



Appeal Decision

Site visit made on 29 March 2023

by Louise Crosby MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 January 2024

Appeal Ref: APP/E2001/W/22/3306161

Land South-West of Poultry Farm, Starcarr Lane, Brandesburton, East Riding of Yorkshire, YO25 8RT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Messers Foster, Crozier, Draper & Coates against the decision of East Riding of Yorkshire Council.
 - The application Ref 20/03915/STOUT, dated 29 October 2020, was refused by notice dated 1 March 2022.
 - The development proposed is erection of residential development and commercial development and associated public and private amenity space, landscaping, SUDs, parking areas and other infrastructure following demolition and clearance of the existing site.
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This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 29 June 2023.

Decision

1. The appeal is allowed and planning permission is granted for erection of residential development and commercial development and associated public and private amenity space, landscaping, SUDs, parking areas and other infrastructure following demolition and clearance of the existing site at land south-west of Poultry Farm, Brandesburton, East Riding of Yorkshire, YO25 8RT in accordance with the terms of the application, Ref 20/03915/STOUT, dated 29 October 2020, subject to the conditions in the attached schedule.

Preliminary matters

2. The planning application sought planning permission for 'the demolition and clearance of the existing site and the erection of up to 135 No dwellings and 26,670 sq ft of employment development with associated public and private amenity space, landscaping, SUDs, parking areas and other infrastructure'. However, the balance and scale of built development was negotiated during the planning application stage. The description of development I have used in my banner heading above is taken from the decision notice and reflects the development considered by the Council in determining the planning application and thus the scheme before me.
3. Outline planning permission is sought with all matters reserved except for the access.
4. I shall deal with the appeal on the basis of the above.

5. The appellant has submitted a Section 106 agreement at the appeal stage which would secure 20% affordable housing. I shall consider this further in my decision below.

Main Issues

6. The main issues are:
- i) whether the appeal site is an appropriate location for residential development having regard to development plan policies and other material considerations;
 - ii) the effect of the proposal on the character and appearance of the surrounding area; and
 - iii) if harm arises, whether this is outweighed by other considerations.

Reasons

Whether the appeal site is an appropriate location for the proposal

7. The 6.51ha appeal site lies to the south of the village of Brandesburton. Although it adjoins the settlement of Brandesburton it is in open countryside for planning policy purposes.
8. East Riding Local Plan (strategy Document and Allocations Document) 2016 (LP) policy S4 only permits certain forms of residential development outside of a settlement, and this does not include the type and scale of residential development proposed in this scheme. So, while the employment element of the proposal would accord with LP policy S4 the 50 dwellings proposed would not.
9. LP policy S3 seeks to focus new development within the defined settlement network, including in Brandesburton which is defined as a primary village. The supplementary text to policy S3 explains that the reuse of previously developed land remains important in the East Riding providing it is not subject to significant risks from flooding or a previous use that cannot be remediated. Since the development is outside of the defined settlement limits it would conflict with policy S3.
10. Policy S5 sets out how the housing requirement for the East Riding will be met across the district. Table 2 allocates 60 homes to Brandesburton for the period 2012 to 2029. Neither main party sets out whether any of the 60 homes have been built or if there are any relevant extant planning permissions. However, I note from Brandesburton Parish Council's consultation response their information in this regard.
11. The supplementary text to policy S5 says at paragraph 5.13 that no windfall allowance has been provided for in the settlements identified in the Settlement Network, but windfall opportunities in the villages and the countryside are expected to continue to deliver limited housing outside of the Settlement Network and also contribute to meeting the overall housing requirement. So, whilst the proposal would fail to accord with Policy S5 the Plan does envisage some sites coming forward outside of defined settlement limits to meet some of the housing requirement.

12. I note that whilst the Council is currently able to demonstrate a healthy supply of housing land the Framework advises that one of the Government's objectives is to significantly boost the supply of housing land. As such there is no cap on housing supply in theory.
13. To summarise, the proposal would conflict with LP policy S3, S4 and S5, however some limited support comes from S5 given that it is a brownfield site that would represent a windfall site in the countryside.

Character and appearance

14. The appeal site is bounded immediately to the east by agricultural land with a holiday park beyond. To the south are two further holiday accommodation sites. On the opposite side of Starcarr Lane is a golf club and a guest house. At present the appeal site contains 2 dwellings, an agricultural pig-farming unit as well as a variety of employment uses, a skip hire business and a caravan storage compound.
15. Whilst the appeal site is located within the open countryside it does not appear as such and the majority of the surrounding area is not 'open'. It is agreed between the parties that part of the site comprises previously developed land. Whilst the pig farm is classed as 'greenfield' this contains numerous buildings.
16. I saw when I visited the visually prominent and gateway site on the edge of the village of Brandesburton that the majority of it has an unkempt and run-down appearance, at odds with other well-maintained development nearby. Most of the buildings are old and dilapidated and the businesses are laid out across the site in what appears to be a very ad hoc manner, mostly accessed from muddy unmade roads.
17. Clearly the employment site has existed for many years and appears to have evolved over time in this way. I was also able to witness first-hand the significant odour from the pig farm which was not only present on the site but also in the surrounding area, including the adjacent holiday home site. On the day I visited the site the weather was cool with little wind. Clearly the odour would increase during warmer weather conditions and when it is windy the odour would be experienced further afield.
18. The planning application is supported by a masterplan which demonstrates that the site can accommodate up to 50 dwellings at an average density of 22dph which would be appropriate given the context of the site with neighbouring dwellings occupying generous plots, and in accordance with LP Policy H4, part C.
19. The masterplan also shows the retention of most boundary trees and the introduction of new planting along the frontage of Starcarr Lane to filter views of the new development, along with reinforced planting along the boundaries of existing dwellings on Starcarr Lane and new planting within the site. The masterplan also incorporates a good sized multi-functional open space.
20. Overall, I find that the proposal would greatly improve the character and appearance of the surrounding area and accord with LP policy ENV 1 which promotes high quality design. This benefit of the scheme adds significant weight in favour of the proposal.

Whether any harm is outweighed by other considerations

21. The appeal site is less than a kilometre to many services such as shops and takeaways. Brandesburton School is around a kilometre away. All of these are within easy walking or cycling distance. Slightly further afield is Leven with a wider range of services such as a post office and library and pharmacy and medical centre. Most of these are just over 2km away. The Transport Statement submitted with the planning application demonstrates that despite the site being outside of the settlement limits of Brandesburton it has good access to public transport services to places such as Hull and Beverley. There is a train station in Beverley, around 13 km away. Accordingly, I find that the site is well related to Brandesburton and is in a sustainable location.
22. Whilst the proposal would conflict with policy S4 of the LP it would bring a number of benefits. It would greatly improve the character and appearance of this predominantly brownfield site as well as provide 20% affordable housing in accordance with LP policy H2 and provide modern employment units. There is a demonstrable need for affordable housing in the district and therefore this attracts significant weight in favour of the proposal. Many locals, including the owner of the nearby guest house have expressed their concern about the odour from the pig farm. This proposal would remedy that and is therefore a benefit of the scheme which carries great weight.
23. Whilst the proposal would reintroduce development it would be carefully planned and designed to respect the character and appearance of the surrounding area and the nearby uses that currently exist in a predominantly residential area. Moreover, the proposed scheme would include areas of open space and landscaping. This is also a substantial benefit of the scheme.

Other Matters

24. Whilst the proposal involves the loss of the existing employment buildings the proposal includes the provision of new employment ones which could potentially be occupied by some of the existing businesses. The pig farming element would be re-located to one of the applicant's other farming sites.
25. Whilst larger settlements with the most services would be accessed by car in the majority of cases, there is a bus service to nearby towns. The businesses operating from the site would be likely to offer at least some jobs that would be available to local people. From my visit to the site I find it unlikely that the site supports much wildlife, however I accept that this is likely in the hedgerows and overgrown areas at the edges of the site. Any ecology or wildlife on the site could be protected through the use of planning conditions and as set out above the masterplan shows retention and in some cases reinforcement of planting in these areas.
26. Moreover, the proposal includes the creation of an area of open space which would provide legible routes and benefits for wildlife. The masterplan also shows a green corridor along the eastern boundary of the site. In terms of the size and mix of the dwellings this will be determined at a future date and will depend to some degree on what the Council's evidence indicates as being required. Finally, regarding security concerns, the site is likely to provide

better security than at present as the occupiers of the dwellings will provide natural surveillance and not just during business hours as is the case now.

27. I note that the Council refer to 2 other appeal cases for development outside of defined settlement limits in East Riding District however it appears from those appeal decisions that they related to undeveloped greenfield sites which is a significant material difference from the case before me which is a developed site that is part brownfield.

Unilateral Undertaking

28. As set out above the appellant has submitted a Unilateral Undertaking (UU) to secure an element of affordable housing if planning permission is granted. I have considered this in light of the statutory tests contained in Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010. The UU secures the provision of 20% affordable housing in accordance with LP policy H2. In these circumstances I consider that this obligation would be fairly and reasonably related to the development proposed and that it passes the statutory tests.

Planning Balance and Conclusion

29. Drawing together my findings on this case whilst the appeal site is outside of the settlement limits of Brandesburton in open countryside and this is in conflict with the LP in so far as it seeks to focus most new housing within a range of towns and villages, there are features of this site that mean that serious consideration must be given to its suitability as an important windfall site. It is located very close to the settlements of both Brandesburton and Leven which together contain a wide range of services and amenities. The residents and employees of the business units would have access to a good bus service. Importantly it would provide an opportunity to regenerate this visually intrusive site to provide an attractive mixed-use development and relocate the pig farm to a location where the odour would be less problematic. It would also be policy compliant in terms of the affordable housing which is a benefit of the scheme.
30. For these reasons I conclude that the appeal should succeed.

Conditions

31. I have imposed a number of planning conditions in addition to the necessary standard reserved matters conditions. These include conditions to ensure that the development is carried out in accordance with the approved plans, a condition limiting the number of dwellings to 50 as this is the number considered as part of this appeal when assessing the effect of the proposal on the character and appearance of the area. A number of conditions are necessary which stipulate details required at the reserved matters stage for character and appearance and living conditions reasons.
32. Conditions are necessary to ensure no dwellings are constructed in an area identified as being within flood zone 3a and that the development is carried out in accordance with the submitted Flood Risk Assessment to minimise flood risk. A number of conditions are necessary in the interests of highway safety. To protect the living conditions of the future occupiers of the dwellings on Starcarr

Lane a condition in relation to the window design is necessary. Conditions in relation to the employment element of the scheme are necessary to control external lighting to protect living conditions and the appearance of the area at night and a condition to control operational and delivery hours to protect living conditions.

33. In the interests of sustainable development, it is necessary to impose a condition in relation to the installation of electric charging points. Whilst Planning Practice Guidance (PPG) advises that permitted development rights should only be removed in exceptional circumstances it is necessary here to control planting and development in an identified area for highway safety reasons. It is important that infrastructure within the site is controlled to ensure that it can be adopted as publicly maintainable following completion of the development. It is also necessary to control construction works on the site during the construction period and have wheel washing facilities in the interests of highway safety and that drainage works are agreed and installed to prevent flooding and prevent the pollution of controlled waters.
34. To protect wildlife and ecology on the site it is necessary to impose conditions requiring a Construction Environmental Management Plan and the adherence to the Bat and Barn Owl Survey and Assessment. To protect living conditions, I have imposed a condition requiring a Construction Method Statement. Given the current uses on the appeal site it is necessary to ensure that any contamination on the site is investigated and remediated in an appropriate manner and so I have included relevant conditions. The proposal will require a significant amount of demolition which could be harmful to living conditions if carried out at any time and so a condition is necessary to control the days and hours that demolition can take place.
35. I have not included the Council's suggested condition in relation to a scheme for the provision of education since the Council have since conformed that this is not necessary.

Louise Crosby

INSPECTOR

Schedule of planning conditions

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: P17-1836.300A, P17-1836.007, P17-1836.008, P17-1836.301.

Conditions applicable to the residential element of the outline planning permission only

- 5) The details submitted pursuant to condition No 1 shall show no more than 50 dwellings overall.
- 6) The details submitted pursuant to condition No 2 shall include a scheme for the provision of a mix of housing types to be provided as part of the development in accordance with Policy H1 of the ERLP SD. The development shall be carried out in accordance with the approved scheme.
- 7) The details submitted pursuant to condition No 2 (layout) shall include details confirming how dwellings and residential garden shall be designed, constructed and orientated.
- 8) The details submitted pursuant to condition No 2 shall include details of a 2m high acoustic bund with a 2m high acoustic palisade barrier on top to be provided on Starcarr Lane. The acoustic bund and palisade fence shall thereafter be installed prior to the occupation of any dwelling on site and maintained throughout the life of the development.
- 9) The details submitted pursuant to condition No 1 shall include a scheme for the provision of open space as part of the development within the site in accordance with Policy CS of the East Riding Local Plan and Open Space SPDs (unless the developers have previously entered into a binding agreement with the Council to secure the provision of the required open space elsewhere in the area). The scheme shall include details of the laying out and construction of the open space, the equipment to be provided on the open space, a timetable for its provision, and arrangements for its future maintenance. The open space shall then be provided and maintained in accordance with the approved scheme.
- 10) No residential development shall take place on the area of the site shown within future flood zone 3a on the East Riding Strategic Flood Risk Assessment 2019.

- 11) No dwelling on the site shall be occupied until that part of the street which provides access to it has been constructed and lit from the junction with the public highway in accordance with the approved plans.
- 12) No dwelling shall be occupied until the vehicular access has been provided and space has been laid out within the curtilage of that dwelling or the site for motorcars to be parked in accordance with details of the siting of the dwellings as required by the condition No 1 above. Provision shall thereafter be retained for the parking of these motorcars and not used for any other purpose.
- 13) Dwellings facing onto Starcarr Lane shall be installed with windows with an insulation standard of 33dB Rwi and trickle vents with an insulation standard of 35dB Dn,e for all noise sensitive rooms.

Conditions applicable to the employment element of the outline planning permission only

- 14) The employment development shall not begin on site until details of:
 - i) The number, location and layout of vehicle parking spaces, including access aisles, surface markings and manoeuvring facilities;
 - ii) The location and layout of loading, off-loading and manoeuvring facilities for delivery vehicles;
 - iii) The pedestrian and vehicular means of access to all buildings, have been submitted to and approved in writing by the Local Planning Authority.
- 15) The development shall not be brought into use until Starcarr Lane has been improved by providing a pedestrian crossing in accordance with details outlined in the hereby approved plan P17-1836-007-SK-Refuge.
- 16) Prior to commencement of use of the commercial units, an external lighting scheme in accordance the ILE GN01 shall be submitted to and approved by the Local Planning Authority. The scheme shall be implemented and thereafter maintained in accordance with the approved scheme.
- 17) During operational phase of the employment development, operation and deliveries shall be restricted to the hours of 07:00-18:00 Monday to Saturday with no working on Sundays or public holidays.

Conditions to both the residential and employment elements of the outline planning permission

- 18) No application for reserved matters pursuant to condition No 1 of this permission shall be submitted unless accompanied by a phasing scheme setting out how the whole site is to be developed and including a timescale for the removal of the pig farm. No part of the residential element of the scheme shall be commenced until the pig farm has been removed from the site.
- 19) The details submitted pursuant to condition No 1 shall include details confirming how the overall scheme has been designed to reflect the requirements of the National Design Guide.

- 20) The details submitted pursuant to condition No 2 shall include electric charge point to be installed for both the residential and commercial elements of the development. Each electric vehicle charge point shall be installed in accordance with the approved details and operational prior to occupation of the dwelling or commercial unit they serve and thereafter retained.
- 21) The details submitted pursuant to condition No 2 shall include an Air Quality Screening Assessment.
- 22) Nothing shall at any time, whether permitted by the Town and Country Planning (General Permitted Development) Order or not, be erected, retained, planted or allowed to grow over 1.05 metres in height above the level of the adjoining carriageway within the area identified on approved plan ref: P17-1836-008.
- 23) Development shall not begin on site until details of the layout, drainage, construction, services and lighting of the proposed residential streets including the junctions with the existing publicly maintained highway, have been submitted to and approved in writing by the local planning authority.
- 24) Prior to commencement of the development details shall be submitted to and approved in writing by the Local Planning Authority showing the provision of the temporary vehicle parking , loading, off-loading, manoeuvring and wheel washing facilities for the contractors carrying out building and construction works on the development and not other building or construction works shall be commenced until the temporary vehicle parking, loading, off-loading, manoeuvring and wheel washing facilities have been provided in accordance with the approved details. The approved vehicle parking, loading, off-loading, manoeuvring and wheel washing facilities shall be retained during the construction of the development.
- 25) The details submitted pursuant to condition No 2 shall include a scheme for the disposal of sewerage and discharge of surface water from the site, incorporating a sustainable drainage system and associated management and maintenance plan, for approval in writing by the Local Planning Authority. The residential element of the development shall not be first occupied, and the employment element brought into use until both sewerage and surface water drainage details have been fully constructed in accordance with the approved scheme and shall thereafter be managed and maintained in accordance with the approved details.
- 26) No development work shall take place until a Construction Environmental Management Plan (CEMP: Biodiversity) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall be compiled by a suitably qualified ecologist, include a timetable for implementation and a detailed plan. The scheme shall provide full details of all ecological mitigation measures along with a programme for implementation.

The scheme shall include:

- a risk assessment of potentially damaging construction-type activities;

- full details of practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction, including action to be taken if any protected species are found during construction works;
- the location and timing of sensitive works to avoid harm to biodiversity features;
- use of protective fences, exclusion barriers and warning signs;
- details of a lighting strategy which secures dark corridors for foraging bats and nesting birds;
- full details and plans of measures to protect watercourses from run-off, pollution, adverse changes in water quality and flow;
- details of site induction information and toolbox talks for all relevant on site working practices. Protocols to demonstrate that the site work force will be briefed about potential ecological issues on the site prior to commencement of construction shall be provided;
- details of personnel responsible for over-seeing the implementation of measure detailed in the CEMP.

Upon commencement of development all aspects of the approved construction environmental management plan (CEMP: Biodiversity) shall be implemented in full, unless otherwise agreed in writing by the Local Planning Authority.

- 27) No development shall take place until a Construction Method Statement (CMS: Public Protection) has been submitted to, and approved in writing by, the Local Planning Authority. The approved statement shall be adhered to throughout the construction period.

the statement shall provide for:

- i) loading and unloading of plant and materials.
- ii) Storage of plant and materials used in the construction including location of any external plant, generators and groundwater pumps to be used during the construction phase as well as measures to address their sound output, prevent noise and vibration problems to neighbouring properties.
- iii) Measures to reduce mud deposition off site from vehicles leaving the site, including wheel washing facilities
- iv) Measures to control the emissions of dust and dirt during site preparation, demolition, groundwork and construction phases of the development including arrangements for monitoring dust emissions from the development site such as agreed routes to and from the site during construction works; allocating arrival times for construction vehicles and suppliers and setting minimum emission standards for construction vehicles operating on, and those delivering to the site.
- v) hours of construction, including deliveries; and
- vi) the control of noise and vibration emissions from construction activities, including groundworks, and the formation of infrastructure

including arrangements to monitor noise emissions from the development site during the construction phase.

- 28) Development, other than that required to demolish existing buildings and to undertake necessary site clearance, shall not begin until an investigation and risk assessment of land contamination has been completed by competent persons and a report of the findings submitted to and approved in writing by the Local Planning Authority. This shall include an appropriate survey of the nature and extent of any contamination affecting the site, and an assessment of the potential risks to human health, controlled waters, property and ecological systems. Where unacceptable risks are identified, an appropriate scheme of remediation to make the site suitable for the intended use must also be submitted to and approved in writing by the Local Planning Authority.
- 29) The development hereby permitted shall not progress beyond damp proof course level of the buildings until a wildlife enhancement plan (WYP) has been submitted to and approved in writing by the Local Planning Authority. The WEP shall be compiled by a suitable qualified ecologist and include:
- a timetable for implementation;
 - the enhancement measures recommended in Figure 3 of the Preliminary Ecological Assessment (WEL, September 2020);
 - a detailed plan showing the locations and specification of the enhancement measures;
 - a 25% bird box to building ratio;
 - a 25% back box to building ratio;
 - details of the means of enclosure to demonstrate that boundary treatments will provide 'hedgehog highways' with holes under boundary features for hedgehogs to pass through;
 - hedgehog houses positioned around the site within hedge bases;
 - insect boxes and log piles to increase the habitat for local biodiversity;
- The enhancement features shall be installed before first occupation of the development and be retained thereafter.
- 30) Unless otherwise agreed in writing by the Local Planning Authority, none of the dwellings shall be occupied and the employment development shall not be brought into use until the approved scheme of remediation has been completed, and a verification report demonstrating the effectiveness of the remediation carried out has been submitted to and approved in writing by the Local Planning Authority. The verification report shall include a description of the works undertaken and a photographic record where appropriate, the results of any additional monitoring or sampling, evidence that any imported soil is from a suitable source, and copies of relevant waste documentation for any contaminated material removed from the site.
- 31) The junctions between the proposed residential street and the highway (Starcarr Lane) shall be constructed in accordance with the hereby

- approved plans; and no employment building shall be brought into use or residential dwelling occupied until that junction has been constructed in accordance with the approved details.
- 32) No development shall take place unless in accordance with all of the recommendations for mitigation set out in sections 8.2.1 and 8.2.2 of the Bat and Barn Owl Survey and Assessment (WEL, February 2021), unless otherwise varied by a European Protected Species licence subsequently issued by Natural England.
- 33) The development shall be carried out in accordance with the Flood Risk Assessment prepared by Pegasus Group (report dated October 2020), unless otherwise agreed in writing with the local planning authority.
- 34) During the demolition phase of the development, operations shall be restricted to the hours of 08:00 and 18:00 Monday to Friday and 08:00 and 13:00 on a Saturday, with no working on Sundays and public holidays.
- 35) In the event that contamination is found at any time when carrying out the approved development, that was not previously identified, it must be reported immediately to the Local Planning Authority. Appropriate investigation and risk assessment must be undertaken, and where remediation is necessary, a remediation scheme must be prepared by competent persons and submitted to the Local Planning Authority for approval. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be submitted to and approved in writing by the Local Planning Authority.