



Appeal Decision

Site visit made on 3 May 2023

by A Veevers BA(Hons) DipBCon MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th July 2023

Appeal Ref: APP/H2733/W/22/3310165

2 Britannia Drive, Moor Road, Filey YO14 9GX

- 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 G Lasley, Essential Vivendi Ltd against the decision of Scarborough Borough Council.
 - The application Ref 21/02008/FL, dated 16 August 2021, was refused by notice dated 4 August 2022.
 - The development proposed is described as 'development of 5. No shepherd hut holiday homes with associated landscaping'.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The name of the appellant in the banner heading above differs from that on the planning application form, although the company name is the same. The appellant has clarified that the correct name is that used on the appeal form. I have therefore proceeded on this basis.
3. The description of development in the banner above has been taken from the decision notice. It is clear from the evidence before me that, during the determination process, the proposal was revised to comprise 5 shepherd hut holiday homes 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.
4. On 1 April 2023 Scarborough Borough Council was dissolved and merged with other Councils to form one Unitary Authority known as North Yorkshire Council. However, until such time as it is replaced, the statutory provisions set out through Regulation 26 of the Local Government (Boundary Changes) Regulations 2018 allow for any extant development plans to have effect as if adopted by the new Unitary Authority until such time as the new Unitary Authority adopts a plan covering the whole of its area. For the purposes of this appeal, the development plan comprises the Scarborough Borough Local Plan July 2017 (SLP).
5. I am aware that five recent appeals have been determined since 1 January 2023 at The Bay Holiday Village (The Bay) by different Inspectors¹. The

¹ APP/H2733/W/22/3308236, APP/H2733/W/22/3307687, APP/H2733/W/22/3303810, APP/H2733/W/22/3304550 and APP/H2733/W/22/3304553

location and proposed development of those appeals differ to the appeal before me. Therefore they have had no significant bearing on my conclusions.

Main Issues

6. The main issues are the effect of the proposal on:

- the living conditions of the neighbouring occupiers on Britannia and Turnberry, with particular regard to privacy and outlook;
- the character and appearance of the surrounding area, having regard to design, landscape and the site's countryside and coastal location; and,
- biodiversity, having regard to the Butcher Haven Site of Interest for Nature Conservation (SINC).

Reasons

Living conditions

7. The site is bounded by a number of holiday homes which are accessed from Turnberry Drive and Britannia Drive. These properties currently enjoy an open setting overlooking the appeal site to the rear, a communal area of grass to the countryside and coast beyond. Some of the properties have large amounts of glazing, along with balconies and patios.
8. Use of the appeal site is available to all visitors to The Bay at present and there is currently no boundary treatment or vegetation enclosing the rear patio areas of properties along Britannia Drive and Turnberry Drive. Therefore, views towards these properties are readily obtainable from the appeal site. Although the size and number of the proposed holiday homes would be reasonably limited, they would be located in close proximity to the existing holiday homes. Furthermore, the proposal would include a pedestrian access located between the properties and the proposed accommodation.
9. The layout of the holiday accommodation along Britannia Drive and Turnberry Drive is relatively spacious, partly due to the open grassed area to the rear, the size of the properties and the gaps between them. The proposed bedroom window of each shepherd hut would directly face the patio areas and rear facing ground floor windows of some properties on Britannia Drive and Turnberry Drive. However, the proposed landscaping would mitigate overlooking of some properties and would also provide some privacy for those properties over and above the existing arrangements.
10. Notwithstanding the introduction of landscaping, the proposal would be likely to intensify activity on the site by the comings and goings of occupiers of the proposed shepherd huts. Due to the narrow gap between No. 2 Britannia Drive (No. 2) and No. 14 Turnberry Drive (No. 14), the access to the proposed accommodation would be particularly close to the patio areas and ground floor windows of these properties and even with the incorporation of a proposed hedge close to the path, views into these properties would be obtainable to visitors coming and going.
11. Furthermore, due to the limited distance and juxtaposition of the two proposed shepherd huts closest to No. 2 (annotated as huts 1 and 2 on Landscape Proposals Plan ref:24 Rev A (LPP)) the proposed hedging would do little to mitigate overlooking of that property from the bedroom of each hut.

12. I acknowledge the relationship between the proposed holiday homes and some of the existing properties along Britannia Drive and Turnberry Drive is similar to that found elsewhere at The Bay, the increase in visitors to the proposal would be modest and some overlooking of these properties is already experienced from people using the appeal site. I have also taken into account that there is some justification for more relaxed standards of separation between buildings in this area given that the properties are occupied for holiday purposes and not intended to be main units of residence. However, I find the proposal would unacceptably harm the living conditions of the occupiers of No. 2 and No. 14 with respect to overlooking.
13. The proposed shepherd huts would be sited to the south of existing holiday homes and in an area currently free from development. They would be clearly visible to occupiers of neighbouring properties. However, in the context of the existing relationships between holiday accommodation at The Bay which was apparent from my site visit, I am not persuaded that the huts would have an unreasonable effect on the outlook from the neighbouring holiday homes. This is due to the relatively wide spacing between the huts and their limited height and size.
14. Whilst I find the development would have acceptable effects on the living conditions of the neighbouring occupiers on Britannia and Turnberry with regard to outlook, for the reasons set out above, the proposed development would be harmful to the living conditions of the occupiers of No. 2 and No. 14 with particular regard to privacy. It would therefore fail to comply with Policy DEC4 of the SLP which seeks to protect the amenity of neighbouring occupiers. In addition, the proposal would fail to accord with paragraph 130 of the National Planning Policy Framework (the Framework) where it seeks a high standard of amenity for existing and future users.

Character and appearance

15. The Bay is a large holiday village. It includes a mix of holiday homes of various styles, sizes and materials. It also includes leisure facilities, a public house, shop, café, pharmacy and open recreation space.
16. The appeal site, and existing holiday homes and associated facilities at The Bay, is located outside defined development limits and so it is within the open countryside for planning policy purposes.
17. The site is contained by existing two storey brick holiday homes to the north and west and a clearly delineated vegetated wooded ravine along the southern boundary. While the site is presently free from built development, it forms part of a managed amenity grassed area for communal use by visitors to The Bay and is enclosed by built form and boundary vegetation. Consequently, I find the appeal site to be within the existing built envelope of The Bay.
18. The proposed holiday homes would be small in scale and spaced apart on the site. Due to their size and intervening vegetation, they would be undiscernible in views from the wider landscape. The proposed tree planting and grassland meadow would partially screen the existing two storey properties in views from the wider countryside and would therefore provide an enhanced natural setting to the coastal cliff top site and the existing properties. The spacing of the proposed five shepherd huts would be substantially greater than the properties on Britannia Drive and Turnberry Drive and would not appear cramped.

19. While the proposal would reduce the amount of open land along the cliff top, the proposed shepherd huts would not be visually intrusive due to their limited height and size. Having regard to the appeal site's countryside and coastal location, I find the proposed landscaping, scale and layout of the development would not be harmful to its immediate setting or the setting of the SINC. The proposal would successfully integrate into the surrounding landscape and would not be seen as an intrusion of development into the countryside or the open character of the cliff top. Consequently, the proposal would have an acceptable impact on the character and appearance of the open countryside and wider landscape.
20. Although the proposed development would be clearly visible to occupiers of the immediately surrounding properties, and distinctly different in size and design, this is not uncommon across the holiday park. The Bay incorporates a variety of styles of holiday accommodation that sit side by side. The proposal would be consistent with this mixed character.
21. Moreover, the timber design would reflect the material evident on the many timber chalets and beach houses at The Bay and in the surrounding area, thereby responding to the overall local context of accommodation. The general design of the proposed shepherd huts incorporating a veranda and mock wheels would not be significantly at odds with other chalet-style accommodation at The Bay and would be an appropriate form of development in open countryside. Furthermore, the proposal would not be clearly visible from the street and the spacing of the huts and additional landscaping would not interrupt the general rhythm and context of the immediately surrounding brick properties.
22. For the above reasons, the proposed development would have an acceptable effect on the character and appearance of the surrounding area, having regard to design, landscape and its countryside and coastal location. Accordingly, it would comply with the aims of Policies ENV6, ENV7 and TOU4 of the SLP. It would comply with Policy DEC1 of the SLP which seeks good design that responds positively to the local context. It would also comply with Section 12 of the Framework which seeks well-designed places and paragraph 174 of the Framework which seeks to ensure proposals contribute to and enhance the natural and local environment by maintaining the character of the undeveloped coast.

Biodiversity

23. The parties agree that the appeal site comprises low biodiversity value mown amenity grass. It has been drawn to my attention that the boundary of the Butcher Haven SINC includes the appeal site. I also note Figure 3.1 in the appellant's Preliminary Ecological Appraisal (Applied Ecology Ltd January 2022 (PEA)) identifies the site is within the SINC. However, it does not contain the coastal scrub habitat characteristic of the SINC. From the information presented, it is clear that the appeal site has been used as informal amenity grassland for some time. I have not been provided with substantive evidence to demonstrate that the appeal site forms part of a habitat buffer for the wider holiday village as a condition of any previous permission.
24. The boundary of the appeal site runs along the break of slope at the edge of a wooded ravine within the SINC. However, I note the appellant's PEA, accompanying LPP and meadow maintenance schedule sets out a number of

measures to mitigate the effect of the proposal. Measures would include the planting of a buffer zone of meadow grassland, tree and hedgerow planting, the existing boundary fence would be replaced, signage and bird nesting boxes would be erected, lighting would be restricted, and periodic inspections would be carried out. Furthermore, non-native plants to the rear of Sunrise Drive, would be replaced with native plants. The use of native planting and other measures to limit human disturbance to the SINC would provide ecological enhancement and support the biodiversity value of the SINC.

25. I have not been provided with any substantive evidence to demonstrate that the proposed measures are not adequate. A planning condition could secure the recommendations of the PEA. From the evidence before me, I find the proposal would have an acceptable effect on biodiversity, including the SINC.
26. Accordingly, the proposal would comply with Policy ENV5 of the SLP which seeks to ensure that proposals respond positively and seek opportunities for the enhancement of species, habitats or other assets and ensuring that development does not result in an unacceptable impact on any locally, nationally or internationally designated site. The proposal would also comply with chapter 15 of the Framework. This states that decisions should contribute to and enhance the natural and local environment by, amongst other things, protecting and enhancing sites of biodiversity value and minimising impacts on and providing net gains for biodiversity.

Planning Balance and Conclusion

27. In support of the proposal, the appellant has provided a copy of Scarborough Borough Council's Visitor Economic Strategy. I note a key action is the expansion of The Bay. I also recognise the importance of the economic benefits to tourism in the area and the need to respond to changing visitor demands, provided such requirements can be successfully integrated into the surrounding landscape as required by Policy TOU4 of the SLP.
28. I conclude that the proposed development would not have a harmful effect upon the character and appearance of the surrounding area or on biodiversity, including the SINC. However, the proposal would be harmful to the living conditions of the occupiers of No. 2 Britannia Drive and No. 14 Turnberry Drive with particular regard to privacy. There is conflict with policy in the development plan for the area flowing from this harm. Given the severity of harm, the conflict is with the development plan as a whole.
29. I acknowledge the benefits, including economic and tourism related. They attract moderate weight and do not outweigh the harm identified.
30. For the reasons given above, the proposed development would conflict with the development plan, when read as a whole. There are no material considerations, including the provisions of the Framework that indicate the decision should be made other than in accordance with the development plan. Having considered all other matters raised, I therefore conclude that the appeal should be dismissed.

A Veevers

INSPECTOR