



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: 7th March 2023

Appeal Ref: APP/H2733/W/22/3308236

Land South Of The Parade, The Parade, Moor Road, Filey YO14 9GA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Essential Vivendi Ltd against the decision of Scarborough Borough Council.
 - The application Ref 21/01754/FLA, dated 30 June 2021, was refused by notice dated 13 May 2022.
 - The application sought planning permission for development of 55 holiday homes with associated landscaping without complying with a condition attached to planning permission Ref 20/02207/FLA, dated 5 March 2021.
 - The condition in dispute is No 7 which states that: All of the recommendations and proposals contained within the approved Ecology Report shall be fully implemented within 12 months of the commencement of the development.
 - The reason given for the condition is: To provide the necessary compensation for the loss of habitat resulting from this development and in accordance with policy ENV5 of the Scarborough Borough Local Plan.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Bay Holiday Village was subject to a further appeal¹ which was also before me. 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 that varying the condition would have on:
 - Biodiversity;
 - The character and appearance of the undeveloped coastline; and
 - Public access to nature.

¹ APP/H2733/W/22/3307687

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

Reasons

4. The Bay is a large holiday village. It 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.
5. Planning permission was granted for a development of 75 holiday lodges to be situated in an open area between the holiday village and Sands Road. An alternative scheme for 55 holiday lodges was subsequently given planning permission³. A further revised application was received and approved to retain the built ground levels and retaining walls, and reposition 8 of the holiday lodges⁴. That application was described as 'variation of condition 1 of decision reference 19/01453/FL to allow alterations to positioning of 8 Holiday Homes, site levels and retaining walls' and this appeal relates to that planning permission.
6. Condition 7 involved providing and managing land around The Bay and off-site mitigation at Flixton as ecological habitat, primarily for Great Crested Newts (GCN), but also for the benefit of other species.
7. The proposal seeks to remove the requirement to manage three areas within the holiday village. These are the two areas of open space either side of the main entrance immediately adjacent to the A165 and another area to the east of the site between the built development and cliff edge.
8. The appellant suggests that the condition should be varied to: 'all of the recommendations and proposals contained within the approved Ecology Report dated September 2018, excluding the mitigation areas 1, 2 and 3 shown on the plan Mitigation Areas Great Crested Newt (1 of 2) in the September 2018 report shall be fully implemented within 12 months of the commencement of the development.' The variation of the condition would allow the three areas to be used as amenity space for visitors, and allow the grass to be cut short in order to facilitate this.
9. There is a Section 106 agreement associated with the original planning permission relating to ecology mitigation. The appellant initially sent a s106 Unilateral Undertaking with their appeal submission to ensure that the Flixton land is retained for biodiversity net gain. The appellant has provided a revised s106 Unilateral Undertaking to address comments made by the Council. The appellant states that this is agreed with the Council, and have provided a revised certified s106.

Biodiversity

10. Policy ENV5 of the Scarborough Borough Local Plan (2017) (LP) states that proposals should respond positively and seek opportunities for the enhancement of species, habitats or other assets thereby resulting in a net gain in biodiversity.
11. Although not referenced in the reason for the condition, Chapter 15 of the National Planning Policy Framework (the Framework) is also relevant. This states that decisions should contribute to and enhance the natural environment, amongst other things, by protecting and enhancing sites of

³ 19/01453/FL

⁴ 20/02207/FLA

biodiversity value and minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures. It states that opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate.

12. The Ecology Report (dated September 2018) stated that in order to compensate the loss of habitat, a total of 1.31 ha⁵ of existing amenity grassland that currently occurs within the wider Bay site in three discrete habitat parcels will be enhanced for the benefit of GCN and other wildlife. Appendix 3 of the report sets out the mitigation areas. This shows proposed hedging, areas of tree and scrub planting, rough grassland meadow and hibernacula domed structures. It was apparent on my site visit, and the evidence before me, that the mitigation areas have not been carried out in accordance with that required.
13. The appellant highlights that following planning approval, more detailed survey work was carried out and it was agreed with Natural England (NE) the 2.3 hectares of offsite land at Flixton was not needed for GCN mitigation, neither were the 3 areas subject to this appeal. NE granted a GCN Licence allowing the development of 55 holiday homes to go ahead which did not include these areas of land. Furthermore, the off-site mitigation at Flixton has been established and it is proposed to keep this as an area of biodiversity net gain, even though it was not required by NE. The appellant asserts that the three areas are remote from GCN breeding ponds and the land will retain the established groups of trees and hedges. They consider they have already gone over and above legal requirements to enhance the nearby area for wildlife.
14. The proposal is supported by an ecology assessment (prepared by an experienced ecologist). The appellant's ecologist's rebuttal statement sets out that the removal of the three areas from the overall GCN habitat management strategy within the Bay is a negligible ecological impact when assessed against the wider 13.2 ha terrestrial habitat creation and management activity that has been implemented. They conclude that the removal of the three areas would not significantly reduce the overall biodiversity benefit of the scheme.
15. Although, NE did not require the areas for GCN mitigation, the License granted by NE is subject to different consenting regime that is separate from the planning system. The License is subject to different criteria and legislation. Maintaining and managing the three areas in question would not prejudice or inhibit the ability of the appellant to comply with the requirements of the License. The Council highlight that in contrast to planning policy, NE License requires compensation rather than enhancement. Similarly, whilst the Council's ecologist did not object to the proposal, they do not specifically refer to planning policies in their consultation responses.
16. As the mitigation areas have not been carried out as required, it is not possible to fully establish the biodiversity benefit of the areas. The areas were clearly originally seen as appropriate areas for GCN and there is nothing robust before me to demonstrate that has changed. The use of the three areas required by the condition would contribute to and enhance the natural environment by

⁵ The total area was originally calculated to be 1.31 ha but subsequent calculations found the total area to be 1.35 ha

enhancing the sites biodiversity value compared to the existing use and nature of the areas that appear to be regularly mown.

17. At the scale proposed, the proposed variation of the condition would result in a notable (rather than significant when considering the overall habitat measures) reduction in the areas required to be managed as rough grassland meadow for GCN habitat and omission of four hibernacula around the holiday village. The proposed reduction in habitat, through varying the condition, would fail to respond positively and would fail to seek opportunities for the enhancement of species and habitats which is required by local and national planning policy. The removal of the areas would have a negative impact, albeit the appellant's ecologist highlights that this would be very minor from the overall management strategy. Although I have considered the overall habitat measures that have been secured, the variation of the condition would ultimately reduce the overall biodiversity of the scheme. It would fail to provide opportunities to improve biodiversity in and around The Bay.
18. Varying the condition would be contrary to Policy ENV5 of the LP and chapter 15 of the Framework. This is because the reduction in the amount of habitat, from what is required by a planning condition, would be a negative and harmful response to improving biodiversity and the enhancement of species at The Bay.

Character and appearance

19. Paragraph 174 c) of the Framework requires decisions to contribute to and enhance the natural and local environment by maintaining the character of the undeveloped coast.
20. The area to the east of the holiday village forms part of the undeveloped coast. As highlighted above, this area is currently being maintained and managed with short, cropped grass which is contrary to the requirements of the planning condition. I also observed on my site visit that the character and appearance of this area significantly differs from the adjoining, natural and wilder cliff top areas.
21. The reason for the condition does not refer to the character and appearance of the undeveloped coastline or the Framework. Furthermore, Policy ENV 5 does not refer to the character and appearance of the coastline.
22. The appellant states that the proposal will not harm the character of the coastal area as the Council suggest because it will not change the historic character or management of the area. Although contrary to the requirements of the condition, the areas have always been managed as cut grass with trees and hedges since development started at The Bay in 2006. The areas have been used by visitors for recreation before they were proposed for GCN mitigation.
23. Therefore, although the character and appearance of the areas would be different to that currently present if the condition had been complied with, taking into account the reason for the condition as well as the historic use and maintenance of the areas, on balance, varying the condition would maintain the character and appearance of the undeveloped coastline. For these reasons, varying the condition would not cause unacceptable harm to the character of the undeveloped coast and, in this regard, would not conflict with paragraph 174 c) of the Framework.

Public access

24. Paragraph 180 d) of the Framework states that development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate.
25. The holiday park, and surrounding area, receives many visitors. Therefore, the location of these areas on the edge of a large holiday village, would provide an opportunity as set out in the Framework in enhancing public access to nature.
26. The reason for the condition does not refer to enhancing public access to nature or the Framework. Furthermore, Policy ENV 5 does not refer to enhancing public access.
27. The Bay has large areas where people have access to nature and direct access to the nearby coast which leads through the coastal area and to the beach. The Bay also has areas where visitors can experience nature such as the cliff top scrub and woodland area.
28. Therefore, taking into account the reason for the condition as well as the existing public access areas, on balance, the loss of habitat around the holiday village would not unacceptably reduce public access to nature. For these reasons, in this regard, varying the condition would not conflict with paragraph 180 d) of the Framework.

Other Matters

29. The economic benefits of The Bay are important to the local area as it employs around 100 people, and its visitors support many local businesses. The appellant states that proposals, such as this change to the amenity areas for visitors are important to ensure that The Bay is successful and therefore contributes to the success of the local economy.
30. I observed on my site visit that the areas immediately adjacent to the A165 were largely enclosed by fencing and hedging. Due to their location next to The Bay's entrance and the main road it is unlikely that they would be well used amenity areas.
31. I also noted that the area to the east of the site had direct access from the holiday homes that backed onto the area and could be accessed between the holiday homes, but it was fenced off adjacent to the path leading to the beach. Appendix 3 of the Ecology Report (dated September 2018) shows that if the scheme was carried out in accordance with the condition, then there would still be an area of grassland, amenity areas between the holiday homes and habitat area.
32. The Bay also has amenity areas elsewhere within the wider holiday village. Therefore, I give the benefits of the proposal very limited weight as, based on the evidence presented, the amenity spaces do not significantly contribute to the success of The Bay or result in significant economic benefits.

Planning balance and conclusion

33. I conclude that varying the condition would maintain the character and appearance of the undeveloped coastline and would not unacceptably reduce public access to nature. However, varying the condition would be a negative and harmful response to improving biodiversity and the enhancement of species at The Bay, and I afford this harm substantial weight. I give the benefits of the scheme very limited weight. The benefits of the proposal do not outweigh the harm identified.
34. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other material considerations, the appeal does not succeed.

L Wilson

INSPECTOR