



Appeal Decision

Hearing held on 9 January 2024

Site visit made on 9 January 2024

by Louise Crosby MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st March 2024

Appeal Ref: APP/B2002/W/23/3329352

Land east of Midfield Road, Humberston, North East Lincolnshire, DN36 4TH

- 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 Cyden Homes Ltd against the decision of North East Lincolnshire Council.
 - The application Ref DM/0696/19/FUL, dated 29 July 2019, was refused by notice dated 30 August 2023.
 - The development proposed is 225 dwellings on land east of Midfield Road, Humberston with secondary access off Andrew Road.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal site is allocated for around 198 dwellings in policy 13 of the North East Lincolnshire Local Plan 2013-2032 (adopted 2018) (LP). Policy 13 also identifies the site as having a medium/high potential for hosting bird species associated with the Humber Estuary Special Protection Area (SPA). Table 5.12 of the plan identifies the site as having a 'moderate' potential to support birds protected by the SPA.
3. The appellant has entered into a Section 106 agreement with the Council. This would secure 20% affordable housing, an education contribution and a contribution to Cleethorpes Country Park as part of the proposed recreational disturbance mitigation. Consequently, at the hearing the Council did not seek to defend the third reason for refusal which relates to this matter. I shall deal with this matter in more detail below.

Main Issues

4. The main issue is the effect of the proposal on biodiversity.

Reasons

Biodiversity

5. The Council's first two reasons for refusal cover two separate biodiversity matters, firstly whether the site comprises land that is functionally linked to the SPA and Humber Estuary Ramsar and Humber Estuary Site of Special Scientific Interest (SSSI) and secondly whether the proposed mitigation to address the

impact of future recreational disturbance from the occupiers of the development on the SPA and the SSSI is adequate. I shall deal with each matter in turn.

6. Table 5.12 of the Local Plan Habitat Regulations Assessment (HRA), identifies the appeal site as having 'moderate' potential to support birds protected by the SPA. At that time, it was an open, tightly grazed horse paddock within 2km of the SPA. In 2015 and 2018/19 bird surveys of the appeal site found that it supported just over 1% of the SPA curlew population and smaller proportions of other SPA bird populations. As such it was agreed that it was 'functionally linked land' (FLL). Natural England consider that the loss of FLL of more than 1% of any SPA bird is likely to be a likely significant effect. This would require mitigation in the form of a managed habitat for curlew and a long term management plan. The appellant has offered no mitigation in this regard.
7. At the time of these bird surveys the site was leased to someone who grazed horses on the land. When the lease came to an end it was not renewed. Since then, the site has been disused and consequently has become overgrown. By September 2021, the site had become less suitable for curlews. Grazing had ceased, allowing the vegetation to grow taller than that preferred by curlew. Also, the boundary fencing had fallen into disrepair, and there was evidence of informal dog walking.
8. It was apparent at the site visit that it is being used illegally by local residents for recreational purposes, such as dog walking. Also, since the appellants' surveys in 2015 and 2018/19, a small housing development has been built to the southwest of the site, reducing the openness preferred by curlew. Further bird surveys were carried out during the winters of 21/22 and 22/23. The bird surveys consisted of many site visits over the two winters. During the surveys only one curlew was recorded on the appeal site.
9. These results indicate that it is no longer likely to regularly support 1% or more of the SPA population of curlew (or any other SPA bird). While the appellant asserts that this can therefore no longer be considered to be FLL the Council and Natural England take the view that if the appeal site were to return to its previous condition the numbers of curlew could increase and therefore it is still FLL.
10. There is little prospect of the current management changing to restore suitable conditions for curlews and other SPA birds. The agricultural management of the site is entirely in the gift of the landowner. Neither the Council nor Natural England can require the landowner to provide curlew foraging habitat and the landowner says they have no plans at the present time to reinstate regular grazing. In fact, it is in the owner's best interests to maintain the current, unsuitable conditions. Nevertheless, to just accept this argument would give a green light to other landowners and developers with allocated sites that are classed as FLL to allow their degradation in order to avoid the need to mitigate the loss.
11. Natural England considers that mitigation in the form of habitat enhancement/creation, specifically for curlew is required and that it is not possible to provide this on-site, due to likely levels of disturbance. The advice of Natural England carries great weight.

12. LP policy 13 requires sites identified as having medium or high potential to support SPA/Ramsar birds, where there is the potential for adverse effects resulting from the off-site habitat loss and/or disturbance that appropriate and timely measures are taken to mitigate such impacts. Such mitigation is likely to be in the form of alternative habitat managed specifically for the affected bird species and/or contributions towards the provision of strategic mitigation sites. The appellant has not identified an off-site area that would provide alternative habitat managed specifically for the affected bird species.
13. I agree with Natural England and the Council that the appeal site is still FLL, to do otherwise would undermine the retention or mitigation of other FLL. Consequently, mitigation is required. Since this has not been provided as part of the planning application or appeal scheme the proposal would conflict with LP policy 13. Moreover it would not be appropriate to require mitigation by planning conditions as mitigation needs to be proposed prior to planning permission being granted.
14. Turning to the second matter, both main parties and Natural England agree that some recreational disturbance would occur as a result of the development, and I concur. Paragraph 5.134 of the Local Plan HRA predicts that housing allocations, such as this one, are likely to result in increased recreational pressure on SPA birds in the Tetney Haven to Humberson Fitties sector. This is because there is a public car park which gives access to the shore and flood bank. The likely significant effect of increased recreational pressure on the shore in Cleethorpes is also noted. Advice from Natural England confirms that this policy is intended to include a commitment to mitigate recreational effects on both the SPA and also on FLL.
15. At the time that the planning application was determined by the Council there was a lack of agreement over the mitigation necessary. The appellant continued to negotiate with the Council and Natural England following the submission of the appeal, in relation to mitigation.
16. The appellant and the Council agree that the proposed package of measures which includes on site open space provision, a sustainable urban drainage scheme and a financial contribution of £78,917.00 towards improvements to Cleethorpes Country Park, which is within walking distance of the appeal site would adequately mitigate the harm.
17. Natural England accepts that improvements to Cleethorpes Country Park could be implemented to avoid recreation disturbance impacts on the Humber Estuary designated sites and agrees that the measures proposed are suitable in principle. However, they have concerns about the amount of mitigation being proposed. They consider that the proposed length of paths to be drained and improved should be increased to reflect the likely number of additional residents to ensure that the total mitigation package would encourage new residents, to use the facility and thus effectively mitigate against recreational disturbance on the Humber Estuary. Natural England's advice carries great weight on this matter, and I agree with their position on this matter.
18. For the reasons set out above, I find that the proposal would conflict with LP policies 5, 13, 40, 41 and 43 in so far as they seek to ensure that new development has regard to biodiversity.

Legal agreement

19. The Council confirmed at the hearing that the legal agreement overcame their third reason for refusal in relation to affordable housing and provision and a financial contribution to secondary education.
20. I am satisfied that these contributions are related in scale and kind to the proposed development and that they are necessary to make the development acceptable in planning terms.
21. Whilst these would be benefits of the scheme that attract some weight, they are required to make the development acceptable.

Conclusion

22. Whilst the proposal would see the development of this site which is allocated for housing in the LP and thus provide much needed market and affordable housing, the benefits of the scheme do not outweigh the harm to biodiversity and in particular the likely significant effects on the SPA and SSSI site due to a lack of suitable mitigation.
23. For the reasons given I dismiss the appeal.

Louise Crosby

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Michael Knott of Stantec
Karen Colebourn of EPR
Andrew Burling of Cyden Homes
Steven Ibbotson of Cyden Homes

FOR THE LOCAL PLANNING AUTHORITY:

Richard Limmer, Planner, North East Lincolnshire Council
Martin Dixon, Planner, North East Lincolnshire Council
Mr Levi Anderson-Jordan, Environmental Strategy Officer, North East Lincolnshire Council
Rachel Graham, Ecology Manager, North East Lincolnshire Council

INTERESTED PARTIES:

Cllr Elizabeth Shawhulme
Cllr Stan Shreeve
Cllr Hayden Dawkins

John Crickett, local resident

DOCUMENTS

1. Signed and sealed Section 106 agreement dated 9 January 2024.