
Appeal Decision

Site visit made on 11 October 2022

by C Coyne BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 March 2023

Appeal Ref: APP/G2713/W/22/3294243

Newby Farm, Newby Farm Track, Newby TS8 9DY

- 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 Mr Paul Armstrong against the decision of Hambleton District Council.
 - The application Ref 21/01031/FUL, dated 20 April 2021, was refused by notice dated 15 February 2022.
 - The development proposed is described on the application form as 'Creation of a Twenty Six Unit Holiday Chalet Park'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Hambleton District Council adopted a new Local Plan on 22 February 2022 meaning that relevant policies contained within it can be afforded full weight. The Council has provided copies of the relevant policies. The appellant has also been provided with an opportunity to comment on this matter. I have therefore determined this appeal based on the relevant newly adopted policies.
3. The Council has described the development on the decision notice as '*Change of use of agricultural land for the creation of a thirteen unit holiday chalet park with associated access and parking - amended on agreement with Hambleton District Council 27.09.2021*'. I note that the appellant has also utilised this description on their appeal form. I consider that the revised wording provides an accurate description of the proposal and I have determined the appeal on this basis.

Main Issues

4. The main issues are:
 - whether the proposed use would adversely affect the integrity of European sites;
 - whether the appeal site is a suitable location for tourism development having regard to the accessibility of services and facilities;
 - the effect of the proposed development on the rural character of the area and its landscape; and
 - the effect of the proposed development on highway safety.

Reasons

5. The appeal site comprises an agricultural field that is situated next to three former agricultural buildings at Newby Farm. The land is surrounded by open countryside save for the nearby Cherry Hill Garden and Landscape Centre (Cherry Hill), some farmsteads further away and the settlements of Stainton, Newby, and Coulby Newham. Newby Farm is itself located at the end of a single vehicular track that joins the B1365 main road near to Cherry Hill. The proposal seeks to expand the existing holiday accommodation business at Newby Farm to include the provision of 13 new holiday chalets. To facilitate this, a new vehicular access and car parking area would also be provided as well as new landscaping, a sustainable drainage system and two cess pits.

Integrity of European sites

6. The appeal site falls within the catchment of the Teesmouth and Cleveland Coast Special Protection Area (SPA)/Ramsar site. There is a known issue, notified by Natural England at the national level, whereby nutrients enter watercourses and adversely affect environmental conditions for the qualifying features of the European sites. New development leads to an increase in nitrogen and phosphorus within foul water discharge and this has the potential to harm the conservation status of the protected sites through eutrophication effects. Moreover, according to Natural England's response, there is also existing evidence of high levels of nitrogen and phosphorus in the Teesmouth and Cleveland Coast SPA/Ramsar water environment with evidence of eutrophication at some designated sites. Nutrient neutrality requires that competent authorities under the Habitat Regulations carefully consider the nutrient impacts of projects on Habitats sites, and whether those impacts may have an adverse effect on the integrity of a Habitats site that requires mitigation.
7. I acknowledge the argument that the installation of two cess pits could prevent additional nutrients reaching the European sites. The appellant has stated that a contractor would maintain and empty these cess pits and that the collected foul sewage would be treated and discharged at a water treatment works located outside of the River Tees catchment. However, in this case there is no legal agreement or other reliable mechanism to secure this in perpetuity, and insufficient certainty regarding these measures to justify the use of a negatively worded condition in this case. Therefore, there can be no guarantee, at the point of granting planning permission, that a condition would avoid adverse impacts on the European sites.
8. I note that that the installation of cess pits was considered acceptable by Natural England in a separate case (Ref. APP/N1350/W/21/3266635). However, this was subject to the submission of satisfactory evidence and the imposition of a negatively worded condition which for the above reasons would not be appropriate in this case.
9. I note the point raised by the appellant that Natural England is about to announce the credit trading system for the Tees catchment area, with credits due to be available proportionally for schemes of all sizes across the Tees watershed and that they would be willing to engage constructively with the Local Planning Authority in this process. However, based on the evidence, there remains uncertainty in terms of timescales, prioritisation and the quantity of such credits and the details of a trading system for the catchment area have not yet been finalised. The Nutrient Mitigation Scheme is not therefore a comprehensive scheme available to developers yet and I cannot be certain that the proposal before me would benefit

from such a credit trading scheme. This lack of certainty means that the imposition of a negatively worded condition would not be appropriate.

10. Where, as in this case, likely significant effects cannot be ruled out, an Appropriate Assessment is required prior to the grant of planning permission. Such an exercise would need to demonstrate, beyond all reasonable scientific doubt, that the proposal would not have an adverse impact on the integrity of European sites. The courts have held that a precautionary principle should be adopted when carrying out an Appropriate Assessment; where it is unclear whether an effect would be significant, it must be assumed that such an effect would occur, unless there is objective evidence to the contrary.
11. In this case, there is insufficient information or certainty to enable adverse effects on the European sites to be confidently ruled out. Accordingly, the proposal would not accord with Policy E3 of the HLP, which aims to prevent harm to protected habitats and species, and it would conflict with the requirements of Regulation 63 of the Habitats Regulations. It would also be at odds with the Framework, in regard to conserving and enhancing the natural environment.

Whether a suitable location

12. According to their statements, both main parties agree that the appeal site is located outside of any defined settlement as identified by Policy S3 of the adopted Hambleton Local Plan (HLP) and that it is therefore in the countryside. From the evidence before me I see no reason to disagree.
13. The appeal site is accessible via a network of Public Rights of Way (PRoWs) and informal footpaths that facilitate pedestrian links to Cherry Hill, the Larchfield Community and the settlements of Newby and Coulby Newham. The site would be a relatively short cycle ride to these nearby settlements and services with easy access to local cycle routes. The services and facilities in these locations include a café and mini-golf course at Cherry Hill, an education centre and a shop and café at Larchfield Community. Bus services are also available at Coleby Newham which is within a reasonable walking distance. Consequently, overall, I consider that the proposal would be in a relatively sustainable location that is well served by pedestrian and cycling routes with links to nearby services and facilities. Furthermore, the fact that the proposal would provide a direct connection to a nearby PRoW means that it would exploit an opportunity to make its location more sustainable.
14. I note that the PRoWs, informal footpaths, and country roads are not very well-lit. However, this is not the same as these footpaths and roads not being lit at all. Moreover, it is also likely that tourists would mainly visit the area during summer months when the hours of daylight would be greater than at other times of year.
15. Additionally, given that the proposal would be situated relatively close to the settlement of Coulby Newham it would be reasonable to think that visitors to the chalets could easily access the services and facilities there either by bicycle or on foot. The services and facilities such as those at Cherry Hill are much closer to the appeal site and it would therefore also be likely that they would be readily accessed by bicycle or on foot.
16. Accordingly, and bearing in mind paragraphs 84, 85 and 105 of the *National Planning Policy Framework* (the Framework), I conclude that the appeal site is a suitable location for tourism development having regard to the accessibility of services and facilities. Accordingly, it would meet the relevant requirements of policies S1 and S3 of the HLP.

Rural character and landscape

17. On my visit, I observed that the side of the appeal site closest to the vehicular access track was at a lower land level to the fields immediately adjacent to the track due to the sloping topography. I also saw that the adjacent PRoW was bounded by a thick and high hedgerow meaning that the proposal would not be readily visible from there. The proposal would also provide extensive new tree planting on the appeal site along that side boundary. It would therefore be likely that this planting would screen the proposed development from view by people using the track. Furthermore, given the relatively low height of the chalets, I consider that the proposed planting, would visually obscure the proposal from such a vantage point. In addition, the proposed muted colour scheme for the chalets would assist in them blending into the landscape.
18. I note that the hedgerow has gaps in it further along the footpath next to the track. However, on my visit I saw that the view of the appeal site from there is from a considerable distance and at an oblique angle thereby mitigating any potential visual impact from this vantage point.
19. I also note that the hedgerows next to the other PRoW on the opposite side of the appeal site are not as high, meaning that the proposal would potentially be visible from there. However, given the existing wedge of high mature trees and hedgerows at the corner of this footpath, any view from such a vantage point further along this path would also be further away and at an oblique angle. Moreover, given the presence of the tree planting on the site boundary nearest this vantage point and the fact that the chalets would be set further back due to the presence of the drainage area I consider that they would be sufficiently visually concealed when viewed from there.
20. I acknowledge the Council's point that the proposal would not blend in with the landscape thereby causing visual harm. However, no substantive evidence such as a landscape and visual impact assessment has been submitted to support this. Moreover, according to the evidence and from what I observed on my visit, the landscape surrounding the appeal site contains several farmsteads as well as belts of high mature trees. As a result, given the nature of the proposal, its location, the topography of the land surrounding it, the scale and height of the chalets, their proposed muted colour scheme as well as the proposed extensive tree planting and landscaping along the site boundaries, I consider that the proposal would not have an unacceptable adverse visual impact.
21. Consequently, for these reasons, I conclude that the proposed development would not materially harm the rural character of the area and its landscape. It would therefore meet the relevant requirements of policies S5, EG7 and EG8 of the HLP. It would also accord with paragraph 84 of the Framework insofar as it seeks to ensure that rural tourism and leisure developments respect the character of the countryside.

Highway safety

22. The Council has raised a concern in relation to the fact that the existing track connects to the B1365 at a junction where there is a relatively sharp bend next to Cherry Hill which in its view increases the risk of accidents in the vicinity of the access. However, no substantive evidence such as an accident report or traffic survey has been submitted to support this.
23. Indeed, the transport statement submitted by the appellant includes an assessment of personal injury accident data (PIA) that shows that no accidents were recorded in the immediate vicinity of the site or the wider study area. It also

concluded that given the modest vehicular traffic generating potential of the development, it the existing trend and pattern of PIA would not be exacerbated. This study also modelled the potential impact of the original scheme which has approximately twice the number of chalets than the appeal scheme.

24. Furthermore, the relevant Highway Authority has not raised any objection to the proposal provided that suitable signage is installed. Moreover, the evidence before me also shows that the installation of high friction surfacing as well as a reduction in the speed limit along the length of the B1365 which passes this junction/access has been completed which would likely improve highway safety. The proposal would also install passing places on the existing access track to the appeal site, which would allow vehicles to traverse it more safely.
25. Accordingly, for these reasons I find that the proposal would not have an adverse impact on highway safety, and being mindful of Paragraph 111 of the Framework, I see no reason why the proposal should be refused. I therefore conclude that the proposal would accord with policy ICT2 of the HLP.

Other Matters

26. The Council has argued that as Policy S5 refers to the prior notification regime under Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, for the conversion of agricultural buildings for residential use means that the principle of tourism development at the appeal site has not been established and that a precedent in this regard has therefore also not been established. However, Class Q relates to permitted development rights for the conversion of agricultural buildings to residential dwellings and not tourism related development. In any event, the fact that permission has previously been granted for the conversion of outbuildings to two units of holiday accommodation within the wider site and that these are now in operation does, to my mind, mean that the principle of tourism development has already been established at Newby Farm.

Planning Balance and Conclusion

27. I have concluded that the location of the site is suitable for tourism development and that the proposal would be acceptable in relation to its effects on the character and appearance of the area and highway safety. The proposal would also bring some benefit to the local economy. Nevertheless, I attach substantial weight to my finding that mitigation cannot be assured to achieve nutrient neutrality and that consequently there is no certainty that the proposal would not adversely affect the integrity of European sites. The proposal would be contrary to the development plan in this respect and the provisions of the Habitats Regulations. The latter must be fatal to the appeal.
28. Therefore, notwithstanding its compliance with HLP policies S1, S3, S5, EG7, EG8 and ICT2, the proposed development would be contrary to the development plan when read as a whole and there are no material considerations indicating a decision otherwise than in accordance with it. The adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits and as such the proposal would not constitute a sustainable form of development in terms of the Framework. Consequently, I am satisfied that the aim of avoiding adverse effects to European sites can only be adequately addressed by dismissal of the appeal, which is therefore necessary and proportionate. Therefore, for the reasons set out above I conclude that the appeal should be dismissed.

C Coyne INSPECTOR