



Appeal Decision

Site visit made on 2 November 2022

by C Dillon BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 January 2023

Appeal Ref: APP/V2723/W/21/3287312

Rose Villa Farm, Wells Lane, Barton, Richmondshire DL10 6LU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission
 - The appeal is made by Mr and Mrs Farrow against Richmondshire District Council.
 - The application Ref 21/00133/OUT, is dated 16 February 2021.
 - The development proposed is described as outline application with some matters reserved for up to 50 dwellings and associated works.
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Decision

1. The appeal is allowed, and outline planning permission is granted with all matters reserved, except for access, for up to 50 dwellings and associated works at Rose Villa Farm, Barton, DL10 6LU in accordance with the terms of the application, Ref 21/00133/OUT, dated 16 February 2021, and the plans submitted with it, subject to the conditions contained in the attached Schedule.

Application for costs

2. An application for costs was made by Mr and Mrs Farrow against Richmondshire District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. This appeal has been lodged in response to the Council's failure to issue its decision within the prescribed determination timeframe. The application was made in outline with all matters reserved for future consideration, except for access into the site itself. As the submitted site layout plan is marked as indicative, it has been treated accordingly. The matters raised in the Council's putative reasons for refusal form part of my assessment.
4. The publication of Natural England's updated approach to nutrient loading and their revised list of the affected areas post-date this appeal. The main parties have agreed that these are relevant to my determination because the appeal site is located within the River Tees Catchment area which covers the Teesmouth and Cleveland Coast Special Protection Area, Ramsar site and associated Sites of Special Scientific Interest ("the protected area"). The appellant was invited to submit further evidence to this appeal in this regard. The Council, Natural England and the Environment Agency were consulted on the subsequent submission during the course of this appeal. I am therefore satisfied that no parties have been prejudiced. I consider this matter later in my Decision.

5. A deed of variation to the relevant legal agreement pursuant to Section 106 of the Town and Country Planning Act 1990 has been provided. Both documents have been signed by the relevant parties. Collectively, these seek to secure off-site mitigation relating to nutrient loading, affordable housing and recreation and play facility provision. Through the submitted compliance statement, it has been demonstrated that all of the obligations sought are reasonable and necessary to secure the required mitigation and meet the policy requirements to make the appeal proposal acceptable in those regards. Overall, the legal agreement is compatible with all of the tests for planning obligations set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended). As its form and content are acceptable, I have taken it into account in my assessment. The weight attached to these planning obligations is set out in the relevant parts of my Decision.

Main Issue

6. The main issue is whether or not the proposed level of housing growth is appropriate, with particular regard to the adopted spatial strategy for the area.

Reasons

7. The appeal site is a working dairy farmyard and associated land located on the edge of the village of Barton, accessed directly off Wells Lane. This complex of large agricultural buildings provides a strong built-up frontage to this side of Wells Lane. Dwellings in the recent Wells Green development opposite define the built form of the village well beyond the extent of the appeal site's road frontage. Consequently, the appeal site reads as part of the built-up form of the village and is set within a wider countryside context.
8. Barton falls within the North Richmondshire sub-area. The spatial approach of the adopted Richmondshire Local Plan 2012-2028 Core Strategy ("the Local Plan") seeks to reflect the area's largely rural nature, the limited services and facilities and the need to resist further in-migration and cross-boundary commuting. Consequently, the Plan's strategy is one of limiting the scale of new housing development in this sub-area. Policy SP1 of this Plan confirms that this is a sub-area identified to accommodate modest growth.
9. Policy SP2 of the Local Plan sets out Richmondshire's settlement hierarchy to organise development and service provision. As one of the area's Primary Service Villages, a key principle of considering new development in Barton is the maintenance and enhancement of existing or new services. The proposed distribution of housing growth over the plan period set out in Policy SP4 of the Local Plan is based on Policies SP1 and SP2 and Table 3 shows the number of homes that are expected to be delivered in this sub-area's 3 Secondary Service Villages. Furthermore, Policy CP4 of the Local Plan supports development that is of a scale and nature appropriate to secure the sustainability of settlements in the defined settlement hierarchy which is located adjacent to the defined development limits of the settlement, where deliverable opportunities do not exist within those limits.
10. The Council's Officer Report accepts that in locational terms the appeal proposal does not conflict with Policy CP4 and there is no basis for me to dispute that assessment. Nonetheless, the Council has calculated that the total housing commitments for this sub-area's 3 Primary Service Villages already exceeds the Core Strategy target by 9 units. It argues that the appeal proposal

would unjustifiably exceed the amount of housing growth appropriate for Barton by a significant level. In asserting that there is no evidence that the housing targets are inappropriate or should be exceeded, the Council argues that the appeal scheme is premature. The Council also argues that the proposed yield would be harmful as it would place unacceptable pressure on existing local services and facilities, and thus would undermine the spatial strategy of the Local Plan.

11. Although the primary focus of Policy SP2 is to direct development to the higher tier towns of Richmond, Catterick Garrison and Leyburn, this policy's wording does not exclude new residential development in the lower tier settlements. This is supported by the Council's previous acceptance, through the grant of an earlier outline permission that the appeal site as a location suitable for new housing growth.
12. The Council's claim that the proposal is premature is not substantiated. The Plan's supporting text explicitly states that the Plan's overall target of housing is not a ceiling figure for the stated level of growth throughout the plan period. Rather, it is stated as being realistic and deliverable. A numerical limit is not referenced. Notably, the Plan does not specify any further breakdown of the housing growth target set out in Policy SP4 by individual named settlement. Crucially, the precise wording of the Local Plan policies does not expressly direct the decision-taker to resist development where the proposed level of housing delivery would be exceeded in one of the Plan's defined sub-area or settlement hierarchy geographies. Rather, the Plan states that a managed approach will be taken should further suitable, sustainable and deliverable housing sites come forward based on their individual merits.
13. The Council has already accounted for the yield of appeal site's extant permission within its calculation for housing supply in this sub-area. The focus on the proposed percentage increase of the site's yield unduly exaggerates the scale of the development that is proposed in terms of actual net additional dwelling unit numbers. I find that the proposed site yield represents only a modest uplift in the number of permitted new dwellings on this site. I note that the Plan's supporting text states that Barton is the largest settlement in this sub-area. In its totality, the appeal proposal would not be excessive in scale relative to the remainder of the built-up form and role of Barton.
14. Furthermore, the evidence before me does not demonstrate the Council's concerns about the inability for the existing local services, facilities and infrastructure to support the appeal proposal. Neither is there evidence to demonstrate that the Council has failed to secure any community infrastructure deemed necessary to mitigate such a concern.
15. Neither of the main parties have provided clear evidence to demonstrate the effect the appeal proposal would have on existing levels of out-commuting. However, the appeal site is within easy, safe walking distance of a regular bus route. Coupled with the growth in online services and the limited net increase in dwelling numbers proposed, I conclude that any such effects would not be of a level which would undermine that objective of this particular sub-area's spatial strategy.
16. Given the proximity of the appeal site to Barton's existing local services and facilities and the number of units proposed the appeal scheme does have

increased scope to at the very least sustain the existing local services and facilities. This weighs moderately in favour of the appeal scheme.

17. For these reasons, I do not find the appeal proposal is of a scale which is disproportionate or significant. Neither is there evidence of prematurity. Rather, I find that the proposed level of housing growth is appropriate, with particular regard to the adopted spatial strategy. Consequently, this particular appeal proposal does not conflict with Policies SP1, SP3 and SP4 of the Local Plan.

Other Matters

18. No technical concerns about the proposed uplift in yield have been evidenced by the Council and interested parties. The indicative sketch layout demonstrates that the proposed yield would not be discordant with the existing pattern of development within the locality, that a suitable and safe access could be achieved for vehicles and pedestrians, and adequate separation distances and private outdoor space, green infrastructure exceeding current policy requirements and private parking could be secured at the reserved matters stage. I have no cause to disagree with the Council's assessment in those regards.
19. In exercising my statutory duty in respect to protected species, I am satisfied that the appeal scheme would not harm the site's habitat or biodiversity interests, subject to an appropriately worded condition to secure bio-diversity mitigation and enhancement. My findings on the effects on the Teesmouth and Cleveland Coast protected designations are set out later in my Decision.
20. Paragraph 119 of the National Planning Policy Framework ("the Framework") states that decisions should promote an effective use of land in meeting need for homes, while safeguarding and improving the environment and ensuring safe and healthy living conditions. The appeal proposal would secure the more effective use of a site which the Council has explicitly accepted in its evidence as being suitable, in principle, for housing growth, without causing any harm. The proposed increased site yield would accord with the Framework's approach in this regard.
21. The Council's ability to demonstrate a 5-year housing land supply is not disputed. Nonetheless, the appeal proposal will positively contribute to the supply of market housing in the village. Through the legal agreement, an increased contribution to the local supply affordable housing would be secured. This boost in housing supply relates to a sub-area which presents barriers to those wishing to access the housing market¹. The submitted legal agreement would also secure an enhanced level of recreational provision and its maintenance thereafter. These matters all weigh moderately in favour of the appeal proposal.
22. Interested parties have expressed a preference for an alternative site at Ashes Farm. However, the Local Plan does not contain a specific policy led sequential approach to housing sites in the village. My determination of the appeal before me is based on its own particular merits. Any further housing proposals in this sub-area would need to be determined according to their own site-specific merits and in the context of the spatial strategy and its objectives and

¹ Paragraph 3.4.5 of the Richmondshire Local Plan Core Strategy

therefore would not be directly prejudiced by the acceptance of the particular appeal scheme before me.

Habitat Regulations

23. The Teesmouth and Cleveland Coast protected area comprises an area of complex of coastal habitats centred on the Tees estuary and include habitats such as sandflats, mudflats, rocky foreshore, saltmarsh, sand dunes, wet grassland and freshwater lagoons. These habitats support internationally important populations of breeding and non-breeding waterbirds including breeding Little Tern, passage Sandwich Tern, wintering Knot and Redshank, Ringed Plover as well as a significant assemblage of wintering waterbirds and high density of benthic invertebrates. The submitted evidence confirms that this protected area is currently in an unfavourable condition due to nutrient enrichment, which includes pollution from nitrates, including Nitrogen.
24. The wastewater from additional new housing development has the potential to increase nitrate loads for rivers catchments. Removal of agricultural land can also have an effect on such loading. The submitted evidence confirms that without appropriate mitigation, there would be an unacceptable increase in the nitrogen loads from the appeal proposal. There is no basis for me to dispute Natural England's advice on the appeal proposal's likely impact on this particular protected area's qualifying features in view of its current condition and conservation objectives. I therefore conclude that in the absence of appropriate mitigation measures, the appeal proposal would be likely to give rise to significant adverse effects on the qualifying features of this protected area.
25. The appropriate Nutrient Neutrality Budget Calculator tool has been used by the appellant to establish a nutrient budget for the appeal proposal. In turn, this has informed their proposed mitigation measures. The appeal proposal would increase the total annual nitrogen load arising by 151.70 kg per year. This includes a precautionary buffer of 20% and does not factor in any future benefits arising from upgrades to local wastewater treatment works. Having consulted both Natural England and the Environment Agency through the course of this appeal, I have had particular regard to their consultation responses in undertaking my assessment. Overall, I am satisfied that the appellants' evidence on this matter is robust and sufficiently cautious.
26. As a nitrogen surplus would arise, the appellant has accepted that mitigation would be necessary in order to avoid likely significant effects. Offsite mitigation in the form of a permanent land use change through a minimum of 8.65 hectares of native broadleaf woodland planting on agricultural land at field parcels 3857 and 3272 has been identified. This land falls within the appellant's ownership and is located within the relevant river catchment area. This mitigation would fall within the 5–50-hectare threshold for EIA purposes. However, no constraints have been identified that would indicate that the entire proposal would not fall within a low-risk area, whereby there would be a presumption against likely significant effects. Crucially, through their consultation response, Natural England has confirmed acceptance of this mitigation proposal to achieve nutrient neutrality from the appeal proposal.
27. The subsequent deed of variation to the submitted legal agreement requires an appropriate Nitrate Mitigation Strategy, including a programme of implementation, to be submitted to and approved by the Council before

development can commence. This will ensure that the date of first occupancy, average rate of occupancy and rate of occupation of the appeal proposal do not exceed the rate of the proposed mitigation benefits reaching the protected area. This is because the required agreed scheme and implementation plan provides the necessary control to ensure that the proposed mitigation is in place in time to offset the adverse effects that would otherwise occur from the appeal proposal. For the same reason, I am satisfied that the planning obligation provides adequate control to ensure that there would be no adverse timing issues arising from the removal of agriculture from land located in close proximity to any relevant riparian corridors.

28. Overall, I am satisfied that the proposed mitigation measures contained in the appellant's Nitrate Neutrality Report Appendix H (Mitigation and Land Areas) would adequately mitigate the effects of the proposal and so would remove all reasonable scientific doubt that the appeal proposal would create adverse impacts on the integrity of these important protected coastal designations either alone or in combination with other plans and projects. Moreover, I am satisfied that the submitted legal agreement provides a suitable mechanism to secure these necessary mitigation measures.
29. Consequently, I find that the appeal proposal will not adversely affect the integrity of the Teesmouth and Cleveland Coast protected area and meets the relevant Habitat Regulations.

Conditions

30. The submitted schedule of planning conditions includes a number of pre-commencement conditions. The appellant has not objected to these. I have had regard to the advice set out in both the Planning Practice Guidance and the Framework in terms of both the need for each condition and also for their clear, precise and enforceable wording. The circumstances and nature of this outline proposal mean that the pre-commencement conditions are necessary to make the development acceptable in planning terms. This is because a later trigger would limit their effectiveness. The standard timescale conditions and the requirement for reserved matters to be agreed are necessary to accord with Section 92(2) and Section 92 of the Town and Country Planning Act 1990 respectively. A condition specifying the approved plan is also necessary to define the scope of the approved matters in the interests of clarity.
31. A series of 7 highways related conditions are necessary to secure and control the details of an appropriate and safe access before the site is brought into use. A construction management plan is also necessary to safeguard public safety and living conditions of neighbouring residents.
32. A condition to define the scope of the hard and soft landscaping details to be submitted is necessary in order to safeguard the character and appearance of the area. I have amended the condition suggested by the Council to ensure that those details include measures to protect the existing vegetation to be retained during the construction phase. A series of 3 conditions are necessary to secure the implementation of an appropriate sustainable drainage scheme prior to the occupation of the dwellings in order to prevent an increased risk of flooding from any sources.
33. Conditions to secure a contamination risk assessment and the implementation of any necessary remediation scheme are necessary in the interests of the

safety of future occupiers of the proposed dwellings. A condition to secure appropriate bio-diversity mitigation and enhancement of the site is also necessary in order to meet the requirements of the Local Plan, the Framework and associated wildlife and habitat legislation. I have amended the wording of the condition suggested by the Council to clarify the scope of that particular condition.

Conclusion

34. For all of these reasons and subject to the following conditions and submitted planning obligations, the appeal proposal does not conflict with the development plan when taken as a whole. Furthermore, the requirements of the Habitat Regulations have been met. Consequently, there is no reason for withholding outline planning permission in this particular instance.
35. I therefore conclude that the appeal should be allowed, and outline planning permission be granted, subject to the conditions specified in the attached Schedule.

C Dillon

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development to which this permission relates must be begun not later than whichever is the later of the following dates:
 - a) five years from the date of this permission; or
 - b) the expiration of two years from the final approval of reserved matters, or in the case of approval on different dates, the final approval of the last such matters to be approved.

Application for the approval of the appearance, landscaping, layout and scale (hereinafter called "the reserved matters") must be made not later than three years from the date of this permission.

2. Details of the reserved matters shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
3. The development hereby permitted shall be carried out in accordance with the approved location plan, drawing ref No BDL704354/000 dated December 2020.
4. Matters of landscaping reserved for further approval by condition 2 shall comprise details of both hard and soft landscaping.

The hard landscaping details shall comprise:

- (i) proposed finished levels or contours;
- (ii) means of enclosure;
- (iii) finishes for car parking areas and other vehicle and pedestrian access and circulation areas not proposed for adoption;
- (iv) incidental structures, including any furniture, play equipment, refuse or other storage units, signs and lighting; and
- (v) an implementation timetable.

The soft landscaping scheme shall include details of:

- (a) measures to protect during the construction phase existing hedgerows and trees to be retained
- (b) planting plans;
- (c) written specifications and schedules of proposed plants noting species, planting sizes and proposed numbers and densities;
- (d) an implementation timetable; and
- (e) a schedule of landscape maintenance proposals for a period of not less than five years from the date of completion of the scheme.

Thereafter, the approved landscaping scheme shall be implemented and maintained in accordance with the agreed details and timetables.

5. Except for investigative works, no excavation or other groundworks or the depositing of material on site in connection with the construction of any road or any structure or apparatus which will lie beneath the road must take place on any phase of the road construction works, until full detailed engineering drawings of all aspects of roads and sewers for that phase, including any

structures which affect or form part of the highway network, and a programme for delivery of such works have been submitted to and approved in writing by the Local Planning Authority. The development must only be carried out in compliance with the approved engineering drawings.

6. No part of the development to which this permission relates must be brought into use until the carriageway and any footway or footpath from which it gains access is constructed to binder course macadam level or block paved (as approved) and kerbed and connected to the existing highway network with any street lighting installed and in operation.

The completion of all road works, including any phasing, must be in accordance with a programme submitted to and approved in writing with the Local Planning Authority before any part of the development is brought into use.

7. The development must not be brought into use until the access to the site at has been set out and constructed in accordance with the 'Specification for Housing and Industrial Estate Roads and Private Street Works' published by the Local Highway Authority.

The access must be formed with 6 metres radius kerbs, to give a minimum carriageway width of 5.5 metres with a 2 metres wide footway on each side. All works must accord with the approved details.

8. The development must not be brought into use until any existing access onto Wells Lane has been permanently closed off in accordance with details which have first been submitted to and approved in writing by the Local Planning Authority.
9. There must be no access or egress by any vehicles between the highway and the application site until splays are provided giving clear visibility of 90 metres measured along both channel lines of Wells Lane from a point measured 2.4 metres down the centre line of the access road. In measuring the splays, the eye height must be 1.05 metres and the object height must be 0.6 metres.

Once created, these visibility splays must be maintained clear of any obstruction and retained for their intended purpose at all times.

10. The following scheme of off-site highway mitigation measures must be completed prior to the occupation of the first property:

- (a) The provision of a 2-metre-wide footway on Wells Lane which extends northwards from the site entrance to meet with the existing footway to the north.
- (b) An appropriate traffic count to be undertaken at the junction of Silver Street with Wells Lane in order to establish whether or not a formal protected right turn facility is required for use by turning drivers.

For each scheme of off-site highway mitigation, except for investigative works no excavation or other groundworks or the depositing of material on site in connection with the construction of any scheme of off-site highway mitigation or any structure or apparatus which will lie beneath that scheme

must take place, until full detailed engineering drawings of all aspects of that scheme including any structures which affect or form part of the scheme have been submitted to and approved in writing by the Local Planning Authority.

A programme for the delivery of that scheme and its interaction with delivery of the other identified schemes must be submitted to and approved in writing by the Local Planning Authority prior to construction works commencing on site.

Each item of the offsite highway works must be completed in accordance with the approved engineering details and programme and funded by the developer.

11. There must be no excavation or other groundworks, except for investigative works, or the depositing of material on the site in connection with the construction of the access road or buildings until full details of the following have been submitted to and approved in writing by the Local Planning Authority:

- (a) vehicular, cycle, and pedestrian accesses;
- (b) vehicular and cycle parking; and
- (c) vehicular turning arrangements

No part of the development must be brought into use until the vehicle access, parking, manoeuvring and turning areas have been constructed in accordance with the details approved in writing by the Local Planning Authority. Once created these areas must be maintained clear of any obstruction and retained for their intended purpose at all times.

12. No development for any phase of the development shall commence until a Construction Management Plan for that phase has been submitted to and approved in writing by the Local Planning Authority. Construction of the permitted development must be undertaken in accordance with the approved Construction Management Plan. The Plan must include, but not be limited, to arrangements for the following in respect of each phase of the works:

- (i) Details of any temporary construction access to the site including measures for removal following completion of construction works.
- (ii) Wheel and chassis underside washing facilities on site to ensure that mud and debris is not spread onto the adjacent public highway.
- (iii) The parking of contractors, site operatives and visitors vehicles clear of the Public Highway.
- (iv) Areas for storage of plant and materials used in constructing the development clear of the Public Highway.
- (v) Measures to manage the delivery of materials and plant to the site including routing and timing of deliveries and loading and unloading areas.
- (vi) Details of ditches to be piped during the construction phases.
- (vii) Unless otherwise approved in writing by the Local Planning Authority, there shall be no HCVs brought onto the site until a survey recording the condition of the existing highway along the entirety of Wells Lane has been carried out in a manner approved

in writing by the Local Planning Authority in consultation with the Highway Authority.

13. Development shall not commence until a detailed scheme for the disposal of foul water from the development hereby approved has been submitted to and approved in writing by the Local Planning Authority in consultation with Northumbrian Water and the Lead Local Flood Authority. Thereafter the development shall take place in accordance with the approved details.

14. No development shall commence until a surface water drainage scheme, based upon the hierarchy of drainage options listed in the National Planning Practice Guidance, together with an assessment of the site conditions, has been submitted to and approved by the Local Planning Authority. The surface water drainage scheme must accord with the Non-Statutory Technical Standards for Sustainable Drainage Systems (March 2015), or any subsequent replacement national standards.

None of the dwellings hereby approved shall be first occupied until the approved surface water drainage scheme has been completed and made operational.

15. None of the dwellings hereby approved shall be first occupied until a management and maintenance plan for the surface water drainage scheme for the lifetime of the development has been submitted to and approved in writing by the Local Planning Authority.

As a minimum the plan shall include:

- (i) Arrangements for adoption by an appropriate public body, statutory undertaker, or private management company; and
- (ii) Arrangements for inspection and ongoing maintenance of all elements of the surface water drainage scheme to secure its effective operation for the lifetime of the development.

The development shall subsequently be completed, maintained and managed in accordance with the approved management plan.

16. No development shall commence until an assessment of the risks posed by contamination, carried out in line with the Environment Agency's Land Contamination: Risk Management (LCRM), has been submitted to and approved by the local planning authority.

If deemed necessary, a scheme for the remediation of any contamination shall be submitted and approved by the local planning authority before any development occurs.

The development shall not be occupied until the approved remediation scheme has been implemented and a verification report detailing all works carried out has been submitted to and approved in writing by the local planning authority.

17. If contamination is found or suspected at any time during development that was not previously identified all works shall cease and the local planning authority shall be notified in writing immediately. No further works (other than approved remediation measures) shall be undertaken, or the development occupied until an investigation and risk assessment carried out

in accordance with the Environment Agency's Land Contamination: Risk Management (LCRM), has been submitted to and approved in writing by the local planning authority.

Where remediation is necessary a scheme for the remediation of any contamination shall be submitted and approved by the LPA before any further development occurs. The development shall not be occupied until the approved remediation scheme has been implemented and a verification report detailing all works carried out has been submitted to and approved in writing by the local planning authority.

18. No development shall commence until a scheme for biodiversity mitigation and enhancement associated with the proposed development, including management proposals for the lifetime of the development, has been submitted to and approved in writing by the local planning authority. The scheme must demonstrate a net gain in biodiversity unless it can be demonstrated that it is not possible to achieve.

The scheme must be prepared in the context of:

- (a) the Government's Planning Practice Guidance and any other relevant best practice; and
- (b) the baseline conditions and recommendations contained within the "Ecological Impact Assessment – September 2020", produced by Naturally Wild Consultants Limited, submitted in support of this application.

Thereafter, the site shall be developed and maintained in accordance with the approved management details.

END OF SCHEDULE