



Appeal Decision

Site visit made on 5 November 2024

by C Skelly BA (Hons) MSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th December 2024

Appeal Ref: APP/E2001/W/24/3348708

Land North of Long Lane, Driffield, East Riding of Yorkshire YO25 5HF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) (TCPA) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Barratt David Wilson Homes against the decision of East Riding of Yorkshire Council.
 - The application Ref is 24/01429/STVAR.
 - The application sought planning permission for the erection of 165 dwellings with associated infrastructure and landscaping without complying with conditions attached to planning permission Ref 17/04066/STPLF, dated 13 August 2018.
 - The condition in dispute is No 18 which states that: Prior to the occupation of plot numbers 68 to 96 and 163 to 166 inclusive, details of the location and design of any highway features which will prevent through vehicular traffic, other than emergency vehicles, pedal cyclists and pedestrians, to the remainder of the allocation DRF-B, shall be submitted to and approved in writing by the Planning Authority. A timetable for its installation shall be submitted as part of the details and this shall be prior to the occupation of any later phases of residential development to the south of Long Lane which adjoin the application site boundary. The barrier shall prevent future vehicular access to any dwellings south of the Bridleway along Long Lane; these shall then be accessed via Northfield Road or other such access, with access to be agreed as part of a future planning application. Once provided, the highway barrier feature shall thereafter be so retained unless any variation to its design or position is subsequently agreed in writing by the Local Planning Authority. For the avoidance of doubt, all dwellings proposed under this application including plots 163 to 166 inclusive will be accessed via the main site vehicular access from Long Lane until such time that a more suitable vehicular access can be secured via the remainder of the allocation.
 - The reasons given for the condition is: to secure a suitably designed and located highway feature to prevent vehicular access to this portion of the housing allocation from the wider DRF-B allocation, to prevent an increase in traffic onto Long Lane or link to the wider highway network which has not been previously assessed as part of any Transport Assessment, as well as minimising impacts on the Bridleway.
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Decision

1. The appeal is allowed and planning permission is granted for 165 dwellings with associated infrastructure and landscaping at Land North of Long Lane, Driffield, East Riding of Yorkshire YO25 5HF in accordance with the application Ref 24/01429/STVAR, without compliance with condition number 18, previously imposed on planning permission Ref 17/04066/STPLF dated 13 August 2018 and subject to the conditions set out in the attached schedule.

Preliminary Matter

2. The application form cites the address as 'Land South of Long Lane'. However, the original permission was for 'Land North of Long Lane'. The Council used this in their Decision Notice and therefore I have used this as the address in my appeal decision.

Background and main issue

3. The appeal site is located on the northern edge of Driffield and comprises phase 1 of a wider area of land allocated in the East Riding Local Plan Allocations Document (LPAD) (2016). This includes five separate sites and requires a new principal access road to the A614 linking with new access to Bridlington Road. A masterplan for the allocation has been adopted by the Council as the Lane North of Driffield Masterplan (2019). The masterplan shows crossing of the bridleway for emergency access only. Phase 1 is substantially complete, and permission has been granted for phase 2 of the allocated site, located to the south of the bridleway.
4. The appellant has applied to vary condition 18 which requires the approval of traffic measures to be put in place to prevent vehicular development to the south of the bridleway. The wording of the condition requires that measures should be agreed and put in place before the occupation of any further houses approved to further phases of development. Bollards restricting vehicular access across the bridleway were approved as part of the discharge of the condition (19/30419/CONDET). The appeal seeks permission to vary the timescale set out in condition 18 to allow a temporary relaxation of when the bollards are to be installed to allow 40 dwellings on phase 2 to be occupied.
5. As part of the appeal the appellant has submitted a new planning obligation pursuant to s106 of the TCPA in the form of a unilateral undertaking. The new obligation carries over all the terms of the original agreement. This has been signed by both parties and sealed.
6. Therefore, the main issue is the effect of the variation of condition 18 on the integrity of Driffield Bridleway No 3.

Reasons

7. Driffield Bridleway No 3 runs along the southern boundary of the appeal site, connecting to Scarborough Road and then north over the A614. The west of the bridleway is part of the estate access, and then runs to the rear of dwellings along Highfield Avenue. The eastern section beyond the temporary vehicle access, runs through countryside and is more rural in character. The footpath is well used by residents for recreation and dog walking. There are four properties located to the south of the bridleway, which form part of the phase 1 permission.
8. A Transport Assessment was submitted to support phase 1, based on 165 dwellings as a standalone residential development with no vehicular links to the wider allocation and to the proposed roundabout on the A614 other than for emergency vehicles.

9. Following the approval of phase 1, the appellant undertook an extended Transport Assessment which demonstrated that Long Lane remained a suitable access for additional traffic growth and the barrier restrictions were unnecessary. A S73 application was submitted in August 2022 under reference 21/00632/STVAR, which sought the removal of condition 18 entirely. This application was refused as it would fail to protect the public right of way.
10. Since the refusal of this application, consent has been granted (reference 21/045057) for 200 dwellings, landscaping and associated infrastructure to the south of Long Lane. This site is being delivered by the same developers as the appeal site. The permission of phase 2 included a single point of access via Cemetery Lane and when available via the A614/Bridlington Road link. In this decision neither the roundabout or Long Lane access were relied upon to support the approval of the scheme. The appellant puts forward that the variation of condition 18 is necessary to separate construction traffic in phase 2 from other access for health and safety reasons.
11. The Construction Traffic Management Plan (CTMP) for phase 2 proposes that construction traffic for this site is separated from residential traffic by routing it via Long Lane. It is proposed that this would be up to the occupation of the 40th dwelling approved under 21/0457/STPLF, which would be a total of 44 dwellings with the inclusion of phase 1. After this time the bollards would be installed to prevent ongoing vehicular access across the bridleway.
12. Outline planning permission has also been granted for the land to the east of the appeal site and an application for reserved matters has been received which includes the roundabout link.
13. Drawing plan (P21:5512.01 DD) has been submitted with this application which shows that 41 dwellings in phase 2 are anticipated to be occupied by July 2025. A Transport Note by Development Planning Limited (2024) has been submitted with the application. This states that traffic movements along Long Lane would gradually increase over this period. Based on the approved Transport Assessment for Phase 2, the additional use of Long Lane by 40 dwellings would create a maximum peak hour traffic flow of 23 two-way peak hour vehicle movements. Traffic generation would reach this level in approximately 12 months.
14. The bridleway is a well-used route which provides a range of benefits to local residents with regards to health and recreation. Although the Council agreed the road crossing, it was clearly anticipated to be a short-term measure to support access to four properties pending the creation of permanent access from the south.
15. This proposal is different to the previous application in that it seeks to vary the timescales for the installation of the bollards, rather than remove the requirement completely. Although there would be a further increase of vehicular movements over the bridleway, this would increase gradually over 12 months to a maximum of 23 two-way peak movements. Therefore, movements across the bridleway would slowly increase as more dwellings are occupied. However, the continued severance of the bridleway would only be on a temporary basis for approximately 12 months.
16. The proposal would also ensure that construction traffic would not utilise Long Lane, which appears to have been the cause of many of the complaints raised

by local residents. The separation would also mean that occupiers of the existing 4 dwellings from phase 1 and the first 40 dwellings of phase 2, would not have to drive through a busy construction site. There are therefore clear benefits in terms of health and safety which weighs significantly in favour of the appeal.

17. I recognise that concerns have been raised by the parties in relation to conflicts between users of the bridleway and vehicles, particularly construction traffic. However, the proposal would not allow for the use of Long Lane by construction traffic. Comments have also been raised that restrictions put in place to address safety concerns over the crossing, restricted the free movement of the bridleway by different users. I noted on my site visit that the kissing gates which had been erected have since been partially removed as a result.
18. There are fears that the temporary extension of the crossing would lead to the permanent severance of the bridleway. However, I am satisfied that a new condition would provide clear timescales in relation to when the vehicle crossing would be closed and bollards installed. This would ensure that over the longer term the integrity of the bridleway would be protected, whilst resolving potential health and safety problems which would arise from the sharing of access by residents and construction vehicles.
19. Therefore, I conclude that the temporary nature of the proposal would not harm the integrity of Driffeld Bridleway No 3. Thereby, the proposal would not conflict with policy S8 of the East Riding Local Plan Strategy Document (2016) which seeks amongst other things to ensure that existing footpath networks are protected. Neither do I find conflict with paragraph 104 of the National Planning Policy Framework which states that decisions should protect and enhance public rights of way and access, including taking opportunities to provide better facilities for users.

Other matters

20. A number of comments have been submitted with regards to the condition of the roads and bridleway. However, these are not matters for me to consider as part of this appeal.

Conditions

21. By allowing this appeal a new planning permission is granted. The national Planning Practice Guidance advises that, for clarity, decision notices for the grant of planning permission under section 73 should restate the conditions imposed on earlier permissions that continue to have effect unless they have already been discharged.
22. The Council has provided a list of conditions and reasons given, which reflect subsequent discharges of conditions. I have replaced condition 18 with a condition (16) which requires the installation of the bollards in accordance with the approved phasing plan, to provide clear timescales.
23. As the development is substantially complete it has not been necessary to impose a commencement of development condition. I have imposed a condition relating to approved plans layout for the avoidance of doubt (1).

24. In order to protect the character and appearance of the area and the living conditions of existing and future residents, I have imposed conditions to ensure the implementation of approved plans relating to technical layout, landscaping works, boundary fencing, landscape management, tree surveys and tree protection, public open space, operation hours, construction safety and noise impact (2, 3, 4, 5, 6, 7, 8, 9 and 10)
25. In order to ensure that the development can be safely occupied and to protect the environment, a condition is necessary requiring the investigation and remediation of any contamination that may be encountered during construction is required to ensure risks are minimised and that the development is carried out safely (11).
26. A condition relating to the reports required as set out in the written scheme of investigation archaeological trial trenching is necessary as the site is within a major archaeological landscape where prehistoric and Romano-British settlement has been recorded (12).
27. To encourage sustainable transport, a condition is necessary requiring implementation of the approved travel plan (13).
28. In the interests of highway safety, conditions are necessary to ensure development is carried out in accordance with approved plans (14 and 15).
29. A condition is necessary to ensure that protected species and priority habitats would not be harmed by the development (17).
30. Conditions are necessary to ensure that the development provides satisfactory drainage (18). In order to protect the public water supply, conditions are required to ensure development is carried out in accordance with approved plans (19 and 20).

Conclusion

31. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without the disputed conditions but substituting others and restating those undisputed conditions that are still subsisting and capable of taking effect.

C Skelly

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with drawing numbers:-
 - Site location plan P17-5067-03 Rev A dated August 2017
 - Site layout plan P17-5067-01 Rev jj dated 3/5/22
 - Garage details P17-5067-05 dated August 2017
 - Boundary treatments P17-5067-06 dated August 2017
 - Substation details GTC-E-EA-0001_R7-4GTC-E-SS-0012_R1-8 dated 10/9/2014
 - House Types; Elevations and Floor Plans - P17-5067-10 to P17-5067-30 inclusive

Amber House - Plots 34-37 - Proposed Floorplans and Elevations Ref. BHMP-PAD

Denby (AS) - Proposed Floor Plans & Elevations drawing no.BDW-STD-HT-2057 dated January 2019

Denby (OP) - Proposed Floor Plans & Elevations drawing no.BDW-STD-HT-2058 dated January 2019

Denford (AS-OP) - Proposed Floor Plans & Elevations drawing no.BDW-STDHT- 3128 dated July 2020

Ellerton (AS-OP) - Proposed Floor Plans & Elevations drawing no.BDW-STDHT- 3143 dated September 2020

Ellerton (OP-AS) - Proposed Floor Plans & Elevations drawing no BDW-STDHT-3144 dated September 2020

Landscape & Ecological Proposals Sheet 1 of 3 drawing no.P17:5067:101 Rev.L dated 1/9/20

Landscape Ecological Proposals Sheet 2 of 3 drawing no.P17:5067:102 Rev.L dated 1/9/20

Landscape Ecological Proposals Sheet 3 of 3 drawing no.P17:5067:103 Rev.L dated 1/9/20

Denford Classic (End – Hipped AS) BDNF 00HE drawing no.01 Rev B dated March 2021

Denford Classic (End – Hipped OPP) BDNF 00HE drawing no.02 Rev B dated March 2021

Denford Classic (End AS) BDNF 00CE drawing no.01 Rev B dated March 2021

Denford Classic (Mid AS) BDNF 00CI drawing no.01 Rev B dated March 2021

Denford Classic (Mid OPP) BDNF 00CI drawing no.02 Rev B dated March 2021

Kenley Classic (Mid) OPP (Plot 116) BKNL 00CI drawing no.02 Rev G dated March 2021

Phasing Plan P21:5512.01 DD rec'd 8 July 2024

- 2) The development shall be constructed in accordance with the details shown on the "Technical Layout" drawing no. P17 5067 250 Rev.B received 13 February 2019 and approved by application 19/30060/CONDET unless otherwise agreed in writing by the Local Planning Authority.
- 3) All Hard and soft landscaping works shall be carried out in accordance with the details shown on "Landscape Proposals Sheet 1 of 3" drawing no. P17 5067 101 Rev B; "Landscape Proposals Sheet 2 of 3" drawing no. P17 5067 n102 Rev B; "Landscape Proposals Sheet 3 of 3" drawing no. P17 5067 103 Rev B; and "Estate Conveyance " drawing no. P17 5067 251 Rev O, received 20 February 2019 and all approved by application 19/30060/CONDET.
- 4) All boundary fencing shall be carried out in accordance with the details shown on drawing no. P17 5067 250 Rev B received 13 February 2019, "Close Boarded Fence" drawing no. DB-SD13-006 Rev.A; and "2m High Acoustic Fence" drawing no. DB-SD13-006_YE all received 12 February 2019 and approved by application 19/30060/CONDET.
- 5) Landscape management shall be carried out in accordance with the details shown on "Landscape management Plan" drawing no. P17 5067 105 Rev. O

received 19 February 2019 and approved by application 19/30060/CONDET.

- 6) Tree surveys and tree protection shall be carried out in accordance with the details shown on "Tree Survey Report"; "Tree Survey Layout" and "Barratt Tree Protection Plan" all received 12 February 2019 and approved by application 19/30060/CONDET.
- 7) All public open space details shall be carried out in accordance with the details shown on "Landscape Proposals Sheet 1 of 3" drawing no. P17 5067 101 Rev B received 12 February 2019; "Landscape Proposals Sheet 2 of 3" drawing no. P17 5067 102 Rev B received 12 February 2019; "Landscape Proposals Sheet 3 of 3" drawing no. P17 5067 103 Rev. B received 12 February 2019; "Estate Conveyance" drawing no. P17 5067 251 Rev O received 20 February 2019 and "Mortimer Park Plan" drawing no. Q5561 Rev A received 2 April 2019 all approved by application 19/30060/CONDET.
- 8) Deliveries to and from the site, the loading or unloading of raw materials and operation hours during the construction phase of the development shall be restricted to the hours of 07.00 and 18.00 Monday to Friday and 08.00 to 13.00 on a Saturday, except as may otherwise be agreed in writing with the Local Planning Authority. No deliveries or operation hours shall take place on Sundays or Bank Holidays.
- 9) The development shall be carried out in accordance with the details shown in the "Construction Phase Safety, Health and Environment Plan" and "Execution Plan" drawing no. P17 5067 01 Rev F received 6 February 2019 and approved by application 19/30060/CONDET. The approved facilities shall be retained and used by contractors during the entire construction period.
- 10) Development shall be carried out in accordance with the recommendations set out within section 5 of the submitted Noise Impact Assessment by ENS (03/03/13) unless any variation is previously agreed in writing with the Local Planning Authority.
- 11) 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. 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.
- 12) Within 3 months of the date of this permission, the reports required by section 7 of the "Written Scheme of Investigation Archaeological Trial Trenching" prepared by MAP Archaeological Practice received 19 November 2018 and approved by application 18/30471/CONDET shall not be implemented until this report has been agreed in writing by the local planning authority.

- 13) The development shall be carried out in accordance with the Travel Plan submitted 28 October 2019 and approved by application 19/30419/CONDET. The Travel Plan shall be implemented as approved.
- 14) The development shall be carried out in accordance with "proposed Road Lighting Layout" drawing no. L&S/MR/DRIFF 01; "Typical Highways Construction Details" drawing no. P18-00921-M2-C-015-1; "section 38 Layout Plan" drawing no. P18-00921-M2-C-016-1; "Section 104 Layout Plan" drawing no. P18-00921-M2-C-020-1 and "vehicle Tracking" drawing no. P18-00921-M2-C-029-1 all received 5th December 2018 and approved through application 18/30471/CONDET.
- 15) The development shall be carried out in accordance with the details shown on the "Estate Conveyance" Plan, drawing no. P17 5067 250 – N received 4 October 2019 and the "Covering Note" received 15 October 2019 and approved by application 19/30387/CONDET. The approved provision shall be retained for the parking of these motorcars and not used for any other purpose.
- 16) The bollards approved under 22/30418/CONDET shall be installed across the Driffield Bridleway No.3 in accordance with approved details and the timetable set out in the annotated phasing plan drawing no. P21:5512.01 DD received 8/7/2024. The bollards shall prevent through vehicular traffic other than for emergency vehicles, cyclists and pedestrians and shall thereafter be retained.
- 17) The development shall be carried out in accordance with the details shown in the "Construction Environment management Plan (CEMP:Biodiversity)" Ref. R-2959-02 and "Biodiversity Management Plan" Ref. R-2959-03 received 9 April 2019 and approved by application 19/30060/CONDET.
- 18) The development shall be carried out in accordance with "Drainage Layout Plan Sheet 1 of 3" drawing no. P18-00921-M2-C-04-3; "Drainage Layout Plan Sheet 2 of 3" drawing no. P18-00921-M2-C-05-2; Drainage Layout Plan Sheet 3 of 3" drawing no. P18-00921-M2-C-06-2; "Surface Water Manhole Schedules" drawing no. P18-00921-M2-C-010-3; "Foul Water Manhole Schedules" drawing no. P18-00921-M2-C-011-2; "Surface Water 1st Off Manhole Schedules" drawing no. P18-00921-M2-C-012-2; "Foul 1st Off Manhole Schedules" drawing NO. p18-00921-C-013-2; "Standard Manhole Construction Details" drawing no. P18-00921-C-014-2; and "Section 104 Layout Plan" drawing no. P18-00921-C-020-1 all received 5th December 2018 and approved through application 18/30471/CONDET.
- 19) The development shall be carried out in accordance with the "Main Scheme Design" drawing no. B.5.046.2438 received 5 December 2018 and approved by application 18/30471/CONDET.
- 20) The development shall be carried out in accordance with the details shown on the "Yorkshire Water Main Scheme Design", drawing no. B.5.046.2438 received 4 October 2019; "Site Guide to Water Mains and Services" received 4 October 2019; and the "Covering note" received 15 October 2019; a;; approved by application 19/30387/CONDET. The development shall be carried out as approved.

End of schedule