



Appeal Decision

Site visit made on 23 January 2023

by L Wilson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd February 2023

Appeal Ref: APP/H2733/W/22/3307687

Land South of 36 Discovery Way, Moor Road, Filey YO14 9FH

- 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 Essential Vivendi Ltd against the decision of Scarborough Borough Council.
 - The application Ref 21/01845/FL, dated 26 July 2021, was refused by notice dated 13 June 2022.
 - The development proposed is development of 3 holiday homes with associated landscaping and car parking.
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Decision

1. The appeal is allowed and planning permission is granted for the development of 3 holiday homes with associated landscaping and car parking at Land South of 36 Discovery Way, Moor Road, Filey YO14 9FH in accordance with the terms of the application Ref 21/01845/FL, dated 26 July 2021, and the plans submitted with it, subject to the attached schedule of conditions.

Preliminary Matters

2. The Bay Holiday Village is subject to a further appeal¹. This appeal is also before me, and as the proposals differ, I have dealt with the appeals separately. I am also aware that three more appeals at The Bay have recently been determined by a different Inspector². The location, main issues and proposed development of those appeals differ to the appeal before me.

Main Issues

3. The main issues are the effect of the proposed development on:
 - The character and appearance of the surrounding area, having regard to the countryside location, landscape and appeal decision; and
 - Biodiversity, including protected species.

Reasons

Character and appearance

4. The appeal site forms part of The Bay which is a large holiday village. The Bay includes a mix of permanent holiday homes of various styles, leisure facilities (including a public house, swimming pool, gym, tennis court, shop and café) and open recreational space.

¹ APP/H2733/W/22/3308236

² APP/H2733/W/22/3303810, APP/H2733/W/22/3304550 and APP/H2733/W/22/3304553

5. The site is located in the open countryside outside of the Development Limits of any settlement defined in the Scarborough Borough Local Plan (2017) (LP). In considering Policy ENV6 of the LP, the appellant highlights that the Council has allowed numerous other similar planning applications outside of the development limits. The appellant has made no case that the countryside location of the proposed development is essential. Nonetheless, it is clear from the evidence before me that the Council considers that if the proposed development complies with Policy TOU4 of the LP then it is not necessary to demonstrate that the countryside location is essential.
6. My attention has been drawn to the Scarborough Borough Landscape Study (2013) which sets out the key characteristics of this landscape. The surrounding area is characterised by holiday parks, farmland with hedgerow boundaries as well as open, coastal and rural landscape and the A165.
7. The proposed lodges would be located in the open meadow area. There is an extensive planning history related to The Bay. The lodges would be immediately adjacent to existing holiday lodges that formed part of a scheme for 55 holiday lodges that has been implemented. Four further units were recently permitted to the north of the appeal site as relocated plots. The Council highlight that these lodges are more prominent than originally anticipated and are concerned with incremental and cumulative effects of development.
8. The design, style and colour of the proposed lodges would be the same as others in the vicinity and there is an existing roadway to the front of where they would be sited. The proposed lodges would be marginally larger with a slightly lower ridge height than the adjacent lodges.
9. The lodges around the lake are at a lower level within a natural basin. This results in them being less prominent than the four relocated plots adjacent to the appeal site. The appeal site slopes gently upwards so the proposed lodges would be situated on higher ground on the edge of the development. However, the land level difference is not significant and therefore they would only be marginally more prominent. Furthermore, the land further to the west and south continues to slope gently upwards.
10. The proposed development would be seen within the context of the existing lodges and would not protrude significantly beyond the existing extent of development. They would not be conspicuous from the A165 due to the belt of mature trees. The lodges would be partially visible from viewpoints along Sands Road. However, they would not be a prominent addition because of the mature hedge along the boundary (which provides established screening), the distance to Sands Road and land levels. Furthermore, the lodges would be seen in the context of the surrounding holiday homes and would not look out of place in this location. They would be seen as infilling a small area next to the existing lodges and would visually relate well with the nearby lodges.
11. Consequently, the lodges would integrate successfully into the surrounding landscape due to the natural topography and established screening. The proposed development would be of an appropriate scale in relation to its location and would be sited to be visually unobtrusive. The proposed development would be a modest addition which would respect the character of the countryside and would not have a negative impact on the expansive, open, coastal and rural landscape.

12. In making my decision I have taken into account the appeal decision which the Council has highlighted. However, that decision related to a wider area and scheme for 116 holiday homes and a function room. Therefore, the findings of the Inspector in that decision cannot be directly compared to this scheme which is for a significantly smaller scheme.
13. For these reasons, the proposed development would have an acceptable effect on the character and appearance of the surrounding area, having regard to the countryside location, landscape and appeal decision. Consequently, it would comply with the overarching aims of Policies ENV6, ENV7 and TOU4 of the LP. These seek, amongst other matters, to ensure proposals for the development of new visitor accommodation in the countryside will be permitted where they are sited to be visually unobtrusive and can be successfully integrated into the surrounding landscape due to the natural topography and established screening. Furthermore, proposals should protect and where possible enhance the distinctiveness or special features that contribute to the landscape character of a particular area. It would also comply with paragraph 84 of the National Planning Policy Framework (the Framework) which supports sustainable rural tourism and leisure developments which respect the character of the countryside.

Biodiversity

14. The recent extension of The Bay into the meadow area required that the remainder of the area to be landscaped and managed to enhance its ecological habitat value (especially for Great Crested Newts (GCN)) as compensation for that area was lost. The Council highlight that this still needs to be completed in accordance with the approved plans and planning conditions.
15. The appeal site was required to form part of a wider area of rough tussocky grassland to provide foraging habitat for GCN. In addition, a new nature reserve was approved, and secured by a s106 agreement, to provide offsite ecology mitigation and provide biodiversity net gain in relation to the development of 55 holiday homes around the wider site.
16. The Council is concerned about the cumulative impact of small developments progressively encroaching into the meadow area established as part of the mitigation plan in earlier phases of development. The appellant's ecology report sets out that the development would constitute a minor adverse ecological impact. In response to the Council's ecologist and biodiversity officer consultation, they state that the development would result in an additional loss of GCN habitat, but it is unlikely to result in significant adverse impacts on GCN along or cumulatively with other developments. They confirm that the control of invasive species (Himalayan balsam) from around the Cops pond will be implemented as part of the package of work detailed, as suggested by the Council's ecologist and biodiversity officer.
17. The appellant has provided a copy of an email sent from the Council's ecologist and biodiversity officer which confirms that the updated ecology / pond and meadow management proposals address his comments and satisfy his concerns. I have not been provided any substantive evidence to demonstrate that there has been a change in the officer's stance or that these measures are not adequate. Consequently, although I recognise that the appeal site is in an area that is required by existing planning permissions and conditions to be laid

out as rough grassland meadow to provide ecological habitat for GCN, the loss of habitat arising from the development has been justified.

18. For these reasons, based on the evidence submitted, the proposed development would have an acceptable effect on biodiversity, including protected species. Consequently, it would comply with Policy ENV5 of the LP. This states that proposals should respond positively and seek opportunities for the enhancement of species or other assets thereby resulting in a net gain in biodiversity. In addition, it would comply with chapter 15 of the Framework. This states that decisions should contribute to and enhance the natural and local environment by protecting and enhancing sites of biodiversity, maintaining the character of the undeveloped coast and minimising impacts on and providing net gains for biodiversity.

Other Matters

19. In addition to matters relating to the main issues concern has been raised regarding the access road, parking problems, flooding, constant expansion and impact on the local amenities (hospitals and emergency services). The Council did not refuse the planning application on these grounds.
20. The proposed development is small scale and would utilise an existing access. The Highway Authority have confirmed that the access to the site from the A165, Moor Road, is acceptable and have raised no concerns about parking provision. They did recommend that the emergency access to the site (off Sands Road) should be constructed to their specification, but I agree with the planning officer that this would be unreasonable. This is because: it is an old, established access and no changes are proposed, it will only be used in the event of an emergency and will be conditioned as such, the previous, extant approvals for the site did not require any improvement to this access and, therefore, it would be unreasonable to impose this requirement on this proposal for 3 additional units and formalising this access may inadvertently encourage its use.
21. The Council highlight that proposed drainage is the same as that previously approved (for 75 and 55 lodges). I acknowledge the concerns relating to ongoing expansion of The Bay, but my role is to determine the appeal based on the planning merits and impacts of the proposed development before me. Due to the scale of the development, it would not have an unacceptable effect (including cumulatively) on local amenities.
22. Consequently, subject to appropriate conditions, there is no credible evidence before me that would lead me to an alternative conclusion to the Council on the other matters raised, or that could justify the dismissal of the appeal on these grounds.

Conditions

23. I have assessed the Council's suggested conditions, and those suggested in consultation responses, in light of guidance found in the Planning Practice Guidance and where necessary the wording has been amended for clarity and precision. The appellant and Council were given the opportunity to comment on the altered wording of the conditions as well as additional conditions I consider necessary. The appellant has confirmed that they agree to the conditions.

24. It is necessary to attach a condition specifying the approved plans as this provides certainty. A condition to ensure that the holiday homes are operated for holiday purposes only, and not as permanent residences (which would not be appropriate in this location) is necessary.
25. It is necessary to attach a condition relating to the materials and colour of the holiday homes in the interest of visual amenity of the area. To ensure that the development does not cause flood risk to the site and elsewhere, and satisfactory drainage is provided, a condition relating to surface water and drainage works is necessary. A condition relating to the existing access with the public highway at A165 Moor Road is necessary in the interests of highway safety and visual amenity of the area.
26. It is necessary to attach a condition relating to landscaping works to ensure that the development is adequately landscaped and in the interests of visual amenity of the area. A planning condition relating to the Meadow Maintenance Plan and Ecology Report is necessary to provide the necessary compensation for the loss of habitat resulting from the development.
27. Highways suggested a condition that the emergency access to the site (off Sands Road) should be constructed to their specification. However, as set out above, such a condition would be unreasonable. In addition, the Council has suggested a condition relating to the removal of permitted development rights. Paragraph 54 of the Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. The Council's reason for the condition do not provide clear justification for the condition and therefore, based on the evidence presented, I consider the condition would be unreasonable and not necessary.

Conclusion

28. For the reasons given above, having considered the development plan as a whole, and all other material considerations, the appeal is allowed subject to the attached conditions.

L Wilson

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 14-15 Rev C (Location plan), 5376 – Ext. T - 101 (proposed site layout), 5376 – Ext. T - 001 (plan & elevations).
- 3) The development hereby permitted shall be used solely for holiday accommodation only and shall not be occupied as a person's sole or main place of residence. It shall not be occupied for more than 6 months in total in any 12 month period by the same household. The owners/operators shall maintain an up-to-date register of the names and main home addresses of all owners/occupiers of the holiday homes and shall make this register available at all reasonable times to the local planning authority on written request.
- 4) The holiday homes hereby permitted shall be constructed only in the materials and coloured in the colours specified in the approved Planning Design and Access Statement (dated July 2021).
- 5) There shall be no piped discharge of surface water from the development prior to the completion of the approved surface water drainage works and those works shall be completed in full prior to the first occupation of the site. The drainage works shall have been completed in accordance with the following plan: File reference: 19074-BGP-01-ZZ-DR-C-52-14000 (Proposed drainage plan).
- 6) There shall be no access or egress between the highway and the application site by any vehicles other than via the existing access with the public highway at A165 Moor Road, unless by emergency vehicles in the event of an emergency or service vehicles in connection with the maintenance and management of the adjoining open land.
- 7) The landscaping works shall be carried out in accordance with the approved details shown on Planting Plan Sheet 1 of 2, 14-19 Rev H and Planting Plan Sheet 2 of 2, 14-20 Rev G. All planting, seeding or turfing shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 8) The development hereby permitted shall be carried out in accordance with the submitted Meadow Maintenance Plan (dated December 2021, prepared by Decimus Designs), Meadow Maintenance Schedules (dated 15 December 2021, prepared by Decimus Designs), recommendations set out in the Ecology report (dated July 2021, prepared by Applied Ecology Ltd) and set out in Appendix A of the document titled 'Response to consultation on Land South of the Parade, Moor Road, Filey, YO14 9GA'. The pond works must be supervised by a suitably qualified ecologist.