



Appeal Decision

Site visit made on 11 March 2025

by Ryan Cowley MPlan (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st May 2025

Appeal Ref: APP/E2001/W/24/3351403

Molescroft Farm Childrens Nursery Limited, Grange Way, Molescroft, East Riding of Yorkshire HU17 9FS

- 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 Molescroft Farms Limited against the decision of East Riding of Yorkshire Council.
 - The application Ref is 23/01794/PLF.
 - The development proposed is erection of a children's play barn in association with existing nursery business and associated parking and infrastructure, following demolition of the existing barn and horse walker.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The East Riding Local Plan Update 2025 – 2039 (the Local Plan Update) and The East Riding Design Code April 2025 (the ERDC) were adopted at the meeting of the Full Council on 2 April 2025. The Local Plan Update has superseded the East Riding Local Plan 2012-2029 Strategy Document Adopted April 2016, which formed part of the development plan at the time of the Council's decision. Copies of relevant policies and the ERDC have been provided and both main parties have had an opportunity to comment on the relevance of these to the appeal. The appeal has been determined in accordance with the Local Plan Update and the ERDC.
3. The appeal is supported by a Preliminary Ecological Appraisal¹ (PEA) and Protected Species Report² (PSR). The PSR was not submitted to the Council prior to determination of the application. However, it does not materially alter the proposal and the Council and interested parties have had an opportunity to comment on it through the appeal process. My consideration of the PSR would thus not give rise to any procedural unfairness and I have thus had regard to it below.

Main Issues

4. The main issues are the effects of the proposed development on:
 - the vitality and viability of similar uses within the nearby town centre;
 - protected species, with particular regard to great crested newts (GCN); and
 - the character and appearance of the area.

¹ Brindle & Green Preliminary Ecological Appraisal Report Reference: BG23.362 March 2024

² Brindle & Green Protect Species Report: Great Crested Newt Surveys Report Reference: BG23.362 June 2024

Reasons

Vitality and viability of the town centre

5. Chapter 7 of the National Planning Policy Framework (the Framework) seeks to ensure the vitality of town centres. Paragraph 91 indicates that a sequential test should be applied to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Policy EC3 of the Local Plan Update indicates that Town, District and Local Centres will function as the prime location for retail and other main town centre uses. Proposals for main town centre uses should demonstrate compliance with the sequential approach, with the exception of small-scale rural offices, other small scale rural developments or developments that serve a purely localised need.
6. Paragraph 94 of the Framework states that when assessing applications for retail and leisure development outside town centres, which are not in accordance with an up-to-date plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold. Policy EC3 of the Local Plan Update states that proposals for retail and leisure uses outside of defined centres will be required to assess the impact on the most relevant centre (or centres) where they comprise more than 500 square metres (sq m) (gross) floorspace. Proposals that are deemed to result in a significant adverse impact are likely to be refused.
7. The appeal site is located immediately to the north-east of Beverley. It is not within a defined centre and is primarily surrounded by agricultural uses to the north, east and west with residential areas to the south. The proposal comprises demolition of 2 existing agricultural buildings and a horse walker and erection of a 2-storey building with an internal floor space of 1,366.4 sq m. The building would feature a large play area, a restaurant and a café at ground floor, with a large mezzanine area, several party rooms and a sensory room at first floor. It would provide play space for approximately 160 users between 9am and 7pm every day and employ the equivalent of 9 full-time staff.
8. The appellant states that the nursery and pre-school are oversubscribed. The proposal would provide additional facilities that could be used by children who attend the nursery. However, the scale, operating hours and breadth of facilities proposed is sufficient to accommodate a much broader range of users across a wide catchment. The appellant acknowledges that the play barn would support the local tourism industry and be used by the public alongside children registered with the nursey, to support the play barn's profitability.
9. The evidence indicates that the net increase in floor space would be less than 300 sq m when accounting for existing buildings to be demolished. However, these are primarily in agricultural use and so the increase in floorspace for leisure uses is significantly greater and clearly above the Local Plan Update threshold beyond which an impact assessment would be required.
10. The proposal would thus be a large-scale leisure use outside of existing centres that does not serve a purely localised need. It has not been demonstrated that the sequential approach has been followed, and the proposal is not supported by an impact assessment. It is thus not clear from the evidence whether a more suitable location may be available within a designated centre or what the impact of the development in this location would be on similar uses within Beverley town centre.

11. Policy EC1 of the Local Plan Update supports employment development involving expansion of an existing business and farm diversification, of an appropriate scale. The appellant maintains there is a need for additional facilities at the appeal site to support the existing nursery, including more play space and specifically, indoor space, as well as after school and holiday provision. I recognise that there may be functional, logistical, health and safety and cost reasons why this would be the most suitable location for such facilities. Nevertheless, there is no substantiated evidence to demonstrate that a development of the scale and nature proposed is appropriate or necessary for the proper functioning of the existing nursery and pre-school. Many elements of the proposal, such as the café and restaurant, would operate largely independently. This does not therefore overcome the requirement for a sequential approach and impact assessment set out in the Local Plan Update.
12. The appellant contends that change of use of the existing agricultural buildings represents a fallback position. However, there is no compelling evidence, such as a Lawful Development Certificate, to indicate that such proposals have or could gain consent. Moreover, the evidence indicates that the existing barns are not of the highest structural quality and the high costs of conversion would severely impact the viability of the proposal. There is thus limited prospect that such a development would take place and that the impact would be similar or worse than that of the appeal proposal. Accordingly, it can be ascribed little weight as a fallback position.
13. It has not been adequately demonstrated that the proposal would not have a harmful effect on the vitality and viability of similar uses within the nearby town centre. The proposal would conflict with Policy EC3 of the Local Plan Update. This policy, among other provisions, seeks to promote the vitality and viability of defined centres, and ensure that they function as the prime location for retail and other main town centre uses.

Protected species

14. Regulation 9(3) of the Conservation of Habitats and Species Regulations 2017 (as amended) requires a competent authority, in exercising any of its functions, to have regard to the requirements of the Directives so far as they may be affected by the exercise of those functions. This applies to any proposal that might lead to the deterioration or destruction of the breeding sites and resting places of European Protected Species (EPS) under Article 12(1) of the Habitats Directive³.
15. The site provides limited terrestrial habitat for GCN, however ponds within the zone of influence provide suitable habitat for local GCN populations with intervening grassland and scrub providing an important commuting route. While no ponds would be directly affected, the proposal would include clearance of grassland and scrub which could impact on GCN.
16. The PSR indicates that 2 ponds were subjected to surveys. Pond 2 was found to support a medium population of GCN. The PSR concludes that, in the absence of mitigation, ground clearance works prior to development would result in direct and indirect impacts to local newt populations and breach wildlife legislation.
17. The Council submit that if GCN are found to be present a District Level Licence (DLL) would be required. This is reflected in the PSR, which states a granted EPS Mitigation Licence or DLL and supporting method statement will be required to

³ Council Directive 92/43/EEC of 21 May 1992 on the Conservation of Natural Habitats and of Wild Fauna and Flora

undertake site clearance works. In their final comments, the appellant indicates that a revised ecological report with respect to GCN and proposed mitigation measures has been prepared.

18. The revised ecology report with mitigation measures referred to by the appellant is not before me. There are only limited details of the supporting method statement referred to, and some ambiguity as to whether the appellant intends to pursue an EPS Mitigation Licence or DLL. Notably, a countersigned Impact Assessment and Conservation Payment Certificate has not been provided. It is therefore not clear if a licence would be granted that would adequately mitigate the identified harm.
19. Based on the evidence, I cannot be sure that the proposal would be acceptable in the context of Article 12(1) or could be made acceptable subject to mitigation. Accordingly, it has not been demonstrated that there would not be harm to the long-term conservation status of the GCN.
20. I therefore cannot conclude that the proposed development would not have an adverse effect on protected species, with particular regard to great crested newts. It would conflict with Policy ENV5 of the Local Plan Update. This policy, among other provisions, seeks to ensure proposals conserve, restore, enhance or recreate biodiversity interests, including priority habitats and species; and safeguard, enhance, create and connect habitat networks in order to protect, strengthen and reduce fragmentation of habitats, create a coherent ecological network, and conserve and increase populations of species.

Character and appearance

21. The appeal site sits in a predominantly rural setting, surrounded by agricultural fields, albeit with the adopted highway to the south (Grange Way A1035) separating it from residential areas on the urban fringes of Beverley. The landscape to the north and east is relatively flat and open, with the site exposed to long distance views across the countryside. Public views from Grange Way are limited however due to the dense vegetation lining the north side of the carriageway.
22. The site is composed of numerous buildings in various uses, including nursery and pre-school facilities, office space and agricultural barns and buildings. The site's contribution to the rural character and appearance of the surrounding countryside has thus evolved over time. Its existing composition and relationship to Beverley is analogous of the "Business and Industrial" place type described in the ERDC.
23. The ERDC advises that new industrial, storage and distribution, and commercial buildings should be designed to ensure that the character of the whole site complements its surroundings. Views from inside and outside of the site need to be considered, buildings should be grouped together and in rural settings new buildings should have minimal impact on the surrounding landscape.
24. The existing buildings are of varying scale and appearance, with brick, concrete, timber, corrugated metal sheeting and render finishes found throughout the site. More recent additions such as the nursery buildings and offices feature contemporary designs, with large windows and render and timber finishes. There are several large buildings on the site, including the existing office building and the large agricultural buildings to the north. These are of considerable size and height, with concrete and corrugated metal to exterior walls and dual-pitched roof designs typically running in parallel or perpendicular to one another.

25. The proposal would remove several older barns in the centre of the site, replacing them with a single larger 2-storey building. It would be well related to the existing layout of the site, oriented parallel to several of the agricultural buildings to the north-east. The proposed building would be elongated and have a form akin to that of a barn. Externally, it would feature characteristics common across the site, including a corrugated metal dual-pitched roof, vertical timber weatherboarding, brickwork and concrete plinths, as well as large, glazed openings. It would thus be sympathetic to both the contemporary design of the newer additions at the site, and the functional form, arrangement and scale of the agricultural buildings.
26. Though of considerable size, the proposed building would thus not appear incongruous or disproportionate in the context of the existing buildings on site. Moreover, the collection of large buildings to the north / north-east of the proposal would provide a considerable degree of screening in views from these directions. The lower level of the site relative to Grange Road and existing landscape screening would further reduce the influence of the development in local views.
27. While the proposal would also include outside play space, car parking and seating, this would not detract from the prevailing character and appearance of the appeal site or surrounding area, given the nature of existing uses at the site and existing screening, which could be further enhanced through additional soft landscaping.
28. The proposal would therefore not have a harmful effect on the character and appearance of the area. It would be in accordance with Policies S4, EC1 and ENV1 of the Local Plan Update. These policies, among other provisions, seek to ensure development outside of development limits is of an appropriate scale to its location, is well related to the existing built form and scale, and contributes to safeguarding and respecting the diverse character and appearance of the area, with regard to the specific characteristics of the site's wider context and the development's scale, density, massing, height and materials.

Other Matters

29. The appeal proposal would provide economic and social benefits through further supporting the diversification of the farm, providing expansion of the existing childcare business, as well as providing an additional community-based facility. This must however be balanced against the economic, social and environmental costs associated with locating such facilities outside of designated centres without adequate justification. Accordingly, the benefits of the development would not outweigh the identified harm and development plan conflict in this instance.
30. Other than where set out above, I have not identified conflict with any other relevant parts of the development plan or national policy and guidance. However, the absence of harm or development plan conflict with respect to other relevant matters weighs neither for nor against the proposal. While no objections were received from statutory consultees during the application, this does not in itself demonstrate that the appeal scheme is acceptable with regard to the main issues.
31. The Planning Practice Guidance and the Framework encourage local planning authorities to take a positive approach and work proactively with applicants. While the appellant's frustrations with the level of engagement offered by the Council during the application process is noted, this does not lead me to a different conclusion on the main issues.

Conclusion

32. While I have found that the proposal would not have a harmful effect on the character and appearance of the area, this does not overcome the failure to adequately demonstrate that it would not have a harmful effect on the vitality and viability of similar uses within the nearby town centre or on protected species, and the associated development plan conflict. The proposal therefore conflicts with the development plan, taken as a whole. I have found no material considerations that indicate the appeal should be determined other than in accordance with the development plan. Consequently, I conclude that the appeal is dismissed.

Ryan Cowley

INSPECTOR