



Appeal Decision

Site visit made on 9 January 2025

by **L N Hughes BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 31st January 2025

Appeal Ref: APP/E2001/W/24/3348544

Lethendy, The Green, Bishop Burton HU17 8QA

- 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 Paul Stanniford against the decision of East Riding of Yorkshire Council.
 - The application Ref is 23/03458/PLF.
 - The development proposed is the erection of 4 detached dwellings with 3 detached garages and associated works following demolition of existing dwelling and garage.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the proposal on the application form cites; demolition of the existing house and development of 4 detached homes. The appeal form and decision notice description cites; erection of 4 detached dwellings with 3 detached garages and associated works following demolition of existing dwelling and garage. I have therefore used the latter for my decision as it provides more clarity.
3. The appellant's appeal submission evidence includes a Preliminary Roost Assessment and Bat Emergence Survey Report (surveys May/June 2024), and an additional Landscape Report (April 2024). These documents, and the appellant's conclusions based upon them, were not before the Council at the time of its determination. The Council has deferred to me to determine whether it is appropriate and reasonable to accept this additional information, with reference to paragraph 16.1 of the 'Procedural Guide: Planning appeals – England', whereby the appeal process should not be used to evolve a scheme.
4. However, it is very common for an appeal to include additional reports and evidence to attempt to overcome the reasons for refusal. The Council and interested parties had the full opportunity to comment upon all of the appellant's new appeal evidence, although the Council chose not to do so in any detail. The Bat Report does not evolve the parameters of the scheme.
5. Similarly, the additional tree planting proposed within the Landscape Report does not amend the scheme's overall layout. Soft landscaping and precise planting details are commonly deferred to the condition stage, so I could impose a condition to require any further details to be agreed. As such, I therefore see no reason why I should not accept these reports into the evidence. To do so would be in accordance with the substantive and procedural tests of the *Holborn Studios Ltd* judgement¹, with no parties prejudiced in the interests of natural justice.

¹ *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin)

6. The East Riding Local Plan Update, comprising a Strategy Document Update and Allocations Document Update, was submitted for examination in 2023. The Council's initial evidence identified that there had been no determination yet as to whether particular policies were likely to be found sound, and so limited to no weight should be given to its draft policies. However, the appointed Planning Inspector issued their final report on 30 December 2024 and found the Update to be sound subject to a number of modifications. The Local Plan Update is now intended for adoption by Full Council on 2 April 2025, and would replace the extant 2016 Local Plan. The Government also published a revised version of the National Planning Policy Framework ('the Framework') on 12 December 2024.
7. I therefore invited the main parties to comment on whether this updated Local Plan position has any relevance or implications for this appeal, or if these Framework changes are substantive in relation to this appeal. I discuss this matter within the Planning Balance.

Main Issues

8. The main issues are the effect of the proposed development upon:
 - the character and appearance of the area, with particular regard to the preservation or enhancement of the Bishop Burton Conservation Area;
 - highway safety, with particular regard to the site access, and
 - protected species.

Reasons

Character and Appearance

9. The site comprises a corner plot at the junction of the A1079 York Road and The Green. It slopes upwards from west to east, with a large garden forming the frontage, and the 'Lethendy' bungalow within the highest eastern part. Its boundaries comprise dense and high hedging and trees, and the garden contains a small orchard. It fronts onto one of the village greens which forms part of the village's historic core.
10. The proposal is to demolish the existing dwelling, remove most of the trees within the site, and erect four dwellings and associated detached garages accessed off the existing driveway. The access would be widened, the majority of the boundary vegetation retained, and new trees planted.
11. The site lies within the Bishop Burton Conservation Area (CA), and so I have a statutory duty under section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing its character or appearance. Section 16 of the Framework requires great weight to be given to the conservation of designated heritage assets.
12. Policy ENV3 of the East Riding Local Plan 2012-2029 Strategy Document (ERLP) takes a very similar approach. In combination with the ERLP Policies A1(C)(4) and ENV1, they require the conservation of the significance, views, setting, character, appearance, and context of heritage assets, especially of the historic cores of medieval settlements, and those elements that contribute to the special interest and the significance of CAs, including landscape setting, open spaces, key views, and vistas. Development will be supported where it achieves a high quality of design, and respects the diverse character and appearance of the area through design,

layout, and scale. The Framework paragraph 135 also requires developments to be sympathetic to local character and history, and to maintain a strong sense of place.

13. The Bishop Burton CA covers almost the entirety of the former estate village on the main road between York and Beverley. Its significance arises from its still evident original medieval settlement plan centred around the Church and village greens, with a streetscape characterised by harmonious buildings fronting the streets, of comparatively uniform scale and a limited material palette. Historic England notes that the rhythm and ratio of buildings to open spaces makes an important contribution to the distinctiveness of the village. Nearly all the properties are brick, with a high predominance of white painted brick with black contrasts, reinforcing the streetscene cohesion.
14. The most important open spaces are the two village greens, The Mere, and two paddocks. Alongside predominantly hedgerow boundaries and significant vegetation, this strengthens and emphasises the village's rural antecedents. The collective character of the open space also results from their framing by the buildings and spaces around them, to which the appeal site particularly contributes due to its rising topography and prominent verdancy. This openness and verdancy helps to create a sense of drama on arrival to the central part of the CA, after approaching through more enclosed streetscapes. Despite no views being gained entirely across the appeal site, and being much smaller and self-contained than those public spaces, it clearly contributes to this sense of space.
15. The Council and the statutory consultees raise no objection to the demolition of the existing dwelling, which is considered to have limited heritage interest and makes a neutral contribution to the character and appearance of the CA. They also raise no objection to the proposed dwellings' individual designs, one and a half storey height, and materials, as these would be in keeping with the character of the CA. I see no reason to take a different view.
16. Despite this however, the insertion of the relatively dense built form of the dwellings within the site would be clearly visible above and through its boundary vegetation, and from multiple vantage points. This includes in views across The Mere and across the greens, which currently allow the best appreciation of the character and appearance of the CA. This massing would detract from and be over-dominant to the overall open character as a significant aspect of the CA.
17. This impact would be reinforced by the wider driveway opening, which would thus allow for increased exposure of the site, particularly the hardstanding and massed form alongside Plot 1. Plot 4 would also project slightly taller in height than the existing dwelling, with a greater and more prominent west facing gable.
18. The cul-de-sac form would contrast with the village's general settlement pattern. The denser cul-de-sac housing immediately to the north of the appeal site is in a different context, with no prominent corner position. The historic properties directly fronting The Green gain additional prominence and significance in juxtaposition to the appeal site, whereby the Lethendy dwelling is visible, but set far back as far as possible. While some parts of buildings to the north are visible beyond the appeal site in some views, a strong precedent or main character reference point is therefore not set. The cumulative scale and massing of the proposal would thus reduce the existing openness to the extent of causing harm to the significance of the CA.

19. I also have a statutory duty under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to consider the impact of the proposal on the special architectural and historic interest of listed buildings and their settings. The Grade II Westfield Farmhouse, dating from the late C18, lies to the north of the appeal site. Its significance lies in its historic contribution to the development of the village, and in forming a cohesive character with the other period dwellings. However, its setting would be unaffected due to its relatively sheltered location and the presence of intervening existing development.
20. Similarly, the significance and setting of the Grade I listed Church of All Saints would be unaffected, as it lies 100m to the south of the appeal site, with the A1079, existing development, and tree cover in between. The Grade II listed Old Village Pump on the edge of The Mere on Church Lane would lie within some views which would also encompass the new dwellings. However, it would not be over-dominated, and is of such a specific and different form and function such that there would be no impact upon its significance.
21. In totality, I find that the proposal would cause moderate harm to the character and appearance of the area, and would fail to preserve or enhance the CA. As such it would conflict with the ERLP Policy S4(B), which specifies that new housing can be supported if it would not detract from the character and appearance of the village. It would also conflict with aspects of the RLP Policies A1, ENV1, and ENV3(B), as already outlined above.
22. The proposal would thus cause less than substantial harm to the significance of the CA as a designated heritage asset, to which the Framework paragraph 212 requires that I give great weight. The LPSD Policy ENV3(C) states that development that is likely to cause harm to the significance of a heritage asset will only be granted permission where the public benefits of the proposal outweigh the potential harm. The Framework paragraph 215 similarly requires less than substantial harm to the significance of the CA to be weighed against the public benefits of the proposal. I therefore return to this matter within my planning balance.

Highway Safety

23. The Council considers that insufficient information has been provided to demonstrate that safe and practical access and egress to and from the site can be achieved for all users and vehicles, specifically because no visibility splays have been provided. The Highway Authority concurs that it is not clear whether the driveway width would be sufficient to provide the required visibility.
24. However, there have been no records of adjacent accidents for the period for when data is available between 1999 and 2022. The increased number of vehicle movements from 3 additional dwellings would be relatively low, onto what is a lightly trafficked effective cul-de-sac.
25. Furthermore, I found no particular visibility issue from the current driveway exit point, which would be improved following the near doubling of its width. Vehicles approaching from the A1079 would have turned off a sharp junction and therefore be travelling slowly, and on the opposite side of the carriageway so not hidden from the exiting driver. There is no segregated footway, so any pedestrians would use the carriageway, but the adjacent hedges are in the appellant's control, and so any additional splay required could be determined and controlled via a condition.

26. Although precaution with regards to highway safety is clearly commendable, the evidence in totality indicates that safe and practical access and egress to and from the site can be achieved for all users and vehicles. There would be no unacceptable impact on highway safety whereby the Framework paragraphs 115(b) or 116 indicate that the development should be prevented. Overall therefore, the proposal would comply with the ERLP Policy ENV1(B.9) which supports development where it achieves a high quality of design that promoting equality of safe access, movement, and use.

Protected Species

27. Bats are a European Protected Species protected under the Conservation of Habitats and Species Regulations 2017 (as amended). At the time of its determination, the Council identified insufficient information to conclude that the proposal would have no adverse impact on bats.
28. The additional Preliminary Roost Assessment and Bat Emergence Survey Report submitted for the appeal identified no evidence of bats living on the site. A number of bats did forage and/or commute past and close to the site, but the report concludes that no further surveys or a European protected species licence would be required for the proposed development to proceed. A Precautionary Working Method Statement would be required via condition so that if bats or bat droppings were to be present during construction, work must be halted until a licensed bat holder can attend the site to provide further advice. I find no reason not to accept this conclusion that the proposal would have no adverse impact on bats.
29. The Council further considers that there is insufficient justification to demonstrate why the proposal has not followed the mitigation hierarchy set out in the Framework paragraph 193(a), in respect of the loss of and impact upon priority habitats. There was no objection in overall landscape terms to the proposed tree removal and their level of replacement. However, regarding priority habitats it was concluded that the proposed fruit tree planting would not meet the definition of a traditional orchard, to mitigate for that which would be removed.
30. The additional Landscape Report submitted for the appeal identifies that 24 fruit trees would be planted compared to the 11 which would be removed, an increase on that proposed at the application stage. The plan shows this to include two groups of more than five in a traditional regimented layout, which thus meet the definition of an orchard.
31. I do have some reservations with the location of the planting, because the size of the tree crowns once fully grown is not shown. The rear gardens of plots 1, 2, and 4 would be more heavily covered by those additional trees, and could resultingly impact on the level of amenity for their occupants and lead to pressure for tree removal. However, I also take into account the overall size of the gardens, their decking areas and some other areas free from tree cover, that trees could be protected by conditions, and that there would be some scope to amend the precise locations and numbers of trees via conditions.
32. Overall therefore, I find that the proposal would mitigate any significant harm to biodiversity as required by the Framework paragraph 193. There would also be no harm to any protected species or habitat, in accordance with the ERLP Policy ENV4 and the Conservation of Habitats and Species Regulations 2017 (as amended).

Other Matters

33. The Council does not consider that the amendments made to the Framework in December 2024, or the upcoming adoption of the Local Plan Update, have any significant implications upon the reasons for refusal regarding this appeal.
34. The appellant identifies that of the most significant changes made in the revised Framework as a whole was the change to the standard method of calculating housing need. A very significant increase is required for the East Riding of Yorkshire, whereby the Local Plan Update would still propose a significant shortfall compared to the new requirement. Notwithstanding this, the Framework changes do not amend the Council's current 5 year supply at this moment in time, and transition arrangements are in place to address where there may be a future shortfall due to the Framework's increased requirement.
35. The Framework also seeks to significantly boost the supply of homes. Paragraph 73 identifies that small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and the December revision added that these sites are essential for small and medium enterprise housebuilders to deliver new homes. There were no amendments to Paragraph 73(d) in supporting the development of windfall sites through decisions, giving great weight to the benefits of using suitable sites within existing settlements for homes. However, for the reasons above, I have not deemed this site to be suitable for additional homes.
36. Three-bed dwellings align with the need identified in the Council's evidence base documents as being one of the two house types in need in Bishop Burton and also in the Beverley Sub-Area. Three additional such dwellings in this sustainable location therefore make a positive contribution to the housing supply, although one of minor scale, and set within the context that the Council can demonstrate in excess of its required 5 year housing supply. There would also be small-scale economic and social benefits associated with the construction and occupation of the dwellings.
37. There would be minor biodiversity benefits resulting from the proposed additional trees and vegetation, and the integrated bat and bird boxes.

Planning Balance and Conclusion

38. I recognise the contribution that the proposal would make in delivering housing from a small windfall site, and give this minor weight. I give minor weight to its local economic and social benefits, and to the biodiversity benefits.
39. Overall, the great weight to which I give the less than substantial harm to the CA, would not be outweighed by the proposal's public benefits. The proposal would not preserve the significance of the Bishop Burton CA, and would cause modest harm to the character and appearance of the area. It would thus conflict with the LPSD Policy ENV3(C), as well as the other development plan policies already identified above.
40. In conclusion, the development conflicts with the development plan as a whole. With no other material considerations outweighing this conflict, for the reasons given above I conclude that the appeal is dismissed.

L N Hughes

INSPECTOR