



Appeal Decision

Site visit made on 5 March 2024

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th March 2024

Appeal Ref: APP/E2001/W/23/3331809

Land east of Turner Avenue, Withernsea

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Messers Hare against the decision of East Riding of Yorkshire Council.
 - The application Ref is 22/00434/OUT.
 - The development proposed is described as "outline - residential development (all matters reserved)".
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Decision

1. The appeal is allowed, and planning permission is granted for an outline - residential development (all matters reserved) at land east of Turner Avenue, Withernsea in accordance with the terms of the application, Ref 22/00434/OUT, subject to the conditions in the attached schedule.

Procedural Matters

2. Since the appeal was lodged, a revised National Planning Policy Framework ('the Framework') has been published. This has not raised any new matters which are determinative to the outcome of this appeal. However, I have referenced the revised paragraph numbers, where necessary.
3. Outline planning permission is sought with all matters reserved for subsequent approval. The submitted drawing includes details of access and layout, matters which are reserved for subsequent approval. I have therefore treated this drawing as indicative. I have determined the appeal on this basis.
4. The Council is preparing a revised local plan. The document was submitted for examination in March 2023. Hearing sessions took place in October and November 2023, but the examination process is ongoing, and the Inspector has not yet issued an interim statement. Therefore, in reference to paragraph 48 of the Framework, I attribute limited weight to the emerging policies.
5. I have been directed to an error contained within the Council's decision notice that references up to 9 dwellings when the number of dwellings is unspecified. However, I have assessed the proposal against the description of development.

Main Issue

6. The main issue is whether the appeal site is a suitable location for the proposed development.

Reasons

7. Policy S3 of the East Riding Local Plan 2012-2029 Strategy Document, adopted 2016 ('the LP') sets out the spatial strategy for new development and seeks to focus the majority of new development within the Major Haltemprice Settlements, Principal Towns, Towns and Rural Service Centres. The policy states that development limits for these settlements are defined on the Policies Map. Accordingly, The appeal site is within the countryside. LP Policy S4 supports development within the countryside provided it meets one of a closed list of developments and it would respect the intrinsic character of its surroundings. The proposal would not comply with any of the developments listed.
8. In reference to the main issue, the appeal site would not be a suitable location for the proposed development, and it would conflict with Policy S4 of the LP, the content of which I have previously detailed. The Council also considered the proposal would conflict with LP Policies S1 and S2. I will return to these later in my decision.

Other Matters

9. I have had regard to the number of objections received from interested parties, as part of the original planning application and this appeal, expressing a wide range of concerns including harm to the occupiers of neighbouring properties through overshadowing and an overbearing effect, flood risk and overtopping of the sea defences, the previous refusal of planning applications on the land, parking and ecology. However, these matters were considered by the Council in the determination of the planning application and there is no compelling evidence before me that would lead me to come to a different conclusion.
10. While the construction phase of the development could potentially be disruptive, it would be temporary, and some effects can be mitigated by way of conditions. Damage to neighbouring properties could happen, but from the information before me, there is no indication that this would be overly likely to occur in this instance. I also have no reason to consider that these matters will not be controlled by provisions separate from the planning regime. I have not been provided with evidence that the appeal site falls within the East Riding of Yorkshire Heritage Coast scheme, or an area designated by The Countryside and Rights of Way Act 2000. While the possibility of the remainder of the field being developed for housing, should I be minded to allow the appeal, falls outside the consideration of this proposal.
11. The right to a view is not a material planning consideration. The potential unauthorised use of the appeal site and the surrounding area and the potential involvement of the Council's Enforcement Team should I be minded to allow the appeal are not material to the determination of the appeal. While the Council can demonstrate a five-year supply of deliverable housing sites and I have been directed to housing developments nearby, this does not prevent other windfall housing developments from being approved. The receipt of several objections from neighbouring residents during the consideration of the planning application, including a petition signed by occupiers of properties in the surrounding area, demonstrates that interested parties were able to express their opinions regarding the proposal, even if they had concerns regarding the Council's consultation process.

12. The photographs submitted to highlight that erosion is occurring to the cliff face even with the new sea defences in place are unclear and during my site visit, I was unable to distinguish any erosion to the cliff face behind the sea defences fronting the appeal site. Furthermore, I note that the Council's Flood and Coastal Erosion Risk Management Team have not raised concern in this regard. The comments of The Planning Inspectorate's EIA and Land Rights Advisor are in respect of The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and is separate to my consideration of the proposal.

Planning Balance

13. I have identified conflict with LP Policy S4. However, this is a restrictive policy that offers support to development in the countryside only if it meets a type of development within a closed list. This is not wholly consistent with the Framework. It is more restrictive than the Framework as it applies the criteria for isolated homes in the countryside¹ to all countryside housing developments. Thus, the fact the appeal site is located outside the development limits of Withernsea is not a determinative factor in this case and I apportion limited weight to the proposal's conflict with LP Policy S4.
14. LP Policy S1 requires developments to accord with the presumption in favour of sustainable development as detailed within the Framework and requires planning applications that accord with the policies in the local plan to be approved without delay, unless material considerations indicate otherwise. This is reflected within paragraphs 11 and 12 of the Framework. LP Policy S2 supports development decisions that will reduce greenhouse gas emissions and adaption of the expected impacts of climate change. Table 1 details how LP Policy S2 will be delivered, which includes (1) directing most new development to areas where there are services, facilities, homes and jobs, which reduces the need to travel and where it can be served by sustainable modes of transport, and (2) promoting the most efficient use of land (which accords with paragraph 128 of the Framework).
15. Although located in the countryside, the appeal site abuts the development limits of Withernsea, a 'Town' as defined by LP Policy S3. Withernsea is a large conurbation that incorporates all the services and facilities required to support the day-to-day needs of its residents including a primary school, a secondary school, healthcare facilities, employment opportunities, supermarkets, shops and leisure facilities. These services and facilities can be accessed from the appeal site by walking, cycling, or public transport. Consequently, future occupiers of the proposal would not be heavily reliant on the private car. The appeal site comprises part of an undeveloped area of grassland that, at the time of my site visit, was of low quality and was not used for any discernible purpose. Consequently, I consider the proposal would make efficient use of the appeal site. I therefore afford these matters significant weight.
16. The appeal site forms part of a larger triangular-shaped field which shares its eastern boundary with the North Sea. According to the Policies Map, the appeal site and part of the wider field fall within the Coastal Change Management Area (the 'CCMA'). However, in December 2021, the South Withernsea Coastal Defence Scheme was completed that improved and extended the coastal flood defences further south. Consequently, the new flood defences would protect

¹ Paragraph 84 of the Framework

the appeal site for the lifetime of the development. Therefore, I attach significant weight to the site's reduced risk of coastal erosion.

17. The proposal does not specify the number of dwellings. However, the size of the site would limit the scale of development and the indicative drawing shows two plots. Although the number of dwellings is likely to be limited, they would contribute towards the Council's housing land supply and support the Government's objective of significantly boosting the supply of homes. Should I be minded to allow the appeal, a condition could be attached to require the proposed dwellings to meet the identified needs of the area in terms of housing mix. The proposal would also provide short-term employment through the construction of the dwellings, while future occupiers would support the town's services and facilities. I therefore afford these matters moderate weight.
18. The proposed dwelling(s) would be adjacent to and viewed against the backdrop of existing housing. Furthermore, the Council recommend a condition requiring the proposed dwelling(s) to be bungalows or dormer bungalows to complement the predominant dwelling type found on Turner Avenue and Oak Avenue. Consequently, the proposal would not appear incongruous within the surrounding area, and it would respect the intrinsic character of its surroundings. Therefore, I afford this significant weight.
19. In my view, there are material considerations that indicate that the proposal should be determined otherwise than in accordance with the development plan in this case.

Conditions

20. I have had regard to the conditions suggested by the Council. Where necessary, I have made amendments to these in the interests of clarity, precision, enforceability and rationalisation. Some of the conditions require details to be submitted prior to commencement. However, in accordance with Section 100ZA(5) of The Town and Country Planning Act 1990, these do not require the prior agreement of the appellant.
21. I have imposed standard conditions relating to the submission and timing of the reserved matters application(s) and the commencement of development. I have specified the approved plan for the avoidance of doubt and in the interests of proper planning. A condition requiring specific details to be submitted with the reserved matter of landscaping is reasonable to ensure the appearance of the development is acceptable. Conditions requiring the submission of information when applying for the approval of the reserved matters in respect of the mix of housing types, type of housing, affordable housing provision and open space are necessary to ensure that the proposal complies with the relevant LP policies, particularly where the proposal may exceed the relevant thresholds.
22. Conditions requiring the proposal to be constructed in accordance with the recommendations detailed within the Flood Risk Assessment² and for finished floor levels to be set at a specific height are necessary to ensure the proposal's future flood resilience. Furthermore, details of the finished floor levels in relation to the existing and proposed ground levels are necessary in respect of flood prevention and to ensure the proposal would have an acceptable

² Site Specific Flood Risk Assessment: Proposed Residential Development Turner Avenue, Withernsea (Ref: P22013-SsFRA_C, dated September 2022 (Rev C dated 31.03.2023) and produced by Humber Civils

relationship with the surrounding housing. Drainage details for the disposal of surface water and foul sewerage is necessary to ensure an adequate system for the drainage of the site is implemented. However, I have amalgamated these conditions in the interests of rationalisation. A condition requiring no obstructions either side of a public sewer that crosses the appeal site is necessary to ensure access is maintained.

23. A management plan for contractors' vehicles and deliveries etc. is necessary to ensure the proposal would not adversely affect the living conditions of the occupiers of neighbouring properties and highway safety during the construction phase of the development. A Wildlife Enhancement Plan is necessary to secure biodiversity enhancements within the appeal site. While a condition in respect of unexpected land contamination is reasonable to protect future occupiers of the development.

Conclusion

24. For the reasons set out above, I conclude that the appeal should be allowed.

A Berry

INSPECTOR

Schedule of Conditions

- 1) Details of the access, 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 plan but only in respect of those matters not reserved for later approval: HARE 01 2022 1B- Block Plan & Site Location Plan.
- 5) If the details required to be submitted in accordance with the reserved matters provide for more than one dwelling, those details shall include a scheme for the provision of a mix of housing types and number. The development shall be carried out in accordance with the approved scheme.
- 6) The details required to be submitted in accordance with the reserved matters shall provide for a scheme of dwellings which are no more than two storeys in height and of a dormer/chalet bungalow design to reflect that of the existing dwellings surrounding the site. The development shall be carried out in accordance with the approved scheme.
- 7) If the number of dwellings proposed is 10 or more, the details required to be submitted in accordance with the requirements of the reserved matters shall include a scheme for the provision of affordable housing as part of the development. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2 of the National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:
 - i) the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of not less than 15% of housing units;
 - ii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
 - iii) the arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing if no RSL involved);
 - iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
 - v) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.
- 8) If the number of dwellings proposed is more than 10, or the combined floor area of the proposed dwellings exceed 1,000 square metres, the

details submitted in accordance with the requirements of the reserved matters shall include a scheme for the provision of open space as part of the development. The details of the open space shall be in accordance with Policy C3 of the East Riding Local Plan Strategy Document and the Open Space Supplementary Planning Document (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) which shall be agreed in writing by the local planning authority. 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, unless otherwise agreed in writing with the local planning authority.

- 9) The details required to be submitted in accordance with the reserved matters shall include details of the proposed finished floor levels of the buildings in relation to the existing and proposed levels of the site and the surrounding land. The buildings shall then be constructed in accordance with the approved levels.
- 10) The details required to be submitted in accordance with the reserved matters in relation to landscaping shall include:
 - i) Proposed finished levels or contours;
 - ii) Means of enclosure;
 - iii) Hard surfacing materials;
 - iv) Planting plans with written specifications (including cultivation and other operations associated with plant and grass establishment), schedules of plants, noting species, plant sizes and proposed numbers/densities;
 - v) A programme for the implementation of the landscaping works; and
 - vi) A scheme for the future maintenance of any areas not included within private curtilages.
- 11) Prior to the commencement of development, a scheme for the disposal of foul sewerage and surface water (to include, where relevant, points of discharge) shall be submitted to and agreed in writing by the local planning authority. The systems should be the most preferential in both the Foul Drainage Hierarchy and the Surface Water Drainage Hierarchy unless there are robust reasons to discount them. There shall be no piped discharge of surface water from the application site. The development hereby approved shall not be first occupied until the foul sewerage and surface water drainage systems have been constructed in accordance with the approved scheme, and thereafter shall be managed and maintained in accordance with the approved plan.
- 12) Prior to the commencement of development, measures to protect the public sewerage infrastructure that is laid within the site boundary shall be submitted to and approved in writing by the local planning authority. The details shall include, but not be exclusive to, the means of ensuring access to the sewer pipe for the purposes of repair and maintenance by the statutory undertaker be retained at all times. If the required stand-off or protection measures are to be achieved via diversion or closure of the sewer, evidence shall be submitted in writing to the local planning

authority that the diversion or closure has been agreed with the relevant statutory undertaker and that, prior to construction in the affected area, the approved works have been undertaken. The development hereby approved shall be implemented in accordance with approved details.

- 13) The details required to be submitted in accordance with the requirements of the reserved matters shall ensure that no building or other obstruction including landscape features is located over or within 6.5m either side of the centre line of the public sewer that crosses the site (i.e. a protected strip width totalling 13 metres).
- 14) The development shall be carried out in accordance with the submitted Site Specific Flood Risk Assessment: Proposed Residential Development Turner Avenue, Withernsea (Ref: P22013-SsFRA_C, dated September 2022 (Rev C dated 31.03.2023) and produced by Humber Civils, and finished floor levels shall be set no lower than 11m above Ordnance Datum (AOD). The mitigation measures shall be fully implemented prior to occupation of any dwelling and in accordance with the scheme's timing/phasing arrangements. The measures detailed above shall be retained and maintained thereafter.
- 15) Prior to the commencement of development, details of the provision of temporary vehicle parking, loading, off-loading, manoeuvring facilities and wheel wash facilities for the contractors carrying out building and construction works on the development hereby approved shall be submitted to and approved in writing by the local planning authority. No building or construction works shall commence until the approved details have been provided for use by contractors. The approved details shall be retained during the construction of the development hereby approved.
- 16) The development hereby permitted shall not progress beyond damp proof course level of the buildings until a Wildlife Enhancement Plan (WEP) 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:
 - i) A detailed plan showing the locations and specification of the enhancement measures;
 - ii) At least two integrated bird nesting boxes such as the Ecosurv Swift Brick, Istock Swift Brick, Schwegler Swift Box No.16 or Woodstone Swift Nest Box (or similar product from an alternative supplier);
 - iii) At least two bat boxes/tubes such as the Schwegler brick box type 27, bat tube 1FR, Habibat bat access slate (or equivalent products from an alternative manufacturer);
 - iv) 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; and
 - v) At least one hedgehog house positioned at a hedge or tree base.The enhancement features shall be installed in accordance with the approved details before first occupation of any dwelling and shall be retained thereafter.
- 17) In the event that contamination not previously encountered is found at any time when carrying out the approved development it must be reported immediately to the local planning authority. An 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.

*****End of Conditions*****