementation
- Include details of measures to prevent polluting discharges from the site
- Be implemented in accordance with the approved phasing plan and the approved maintenance and management scheme shall be implemented throughout the lifetime of the development.

7) Development shall not continue beyond preliminary groundworks until the following drawings and details have been submitted to and approved in writing by the Local Planning Authority:

a) Detailed engineering drawings to a scale of not less than 1:500 and based on an accurate survey showing:

- The proposed highway layout including the highway boundary
- Dimensions of any carriageway, cycleway, footway, and verges
- Visibility splays
- Accesses and driveways
- The highway drainage system and its relationship with the site-wide drainage system
- Any lining and signing
- Any traffic calming measures
- All types of surfacing (including any tactile surfacing), kerbing and edging.

b) Longitudinal sections to a scale of not less than 1:500 horizontal and not less than 1:50 vertical along the centre line of each proposed road showing:

- The existing ground level
- The proposed road channel and centre line levels
- The highway drainage system proposals and its relationship with the site-wide drainage system

c) Full highway construction details including:

- Typical highway cross-sections to scale of not less than 1:50 showing a specification for all the types of construction proposed for carriageways, cycleways and footways/footpaths
- Cross sections at regular intervals along the proposed roads showing the existing and proposed ground levels
- Kerb and edging construction details
- Typical drainage construction details

- The highway drainage system
 - d) Details of all proposed street lighting
 - e) Drawings for the proposed new roads and footways/footpaths giving all relevant dimensions for their setting out including reference dimensions to existing features
 - f) Full working drawings for any structures which affect or form part of the highway network
 - g) A programme for completing the works
- 8) Prior to the first use of the development, the pair of new tactile crossings shown on plan 19/178/TR/007 - Proposed Site Access Junction - Rev B, the specification for which shall be agreed under the provisions of condition 7, shall be implemented in full.
- 9) Notwithstanding the submitted details, prior to the continuation of development beyond preliminary groundworks precise details of the footpath link between the development and New Gardens, which shall connect to the public right of way to the south of the site, shall be submitted to and approved in writing by the Local Planning Authority. The details shall include cross sections of the length of the path at a scale of not less than 1:50 based on an accurate survey and shall include a specification for its surfacing. The approved footpath link shall be implemented in full prior to the first occupation of the site.
- 10) Prior to development continuing beyond initial groundworks, section drawings which precisely show the proposed ground levels, finished floor levels and finished eaves and ridge heights of the proposed dwellings on the site's western boundary shall be submitted to and approved in writing by the Local Planning Authority. These levels shall be shown in relation to a fixed and known datum point, existing land levels and the eaves and ridge heights of the dwellings immediately to the west of the application site on Captain Cook Crescent and the existing bungalow to the north-west corner of the application site. The development shall be implemented in accordance with the approved details.
- 11) Development shall not continue above foundation level until a phasing plan for the provision of the areas of the public open space has been submitted to and approved in writing by the Local Planning Authority. The landscaping of the site and provision of the public open space shall be carried out in accordance with the approved phasing plan.
- 12) Development shall not continue above foundation level until a plan for the maintenance of the areas of open space on the development site (including all equipment, means of enclosure, grassed areas, trees and hard surfaced areas but excluding all on-plot landscaping and areas adopted by the Highway Authority or Yorkshire Water) has been submitted to and approved in writing by the Local Planning Authority. The plan shall include:
- Proposals for the maintenance of the public open space
 - Provision for litter picking
 - A starting point for the maintenance regime.

The approved plan shall be implemented (i.e. the maintenance regime shall begin) in accordance with the submitted plan and shall continue in perpetuity.

13) Prior to the construction of the development plinth on plot 26, details of a scheme for the renovation of the Home Guard store shall be submitted to and approved in writing by the Local Planning Authority. The details shall include:

- Proposals for making good the fabric
- Proposals for any new door apertures and closing of any existing door apertures, setting out what materials will be used
- Joinery details of any new joinery, which shall be timber
- Proposals for a plaque to be sited on the building briefly detailing its history.

No new window apertures shall be proposed as part of the renovation scheme. The scheme shall be implemented in accordance with the approved details prior to the first occupation of plot 26. Once modified in accordance with this condition, notwithstanding the provisions of any Act, Order or Amendment which may afford Permitted Development Rights for development to allow any modification to the Home Guard Building, no such development shall take place.

14) Notwithstanding the submitted details, details of a scheme for the rebuilding of the stone entrance wall in the location shown on the approved boundary plan shall be submitted to and approved in writing by the Local Planning Authority prior to the first occupation on the site. The submitted details shall include elevations of the re-built wall at a scale of not less than 1:20 and shall specify the retention and re-use of the existing stonework including the stone pier cap, coping and the Ordnance Survey Bench Mark. The scheme for the rebuilding of the stone entrance wall shall be completed in accordance with the approved details prior to the final occupation on the site.

15) Prior to the occupation of the respective dwelling, each of the dwellings which have a curtilage abutting the site's southern and eastern boundaries shall be fitted with a proprietary bat box and this shall be fitted at eaves level on the elevation facing the open countryside.

16) As constructed, there shall be a space made in the bottom of the boundary treatment for each plot at ground level of at least 10cm by 10cm, so as to allow permeability for hedgehogs.

17) No dwelling to which this planning permission relates shall be occupied until the carriageway and any footway/ footpath from which it gains access is constructed to basecourse macadam level and/or blocked paved and kerbed and connect to the existing highway network with street lighting installed and in operation.

18) No dwelling shall be occupied until the related parking facilities have been constructed in accordance with the submitted and approved drawings. Once created these parking areas shall be maintained clear of any obstruction and retained for their intended purpose at all times.

19) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting that

Order), no windows shall be installed in the first floor west elevations of Plots 1 and 12.

- 20) Each new dwelling shall be provided with an external socket prior to the first occupation of the dwelling. The socket shall be of at least single phase specification and shall be sited on the ground floor of the dwelling on the elevation closest to the parking spaces designated for use by that dwelling.