



Appeal Decision

Site visit made on 1 May 2025

by **J Smith MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27 June 2025

Appeal Ref: APP/E2001/W/25/3360480

Pillwood Farm, Dunswell Road, Cottingham HU16 4JS

- 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 John England of Stratland Limited against the decision of East Riding of Yorkshire Council.
 - The application Ref is 24/00754/PLF.
 - The development proposed is demolition of existing buildings and construction of three dwellings and associated landscaping, access and infrastructure works.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing buildings and construction of three dwellings and associated landscaping, access and infrastructure works at Pillwood Farm, Dunswell Road, Cottingham HU16 4JS in accordance with the terms of the application, Ref 24/00754/PLF, subject to the conditions in the attached schedule.

Preliminary Matters

2. During the appeal, the East Riding Local Plan Strategy Document Update 2025 (ERLP SDU) was adopted by the Council. Both parties were provided with the opportunity to comment on the implications of this during the appeal. The Council noted in their response that there are limited material differences between the policies of the previous plan and this update in specific regard to this appeal. I have taken any comments received on this matter into account during my assessment of the development.

Main Issues

3. The main issues are:
 - whether the development would be in an appropriate location with regard to the Council's spatial strategy for development; and,
 - whether the development would be in an appropriate location with regard to flood risk.

Reasons

Appropriate location

4. The appeal site is comprised of several former agricultural buildings which are bound by Dunswell Road, surrounding fields and a railway line. This site is in the open countryside to the north of Cottingham. The wider area hosts small clusters of

residential dwellings, farm buildings and several industrial buildings of different sizes and designs.

5. Policy S4 of the ERLP SDU notes that outside of settlements, development will be supported to help maintain the vibrancy of villages and the countryside. Part D of Policy S4 sets out the forms of development which are supported in the countryside. This list does include residential development such as conversions, replacement dwellings, dwellings of exceptional quality or design, affordable housing and rural occupational dwellings where a need has been demonstrated. Policy S3 of the ERLP SDU seeks to focus development within its defined settlement network hierarchy.
6. The proposal would remove the existing agricultural buildings found within the site and replace these with new build market dwellings in the open countryside. The appeal proposal would not include a conversion for new housing due to the removal of the buildings within the site. It would not create a group of dwellings which would be of an exceptional quality design due to its imitation of the simple agricultural buildings found within the site. It would not provide affordable housing or a rural occupation dwelling.
7. It is the appellant's contention that the proposed dwellings would be replacement dwellings. This is due to a fallback position established by a previous decision¹ where approval has been granted to convert these buildings into dwellings. During my site visit, I noted that these works did not appear to have been implemented and the agricultural use of the buildings remained. Therefore, in my assessment of this issue, due to the existing form and use of the buildings for agricultural purposes, the proposed dwellings would not be replacement dwellings.
8. To conclude, the proposal would be a form of development in the open countryside not supported by Policies S3 and S4 of the ERLP SDU. In addition, the proposal would conflict with Policies S1 and S2 of the ERLP SDU. These policies seek for development proposals to reflect the three overarching objectives of sustainable development as set out in the National Planning Policy Framework (the Framework) and reduce the generation of additional greenhouse gas emissions.

Flood risk

9. The appellant has suggested in their final comments that after an update to the Environment Agency Flood Map for Planning, the appeal site now sits within Flood Zones 1 and 2. From my analysis of the evidence before me, including the Flood Risk Assessment and Drainage Strategy (prepared by Civic Engineers, dated 9 February 2024), the information suggests that the appeal site is located within flood zone 3a. I have dealt with the appeal on this basis.
10. Sites which are located in flood zone 3a are in areas which are at a high probability of flooding and are therefore considered to be in the more vulnerable classification. As such, the Framework sets out that due to the type of development proposed and the location of the appeal site within flood zone 3a, a sequential test is required. Policy ENV6 of the ERLP SDU is concerned with the management of environmental hazards, including flood risk. It states that the risk of flooding will be managed by the application of a sequential test to steer development towards the areas of lowest risk.

¹ 24/03186/AGRNOT

11. It is the appellant's contention that the sequential test is not applicable. This is due to a fallback position established by a previously granted, Prior Approval application² on the appeal site. This fallback position allows for the change of use of the three agricultural buildings to three dwellings with associated building works. However, in my assessment of the officer report for this Prior Approval application, as a change of use, the development was not subject to a sequential test, but was required to meet a site-specific flood risk assessment. This is a key difference from this proposal for new build market dwellings.
12. In view of the absence of a sequential test, there is no evidence to demonstrate that there are no sites available for this development which are at a lower risk of flooding. Therefore, the sequential test, by reason of its absence from the application, is failed.
13. Policy ENV6 of the ERLP SDU also notes that flood risk from all sources will be proactively managed by a list of requirements. This is to demonstrate that the development will be safe for its lifetime, without increasing flood risk elsewhere. The application is accompanied by a site-specific flood risk assessment. This assessment details how it would address these issues and demonstrates that the proposal could be made safe from the risk of flooding for its lifetime and would not increase the risk of flooding elsewhere. The Environment Agency do not object to these mitigation measures.
14. To conclude, the proposal would conflict with the Framework and Policy ENV6 Part B of the ERLP SDU. This is due to the absence of an appropriate sequential test.

Planning balance

15. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that in making any determination under the planning Acts, regard is to be had to the development plan and the determination shall be made in accordance with the plan unless material considerations indicate otherwise.
16. I am cognisant of the previously granted prior approval application on the appeal site. This application was granted in January 2025, on the condition that the development shall be begun no later than the expiration of three years starting with the prior approval date. Whilst this fallback position does not appear to have been implemented, due to the time which exists from this date to the expiry of the prior approval application, I consider that there is a real prospect of this fallback position being implemented if the appeal before me was to fail.
17. The buildings proposed in this application would create residential dwellings, be sited in a similar position and would be alike the existing buildings in their appearance. As such, this proposal would create a development which is almost identical to that which would be developed under the prior approval application. But, this would be through the demolition of the existing buildings and construction of new buildings, rather than their conversion. When the two are compared together, it would create an almost identical development.
18. Therefore, the creation of dwellings in this location, whether through the conversion of the existing agricultural buildings, or their demolition and the construction of three new build dwellings, would require the use of a private vehicle in either situation. As such, in terms of the proposal being contrary to the Council's spatial strategy, the

² 24/03186/AGRNOT

sustainability of the location of the proposal would not be too dissimilar to that of the conversion of the buildings found on the appeal site. I do not find that the proposal would result in a material harm in this regard due to this similarity which attracts significant weight in favour of the proposal.

19. With regard to flood risk, the future residents of the proposal would be vulnerable to flooding. However, the Environment Agency do note that the proposed development could be made safe from the risk of flooding for its lifetime and not increase the risk of flooding elsewhere. In addition, when compared to the fallback position available, the risk and vulnerability to flooding would be similar between the two schemes. This is a consideration to which I assign substantial weight.
20. The proposal would conflict with the ERLP SDU with regard to the location of the development in the open countryside and its implications on flood risk. However, the material considerations weighing in favour of the proposal, to which I have ascribed significant and substantial weight, indicate that a decision should be taken other than in accordance with the ERLP SDU.

Appropriate Assessment

21. The appeal is accompanied by a signed Unilateral Undertaking (UU) which has been submitted by the appellant. The UU requires the development to make a contribution towards the Humber Estuary Strategic Access Mitigation and Monitoring Strategy Contribution. Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and Paragraph 58 of the Framework sets out three tests that planning obligations must meet. First, they must be necessary to make the development acceptable in planning terms, secondly, they must be directly related to the development and thirdly, they must be fairly and reasonably related in scale and kind to the development. The contributions are not contested.
22. The appeal site lies within the Zone of Influence of the Humber Estuary Special Protection Area (SPA), Special Area of Conservation (SAC) and Ramsar site. These are unique environments which are home to numerous natural habitats, species, nesting and breeding birds and other mammals, amongst other things.
23. During the appeal, the Council noted that the appeal site is within the Zone of Influence of the aforementioned designations. The appellant had also provided an Appropriate Assessment (AA), in addition to the UU to secure a payment of £320.00 per dwelling towards the mitigation strategy for impacts on the Humber Estuary Strategic Access Mitigation and Monitoring Strategy Contribution.
24. Whilst the appellant had provided a Record of Habitats Regulations Assessment, no consultation with Natural England had been carried out. As such, to determine that the information before me was precise, a consultation with Natural England was undertaken. This consultation sought to confirm the European Sites affected, their qualifying features, Natural England's view on the proposed mitigation measure, their view on the appellant's Appropriate Assessment and whether any other matters need to be raised.
25. The Habitats Regulations 2017 (as amended) requires the decision maker to undertake an AA, where there are likely significant effects from the proposal, either alone or in combination with other plans or projects. This responsibility falls to me as the competent authority in the context of this appeal.

26. The SPA, SAC and Ramsar site are areas of unique natural habitats, species, mammals, nesting and breeding birds and other high value environmental conditions. They also provide an important recreational but also economic resource, and it is likely that occupants of the proposed development would visit them. In this regard and considering the evidence before me, the proposal would have a likely significant effect on the qualifying features of these sites, particularly on their disturbance, as a result of recreational activity. In consideration of the conservation objectives for the SPA, SAC and Ramsar site, this proposal would adversely affect their integrity.
27. Natural England note that the Council has measures in place to manage these impacts in the form of the East Riding Humber Strategic Access Management and Mitigation Strategy Zone of Influence Tier 1. It is the view of Natural England that if a financial contribution was secured, this would be sufficient in avoiding an adverse impact to the integrity of these designated sites.
28. As such, I am satisfied that the UU is a sufficient mechanism to enable the delivery of proportionate and relevant mitigation pursuant to the development which could affect these sites. I therefore find within my AA that, with the provided mitigation, the proposal would not have an adverse effect on the integrity of the SPA, SAC or the Ramsar site. It would therefore accord with Policy ENV4, the provisions of the Habitats Regulations 2017 and the Framework insofar as they seek to secure the long-term protection of such sites through appropriate mitigation and the management of the impact of residents and tourists.
29. Furthermore, I am also satisfied that the proposed contributions would meet the tests as set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and Paragraph 58 of the Framework. It is necessary to make the development acceptable in planning terms, it would be directly related to the development proposed and is fairly and reasonably related in scale and kind.

Conditions

30. The Council did supply a specific list of conditions for my consideration in the event that the appeal was allowed. I have consulted the parties on the conditions imposed in this decision, based on these suggestions and any other comments and suggestions received from other consultees, ensuring that they meet the tests set out in Paragraph 57 of the Framework. I have taken their response into consideration.
31. In addition to the statutory time condition [1], I have attached a condition which specifies the approved plans [2], which is necessary in the interests of certainty. A condition which requires the details of the materials to be used on the external surfaces [3] is necessary to ensure that the finished appearance of the development is appropriate. This condition has incorporated a suggestion by the Council, where it included a condition specifically related to the appearance of rainwater goods.
32. A condition which requires that the development be carried out in accordance with the recommendations for the glazing and ventilation of each dwelling [4] is necessary to prevent undue harm to the living conditions of the future occupants of the development with specific regard to noise. A restriction on the times where development can be carried out [5] is necessary to protect the living conditions of neighbouring occupants during the construction of the development.
33. Several conditions which relate to the management of contamination, including an assessment of the risks posed [6], the submission of a remediation scheme if land is

found to be affected by contamination [7] and the steps to be taken if any contamination is found during the course of construction [8] have been imposed. The appeal site has previously been used for the purposes of agriculture. As such, these conditions are necessary to ensure the appropriate management of contamination during the construction of the proposed development. The inclusion of a condition which requires the submission of a Construction Environmental Management Plan [9] is necessary to ensure that the effect of construction works on the environment are appropriately mitigated. This condition has also incorporated specific matters which relate to the mitigation of dust, transportation routes and the minimum emission standards of construction vehicles, as suggested by the Council in another suggested condition. This action has been taken in the interests of conciseness.

34. A condition has been imposed which requires the access into the site and space for car parking to be laid out in accordance with the approved plans, prior to the occupation of the development [10]. This condition is necessary in the interests of highway safety.
35. A condition which requires the submission of a Wildlife Enhancement Plan [11] is necessary in the interests of improving the habitat value of the site. This condition has been significantly amended from the suggestion by the Council. This change has been undertaken as the suggested condition included requirements which were overly specific. An alternative method of mitigation may be available beyond the suggestion by the Council. Therefore, this is reflected in the wording of condition 11. Furthermore, this condition has incorporated elements of another condition which was suggested by the Council in relation to bat enhancement measures.
36. The provision of the full details of any external lighting [12] is necessary to ensure that such lighting does not disrupt bat flight corridors or other light sensitive species. A condition has been included which requires the development to be carried out in accordance with the mitigation set out within the submitted Flood Risk Assessment [13]. This is necessary to ensure that the risk of flooding to the proposed development and its occupants is appropriately mitigated. The requirement to construct each proposed rooflight flush with the roof surface [14] is necessary to ensure that the appearance of the development is acceptable, with regard to this specific element.
37. The submission of a surface water drainage scheme and foul water drainage scheme [15] is necessary to ensure that the site is effectively drained and that the mechanisms for the removal of foul water is appropriately provided for. This condition has combined two of the conditions suggested by the Council. A condition has been included which requires the submission of the full details for the location of a trespass proof fence to the Council [16]. This condition is necessary to prevent any unauthorised access and egress over the railway line which is a close to the appeal site.

Conclusion

38. The proposed development would conflict with the development plan but material considerations indicate that a decision should be made other than in accordance with it. Therefore, the appeal is allowed.

J Smith

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin no later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawings and documents:
 - Location Plan REV B (22/07/24)
 - Site Layout REV B (22/07/24)
 - Roof Plan and Section (March 2023)
 - Pillwood Farm, Unit 1 (November 2023)
 - Pillwood Farm, Unit 1, Floor Plan (December 2023)
 - Pillwood Farm, Units 2 and 3, Sheet 1 (December 2023)
 - Pillwood Farm, Units 2 and 3, Sheet 2 (December 2023)
 - Pillwood Farm, Units 2 and 3, Floor Plan (December 2023)
 - SD/DFSB/01: 1200mm High Timber Fence (January 2024)
 - SDSFDB/01: 1800mm High Double Boarded Screen Fence (January 2024)
 - Bat Emergence Survey Report (Prepared by Brooks Ecological, dated 19/06/2024)
- 3) No development above ground level shall take place until samples of all external facing materials, including any external rainwater goods, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved sample details.
- 4) The development shall be carried out in accordance with the recommendations for the glazing and ventilation as specified in the submitted Noise Assessment Report prepared by Wardell Armstrong (dated February 2024, Job Number LD10866) and the update within the Technical Note prepared by Wardell Armstrong (dated 18th June 2024, Job Number LD10866).

The ventilation and glazing as specified shall be installed prior to the occupation of any dwelling and thereafter retained for the lifetime of the development.
- 5) The use of machinery and the movement of construction vehicles shall occur only between the following hours:
 - 07:00 to 18:00 Mondays – Fridays;
 - 08:00 to 13:00 on Saturdays; and
 - They shall not be operated at any time on Sundays or on Bank or Public Holidays.

- 6) No development shall take place until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency, Land Contamination Risk Management (or equivalent British Standard and Model Procedures if replaced), has been submitted to and approved in writing by the local planning authority. If any contamination is found, no development shall take place until:
- i) a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the development hereby permitted has been submitted to and approved in writing by the local planning authority;
 - ii) the site has been remediated in accordance with the approved measures and timescale; and
 - iii) a verification report has been submitted to and approved in writing by the local planning authority.
- 7) No development shall take place where land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme has been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out and upon completion, a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before the development is occupied.
- 8) Any contamination that is found during the course of construction of the development hereby permitted that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended until a risk assessment has been carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found, the development, or relevant phase of development, shall not resume or continue until remediation and verification schemes have been carried out in accordance with details that shall first have been submitted to and approved in writing by the local planning authority.
- 9) Prior to the commencement of development, a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the local planning authority. The CEMP shall include the following working practices and information:
- the procedures that will be implemented to minimise the creation and impact of dust resulting from the site preparation, demolition, groundwork and construction phases of the development;
 - detailed plans which demonstrate how the risks to the Chalk Aquifer and Cottingham groundwater abstraction are to be controlled;

- details of agreed material transportation routes and an allocation of material arrival times;
 - the minimum emission standards for construction vehicles operating on and those delivering material to the site; and,
 - the details of who is responsible for the management of these practices and information and how it shall be communicated to the construction workforce.
- 10) No dwelling shall be occupied until the access into the site has been provided and that space has been laid out within the site in accordance with drawing 'Site Layout REV B (22/07/24)' for cars to be parked and for vehicles to turn so that they may enter and leave the site in forward gear. These parking and turning spaces shall thereafter be kept available at all times for the parking and turning of vehicles.
- 11) No development above ground level shall take place until a Wildlife Enhancement Plan (WEP) has been submitted to and approved in writing by the local planning authority. The WEP shall include a protection plan showing the locations of all enhancement measures, including those for bats and swifts, and the built features for biodiversity. The WEP shall be implemented in accordance with the approved plan.
- 12) Prior to the installation of external lighting, full details including height, design, location, intensity, light spill and shall be submitted to and approved in writing by the local planning authority. The lighting installation shall then be carried out in accordance with the approved details.
- 13) The development shall be carried out in accordance with the submitted Flood Risk Assessment (REF 3282-CIV-XX-XX-TN-RP-C-0001 - Pillwood Farm FRA & DS P02 by Civic Engineers dated 9 February 2024) and the following mitigation:
- Finished floor levels shall be set no lower than 6.4 metres above Ordnance Datum (AOD)
- These mitigation measures shall be fully implemented prior to occupation and retained thereafter throughout the lifetime of the development.
- 14) Prior to the occupation of each dwelling, rooflights shall have steel or cast metal frames fitted flush with the adjoining roof surface and shall not project above the plane of the roof. These rooflights shall be retained thereafter throughout the lifetime of the development.
- 15) No development shall take place until a detailed surface water drainage scheme and a foul water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the local planning authority.
- The submitted details shall:
- i) provide information on the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;

- ii) include a timetable for its implementation; and,
- iii) provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

The development shall be carried out in accordance with the approved details. The sustainable drainage system shall be managed and maintained thereafter in accordance with the approved management and maintenance plan.

- 16) The development hereby approved shall not be occupied until details for the location of a trespass proof fence and its design to prevent any unauthorised egress over the Pillwood Farm Level Crossing have been submitted to and approved in writing by the Local Planning Authority. The fencing shall be installed in accordance with the approved details and shall thereafter be retained for the lifetime of the development.