



Appeal Decisions

Site visit made on 30 April 2024

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th May 2024

Appeal A Ref: APP/E2001/W/24/3338185

Ten Acres, York Road, Wilberfoss YO41 5LE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Richard Willis against the decision of East Riding of Yorkshire Council.
 - The application reference is 23/00148/PLF.
 - The development proposed is design modifications to approved timber holiday cabin to provide wooden veranda and hot tub.
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Appeal B Ref: APP/E2001/W/24/3338189

Ten Acres, York Road, Wilberfoss, East Riding of Yorkshire YO41 5LE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Richard Willis against the decision of East Riding of Yorkshire Council.
 - The application reference is 23/00602/PLF.
 - The development proposed is siting of two timber holiday cabins and car parking area including ancillary works.
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Decisions

1. Appeal A and Appeal B are both dismissed.

Preliminary Matters

2. Notwithstanding the description of development for Appeal A in the heading above which has been taken from the application form, the development is more fully described on the Council's decision notice and appeal form as 'Siting of a timber holiday lodge with a raised wooden platform and railings'. The Council determined the application on that basis. I have therefore used that description for the purposes of assessing the proposal. The site for Appeal B includes the site for Appeal A. The appeals are intrinsically linked and raise similar issues. To avoid repetition, I have detailed the findings under a single reasoning section. Nonetheless, each proposal and appeal has been considered on its own planning merits.
3. The National Planning Policy Framework (the Framework) was amended in December 2023. I am satisfied that the amendments made have not had a material bearing on how the appeal proposals are considered. References in the decision are to the December 2023 Framework.

Main Issues

4. The main issues in both Appeal A and Appeal B are:

- the effects of the proposals on the character and appearance of the area;
- whether the appeal sites are appropriate locations for the developments proposed with reference to their vulnerability to flooding; and
- the effects of the proposals on biodiversity.

Reasons

Character and Appearance

5. The appeal sites are located within an attractive rural arable landscape. Fields are bounded by intermittent hedgerows and occasional hedgerow trees. Small areas of woodland are a notable feature in the landscape. These provide a sense of enclosure, which contrasts with the more open and generally flat arable fields and make a positive contribution to the character and appearance of the area. The River Derwent runs through the area, partly set within a flood plain meadow landscape.
6. The site for Appeal A, the single cabin, comprises part of a wooded banked area that lies in between the A1079 road and the River Derwent. The site for Appeal B, the two cabins, comprises a longer length of this wooded bank.
7. On entering East Riding along the A1079 from the west, this embankment and the relatively large trees that sit on it are a notable landscape feature. Their presence in the landscape is made more evident due to the contrast with the flat grassland area immediately to the west, with the trees providing a verdant backdrop in views from vantage points in the vicinity such as from the A1079 to the west. The embankment and the trees on it make a distinctive and positive contribution to the character and appearance of the area.
8. Both appeal sites lie within the River Derwent Corridor and Lower Derwent Valley Important Landscape Area. Policy ENV2 of the 2016 adopted East Riding Local Plan Strategy Document (the ERLP SD) requires proposals to protect and enhance existing landscape character as described in the East Riding Landscape Character Assessment, in particular, within the defined Important Landscape Areas.
9. The appellant has submitted an Arboricultural Impact Assessment¹ (AIA). The AIA appears to consider the effects of the scheme for the two cabins (Appeal B) and not the single cabin that is the subject of Appeal A.
10. Ten trees are identified for removal in the AIA to facilitate the development. This would include two early-mature and two mature trees that the AIA classifies as category B and therefore of moderate quality with an estimated life expectancy of at least 20 years. The crown lifting of an additional four category B trees and one category C tree would also be required. In addition, the AIA identifies that around a further 11 trees, which includes eight classed as category B, would have their root protection area affected by the proposed drainage, where hand digging with root pruning would be undertaken. The AIA states that overall, the arboricultural impacts of the development would be

¹ Prepared by Tree Survey Solutions, reference 23019

moderate, principally due to the culmination of tree removals and the root pruning to facilitate underground utilities.

11. The submitted site plan for the single cabin identifies that three trees would be removed. One of these appears to be a category C tree also identified for removal in the AIA.
12. The character and appearance of the wooded bank would be altered due to the extent of tree removal and crown raising that would be required to facilitate both developments. This would be particularly so for the scheme that is the subject of Appeal B as the works would be more extensive. By reducing the line of trees and the linear spread of the tree canopy that is visible in the surrounding area, the positive contribution that the wooded bank makes as a landscape feature would be markedly diminished.
13. The three cabins that are proposed in the appeal schemes would have the same design and footprint. They would include a large veranda with a hot tub. While the rear part of the cabins would be located on the top of the bank, much of the building and verandas would be suspended on stilts over the sloping bank.
14. The combination of the loss of tree cover, the scale of the proposed cabins and verandas and their location projecting outwards from the tree line and sloping bank means that the proposed developments would have a significant adverse visual presence when viewed from the wider area. In addition, the positioning of the cabins extending out over the wooded bank would further erode its legibility as a positive landscape feature. The illumination that would occur, the car parking areas and general activities that would be associated with the cabins would exacerbate the encroaching urbanising effect of the proposed developments within a defined Important Landscape Area.
15. The proposals would therefore not integrate appropriately with the character and appearance of their surroundings. Although new planting is proposed, it would take a considerable amount of time to establish to make any meaningful contribution to the filtering or screening of the developments, or to compensate for the removal of several large trees and the crown lifting that would alter the form and appearance of a number of other trees.
16. There is an extant planning permission for a holiday cabin at the site. However, the submitted evidence indicates that this is in a different location to the three cabins proposed in the schemes that are the subject of Appeals A and B. Furthermore, it does not include the large veranda that is proposed for the cabins in the appeal schemes and would not involve a projection out over the wooded bank. This extant permission is for only one cabin and so it would be reasonable to conclude that the extent of tree works and removal would be less than at least the scheme under Appeal B which is for two cabins located further along the wooded bank to the north.
17. I acknowledge that local and national planning policies are supportive of tourism developments, notably Policies S4 and EC2 of the ERLP SD and paragraph 88 of the Framework. However, for the reasons given, the proposals would not respect the intrinsic character and appearance of their surroundings and the scale and cumulative impact of the proposals would not be appropriate for the locations proposed, as required by Policies S4 and EC2. Nor would the

proposals respect the character of the countryside as required by paragraph 88.

18. The appellant refers to examples of tourism accommodation in the area that it is claimed are more prominent than the proposed cabins would be. There are only very limited details of these examples before me. However, the Council's evidence identifies that the cabin across the road from the appeal sites is unauthorised and that other static and lodge developments in the wider area have in the main historically been touring caravan sites that have changed to static units over time. Based on the available evidence, I do not find these developments to be directly analogous to the appeal proposals, which I have in any event considered on their own planning merits.
19. For the reasons given, I conclude that the proposals would significantly harm the character and appearance of the area. Consequently, they would conflict with Policies S4, EC2 and ENV2 of the ERLP SD as summarised above. There would also be conflict with Policy ENV1 of the ERLP SD which requires proposals to contribute to safeguarding and respecting the diverse character and appearance of the area, and the design objectives of paragraph 135 of the Framework and Policies C1 and I1 of the National Design Guide.

Flood Risk

20. Policy ENV6 of the ERLP SD directs development to areas at the lowest probability of flooding by applying a sequential test. Chapter 14 of the Framework also requires a sequential test to steer new development to areas with the lowest risk of flooding, with paragraph 168 stating that development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The description of 'reasonably available sites' in the Planning Practice Guidance² is 'those in a suitable location for the type of development with a reasonable prospect that the site is available to be developed at the point in time envisaged for the development. These could include a series of smaller sites and/or part of a larger site if these would be capable of accommodating the proposed development'.
21. The applications were accompanied by a Flood Risk Assessment³ (FRA) and Flood Risk Assessment Addendum report⁴ (FRA Addendum). While noting the appellant's view that the FRA and FRA Addendum assess up to six cabins, not specifically six, the FRA Addendum states that 'In order for the site to be considered appropriate for the development proposed the alternatives sites would normally have to be a similar-sized site (i.e., be capable of accommodating the proposed development)'.
22. In my view, it would not be unreasonable to conclude that the land requirements for a single cabin as in Appeal A, or two as in Appeal B, would be different to a development of up to six cabins. There is no evidence before me to demonstrate what consideration has been given to reasonably available sites for the scale of the developments that are proposed.
23. While permission has been granted for a cabin at the site, as noted above the evidence indicates that this is in a different location to those now proposed.

² Paragraph: 028 Reference ID: 7-028-20220825

³ Prepared by Stephen Locke Associates, dated November 2021

⁴ Prepared by Stephen Locke Associates, dated March 2022

Furthermore, there is no evidence before me as to what considerations were given to flood risk including any sequential test.

24. On this basis, in my judgement, the appellant has failed to demonstrate that there are no reasonably available sites appropriate for the proposed developments in areas with a lower probability of flooding. The sequential test for both proposals has not therefore been passed. Given that the sequential test has not been passed, it is not necessary for me to address the exception test.
25. For the reasons given, I conclude that the appeal sites are not appropriate locations for the developments proposed with reference to their vulnerability to flooding. Consequently, the proposals would conflict with Policy ENV6 of the ERLP SD and paragraph 168 of the Framework as summarised above.

Biodiversity

26. Both proposals were accompanied by the same Preliminary Ecological Appraisal⁵ (PEA) dating from August 2021. The PEA covers a wider area than the appeal sites and is not specific to the proposed developments. The PEA identifies the potential for protected species to be present within the area. Further surveys recommended in the PEA include water vole, otter and bats, dependant on the detail of the development. The consultation response of the Council's nature conservation officer relating to the Appeal B proposal identifies additional surveys. I am not aware that these surveys have been undertaken.
27. Based on the PEA and the consultation response of the Council's nature conservation officer, there is a reasonable likelihood that protected species would be affected by the proposals, the effects of which are currently unknown. Paragraph 99 of Circular 06/2005 (the Circular) states that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. The Circular advises that surveys should only be required by condition in exceptional circumstances. In my view there are no exceptional circumstances in these cases that would justify a condition requiring further survey work. Without the necessary surveys being carried out, I am unable to determine what mitigation may be required to adequately safeguard protected species.
28. The sites are close to the River Derwent Site of Special Scientific Interest and Special Area of Conservation (SAC), and the Lower Derwent Valley SAC, Special Protection Area (SPA) and Ramsar site. The SPA and SACs are European protected sites afforded protection under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). Paragraph 187 of the Framework confirms that listed Ramsar sites should be given the same protection as European protected sites. Primary reasons for the designations include the presence of river lamprey, lowland hay meadow and alluvial flood meadow habitats, and the populations of wintering waterfowl and spring passage wading birds.
29. Based on the submitted evidence, there is no reason for me to dispute Natural England's advice⁶ that there is not enough information to rule out a likely

⁵ Prepared by Whitcher Wildlife Ltd, dated 26 August 2021

⁶ Consultation response on application reference 23/00148/PLF dated 6 April 2023

significant effect on the River Derwent SAC arising from direct discharge of foul water to the watercourse. There is also the potential for impacts on the water quality of the Lower Derwent Valley European protected site and increased recreational use from occupants that could lead to disturbance of its habitats and species either alone or in combination with other plans and projects in the area.

30. Regulation 63(2) of the Habitats Regulations places the onus on the appellant to provide enough information for the competent authority (i.e., the decision maker) to establish whether an Appropriate Assessment (AA) is required and to undertake an AA. Such information has not been provided.
31. As I cannot rule out likely significant effects on the qualifying features of the European protected sites arising from the proposals either alone or in combination with other plans and projects, I am required to undertake an AA. Considering the conservation objectives of the European protected sites, and taking a precautionary approach given the absence of information to the contrary, I am unable to rule out beyond all scientific doubt that the proposals would not have an adverse effect on the integrity of the European protected sites either alone or in combination with other plans and projects due to effects on water quality and from recreational disturbance.
32. The extant permission for the holiday cabin was originally granted in 2017 and varied in 2021 to enable a larger lodge. However, the Council states that the red line boundary for the proposal that is the subject of Appeal A is outside of the previously approved location. The proposal under Appeal B is for an additional two cabins to the north. I cannot therefore be certain that the ecological issues would be the same as the current appeal proposals. Furthermore, any ecological survey work to support the approved development would be more than two years old and there is no evidence before me to confirm that any findings would remain relevant. In addition, there is no evidence as to whether an AA was undertaken.
33. Given the uncertainties set out above, I cannot conclude that the proposals would not have an unacceptable effect on biodiversity interests. Hence, the proposed developments would be contrary to the habitat and biodiversity requirements of Policy ENV4 of the ERLP SD and also paragraph 186 of the Framework.

Other Considerations

34. The appellant identifies that the Council's tree officer did not object to the proposals. However, the absence of objection does not in itself render the schemes acceptable.
35. Given the proposed use, the cabins would likely be reached more often than not by private motor vehicle although I noted bus stops on the A1079 in relatively close proximity, albeit that no details of the frequency of services have been submitted in evidence. No detail is given on the location of the sites in relation to visitor attractions. However, the appeal proposals would add to the visitor accommodation offer in an area where table 6 of the ERLP SD identifies self-catering accommodation which draws visitors to the Yorkshire Wolds as a key tourism accommodation requirement. This weighs positively in favour of the proposals.

36. Environmental benefits arising from the sustainable nature of the materials are referenced. However, no specific details are provided other than on the application form which identifies timber walls, felt tiled roofs and pvc windows. I attribute very limited weight to this matter.
37. There would be some limited short term economic and social benefits during construction of the cabins and longer term through visitor spend in the local area and the servicing of the accommodation. However, I do not afford such benefits very significant weight given the quantum of development proposed.

Planning Balance and Conclusion

38. For the reasons outlined above, the proposals would conflict with the development plan taken as a whole. Significant harm would be caused to the character and appearance of the area, in flood risk terms the sequential test is not passed, and I am unable to conclude that the proposals would not cause harm to biodiversity, including protected species and European protected sites. These are matters of overriding concern and are not outweighed by the above other considerations. Therefore, I conclude that both appeals should be dismissed.

F Wilkinson

INSPECTOR