

Appeal Decision

Hearing held on 1 July 2025

Site visit made on 1 July 2025

by Mr R Walker BA HONS DIPTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 July 2025

Appeal Ref: APP/E2001/W/25/3360560

Land off Ivy Park Road, Goole DN14 6YG

- 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 Surebay Properties Ltd against the decision of East Riding of Yorkshire Council.
 - The application Ref is 24/02843.
 - The development proposed is 18 new dwellings with garages and access roads.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made in writing by Surebay Properties Ltd against the East Riding of Yorkshire Council. An application for costs was also made by East Riding of Yorkshire Council against Surebay Properties Ltd. These respective applications are the subject of separate Decisions.

Preliminary Matters

3. The East Riding Local Plan Update (LPU) was adopted during the appeal process. As a result, the appellant proposes to change the housing to affordable housing. No alterations are proposed to the underlying use, number or design of the scheme and as such I am satisfied that no party has been prejudiced by my consideration of the appeal on this basis. The main parties have had the opportunity to comment on the implications for this during the Hearing.
4. A Section 106 unilateral undertaking (UU) was submitted with the appeal. This included financial contributions towards affordable housing and to support measures to limit recreational disturbance to the Humberside protected areas. An updated final UU was received after the Hearing in accordance with an agreed timetable to reflect the proposed alterations to the affordable housing provision.

Main Issues

5. The main issues are whether the site represents an appropriate location for the proposed development having particular regard to:
 - the housing strategy for the area, including the coalescence of settlements and the provision of affordable housing;
 - local and national flood risk policy; and

- The effect of the proposal on biodiversity, including the integrity of the Humber Estuary Special Protection Area (SPA), Special Area of Conservation (SAC) and RAMSAR site and Site of Special Scientific Interest (SSSI).

Reasons

Housing Strategy

6. Goole is identified in the LPU as a Principal Town, and 855 new dwellings are proposed for the town over the LPU period based on commitments in Goole at the LPU's base date. No other specific housing allocations are made and the development limits for the town have been redrawn. The LPU explains that this strategy, which sees housing allocations deployed elsewhere, is due to the severe level of flood risk in Goole.
7. The appeal site lies outside of the development limits of Goole. Policy S4 of the LPU says, amongst other things, that outside of a development limit, land will be regarded as the countryside. The policy lists several forms of development that are supported, where proposals respect the intrinsic character of their surroundings. This list includes affordable housing for local people.
8. Policy H2 of the LPU refers to affordable housing schemes. It says, amongst other things, that rural exception sites for affordable housing will be supported where they meet an identified need for the type and scale of development proposed. The policy goes on to say that the tenure split, size and type of affordable housing will be informed by the latest Local Housing Need Assessment, Local Plan Viability Study, the housing register, housing surveys and the level and type of existing affordable housing in the locality.
9. Affordable housing need differs from open market housing and the appellant has not provided substantive evidence that there is a local affordable housing need for the type and scale of housing proposed. As such, even though the proposal for affordable housing would align with the objectives of Policy H2 of the LPU, the lack of evidence before me of an affordable housing need locally for the proposal means that the scheme would not garner support from Policy H2.
10. The appeal site has also now been allocated as a Key Open Area as part of the LPU. In this regard, Policy ENV2 says, amongst other things, that development proposals should be sensitively integrated into the existing landscape, demonstrate an understanding of the intrinsic qualities of the landscape setting and, where possible, seek to make the most of the opportunities to protect and enhance landscape characteristics and features. To achieve this, development should protect the character and individual identity of settlements by maintaining their physical separation, including through the maintenance of the Key Open Areas identified in Policies A1-A6, and on the Policies Map, where there is a risk of settlement coalescence.
11. In this regard, Policy A4 of the LPU, says amongst other things, that development decisions in the Goole and Humberhead Levels sub area should prevent coalescence by protecting the character and individual identity of settlements by maintaining Key Open Areas between Goole and Hook.
12. The appeal proposal would result in the erosion of this area of designated land. There would be encroachment to the east toward Hook from Goole's settlement

edge along Blenheim Drive. However, it would not encroach nearer toward Hook than the existing boundary of the settlement to the north of the site along Ivy Park Road. The wider area of the designated land in between would also remain free of development. In this regard, the extent of harm to the identity of Goole and Hook from the erosion of this designated land would be very small but it would still be harmful.

13. I have also been referred to criterion A.3 of Policy A4. This says that where suitable and appropriately mitigated, the policy supports the delivery of housing in Goole that takes account of the residual risk of flooding. However, as the appeal site lies outside of the development limits of Goole, and is thus regarded as countryside, the development of the site would not constitute windfall development in Goole. It would therefore not garner support from this policy.
14. I therefore find that the appeal site does not represent an appropriate location for the proposed development having particular regard to the housing strategy for the area, including the coalescence of settlements and the provision of affordable housing. As such, I find conflict with the requirements of Policies A4, ENV2, H2, and S4 of the LPU, when taken together and in so far as they relate to this main issue.

Flood Risk

15. The appeal site, and most of Goole, lies within Flood Zone 3 according to the Environment Agency's (EA) published flood risk mapping. As such, the proposal must pass the Sequential Test (ST) as set out in Policy ENV6 of the LPU and the National Planning Policy Framework (the Framework). This means development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
16. The Council's 2019 Flood Risk Sequential and Exception Test Supplementary Planning Document (SPD) advises that the area of search for residential proposals in Goole should be limited to the settlement rather than the broader submarket area and should be informed against the Level 2 Strategic Flood Risk Assessment (SFRA). This divides Goole into different areas with an order of preference for the location of development. The appeal site falls within the Rapid Inundation Zone (RIZ) as defined in the SFRA. This is the least preferable of the zones within Goole for development, and where the SFRA recommends that major development, such as the appeal proposal, should not be permitted.
17. There is tension between the LPU's approach to deploy housing elsewhere away from Goole, and the approach in the SPD to consider only other sites in Goole. However, during the Hearing the Council confirmed that it still supported this approach for the appeal scheme following the LPU adoption. In this regard it considered two sites were sequentially preferable and reasonably available in Goole. These two sites are known as the GOO-A site along Rawcliffe Road and a separate small site off Rawcliffe Road, which had been the subject of a planning application (Ref: 22/03365). Both parties agreed during the Hearing that these fell within a sequentially preferable part of Goole and the dispute therefore is limited to whether they are reasonably available for the proposed development.
18. The large site known as GOO-A is in part occupied and under construction with several phases still to commence. I do not consider that such phasing is a determinative matter as to whether it is reasonably available for the appeal

proposal. In my view, permission has been granted for the site and works are ongoing, thus that site is not reasonably available for the appeal proposal to be developed at that location.

19. The separate site off Rawcliffe Road was subject to a planning application (Ref: 22/03365) for 44 dwellings and was progressing positively but was withdrawn prior to agreeing and executing a Section 106 Agreement. As such, there is no planning permission on this site. The appellant argues that the site was not viable due to abnormal costs, including the cost of a rising main for surface water drainage. However, this is based on assumptions and the appellant's interpretation of publicly available evidence, rather than any formal viability assessment or by establishing whether the site is available or not. The Council advised during the Hearing that the scheme was not withdrawn for drainage reasons but are unable to elaborate further due to commercial sensitivity. Moreover, even if there were high development costs, such matters could have been used to negotiate on the Section 106 Agreement.
20. The Planning Practice Guidance (PPG) defines 'reasonably available sites' as *"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 development¹"*. Accordingly, there is no compelling evidence that there is not a reasonable prospect of the site being available to be developed. On this basis it has not been demonstrated that the ST has been passed and there is no need to consider the Exception Test.
21. The appellant has provided numerous submissions, reports and rebuttals of different ages regarding, amongst other things, the modelling undertaken in the SFRA, the weight that should be given to the SFRA, and proposed flood risk mitigation measures. This, I'm told, was to highlight potential issues with the SFRA and give weight to the suggested condition for a site-specific flood risk assessment. In this regard, I am mindful that whether the development would be safe for its lifetime without increasing flood risk elsewhere is a matter that would weigh in my overall balance of considerations.
22. The appellant suggested during the Hearing that any discrepancies between the EA, Council and appellant could be resolved by way of a pre-commencement condition. This, it was put to me, would allow the parties to work together to agree matters such as the parameters to be included in additional modelling and thus work together based on the most up to date evidence.
23. The EA and Council defended the approach taken in the SFRA. The SFRA was recently considered during the LPU examination and the modelling and parameters used deemed appropriate. These included matters relating to the appropriateness of the breach height and modelling of an instantaneous breach, which were deemed reasonable due to local circumstances. Moreover, local circumstances meant a 72-hour breach period was also considered reasonable, rather than the 30-hour period recommended in EA guidance and used in the appellant's RAA modelling.
24. The results of the RAA modelling are based on raised ground levels at the appeal site rather than the existing levels used in the SFRA. Moreover, the appellant's references in the Hearing to the ground levels in Google being between 2-4m AOD

¹ Paragraph: 028 Reference ID: 7-028-20220825

and the implications for this were not corroborated with topographical evidence. Indeed, the topographic evidence that is before me suggests that the appeal site includes levels lower than 2m AOD and the Council indicate that this is also the case elsewhere in Goole.

25. Overall, whilst I accept that flood modelling at Goole will evolve based on the most up to date evidence, given the potentially serious consequences from flooding, these are matters that should not be deferred through a condition for further modelling. In this regard, the evidence before me does not lead me to diminish the weight I give to the SFRA and its role in supporting the LPU and thus the level of risk of flooding at the appeal site.
26. The proposed flood risk mitigation measures include, amongst other things, the raising of the land within the appeal site, which would be at odds with the recommendations in the SFRA in the RIZ. Moreover, there is no substantive evidence before me that doing so would not increase flood risk elsewhere by redirecting the flow of flood water, even with the drainage proposed.
27. Overall, I am not satisfied that the development would be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere. As indicated previously given the potentially serious consequences from flooding, these are matters that should not be deferred through a condition.
28. I therefore find that the appeal site does not represent an appropriate location for the proposed development having particular regard to local and national flood risk policy. Accordingly, I find conflict with the requirements of Policies ENV6 and A4 of the LPU, when taken together and in so far as they relate to this main issue. These say, amongst other things, that the risk of flooding to development, from all sources both now and in the future, will be managed by applying a sequential test to ensure that development is steered towards areas of lowest risk, as far as possible.

Biodiversity

29. The Council clarified during the Hearing that following the receipt of further evidence regarding newts, its concerns regarding protected species were confined to water voles. An internal drainage board (IDB) drain runs close to the southern boundary of the site and there is no dispute regarding the presence of water voles using the drain. The appellant advised that they would not build within 9m of the IDB drain. However, the Proposed Site Layout Road Layout and Landscaping Plan shows numerous parking bays within 9m of the drain. Moreover, it is also unclear from the level of detail before me whether the western most dwelling would be within 9m of the drain, which on the plans also runs along the western boundary. The Council explained that a buffer is necessary to give the water voles refuge in times of high-water levels in the drain.
30. Circular 06/2005 states that the presence of protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. It goes on to say 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*' (paragraph 99). This is reinforced in advice within the PPG.

31. The appellant was not represented by an ecologist at the Hearing but indicates that they would accept a condition in relation to mitigation and highlights the legal protections afforded to water voles. However, whilst I accept that the presence of protected species is established, the extent that they may be affected by the proposed development is not. Moreover, I can not be satisfied on the evidence before me, that such mitigation would not have an impact on the plans and layout in the appeal scheme. As such, I am unable to conclude that the proposal before me would not have a harmful effect on protected species.
32. The appeal site lies within 1km of the Humber Estuary SPA, SAC and RAMSAR site and is within a SSSI Impact Risk Zone. The Conservation of Habitat and Species Regulations 2017 (the Regulations) require the competent authority to ensure that there are no significant adverse effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of the European designated sites. The effects arising from the proposal need to be considered in combination with other development in the area and by adopting a precautionary approach.
33. The two strands to potential effects include recreational disturbance and impacts on functionally linked land. In the latter case, the appellant has referred me to work undertaken to support the LPU. However, none of the evidence provides a site-specific appraisal of the appeal scheme by a suitably qualified ecologist as to how any construction or ongoing operational effects may impact the adjacent undeveloped land. This land has the potential to be used by over wintering birds associated with the Humberside designations and thus constitute functionally linked land.
34. The appellant suggested in the Hearing that this matter could be addressed by way of a condition were I minded to allow the appeal. However, mindful of the precautionary approach, this would not be appropriate and would not enable me to satisfy my duties under The Regulations. The appellant has referred me to the Environmental Impact Assessment Screening Direction issued in relation to the site. However, this Direction stipulates that this does not affect any duties under other legislation, and it does not therefore prejudice my consideration of the scheme under The Regulations.
35. As the competent decision-making authority, if I had been minded to allow the appeal it would have been necessary for me to complete an Appropriate Assessment for this scheme. However, I have already identified harm in the main issues of this appeal, such that undertaking my own Appropriate Assessment would not alter the outcome of the appeal. On that basis, there is no need to examine this matter further for the purposes of making my decision.
36. If allowing this appeal, the proposal would be subject to the statutory pre-commencement biodiversity gain condition (the Condition) as set out in Schedule 7A to the Town and Country Planning Act 1990 (as amended) (the Act). The discrepancy in relation to the drain also directly impacts on the dispute in relation to Biodiversity Net Gain as the baseline map and associated submission does not include reference to the drain and associated riparian margin. This would potentially impact on the pre-development biodiversity value of the site.
37. However, the PPG states that it would generally be inappropriate, when determining a planning application for a development subject to biodiversity net

gain, to be refused on the grounds that the biodiversity gain objective will not be met. The appellant has offered part of land elsewhere to provide the 10% biodiversity net gain and even though limited information has been provided about this land, I see no reason why such matters could not be resolved through the Condition discharge process. Given my other concerns in this main issue this matter has not therefore been determinative.

38. I therefore find that the appeal site does not represent an appropriate location for the proposed development having particular regard to the effect of the proposal on biodiversity. As such, the proposal would not accord with the requirements of Policies ENV4 and ENV5 of the LPU, when taken together and in so far as they relate to this main issue. These say, amongst other things, that applicants will be required to submit appropriate levels of evidence to enable the council to undertake a Habitats Regulations Assessment of the proposal. Evidence will be required to assess the proposal's potential impact (alone or in combination) in view of the international (habitats) site's conservation objectives.

Other Matters and Planning Balance

39. The appellant's UU stipulates that the housing shall be in accordance with Policy H2 of the LPU and the Framework in respect of affordable housing. However, I have already concluded that the evidence before me is such that the appeal proposal would not garner support from Policy H2 of the LPU. In this regard, I have some concerns about the UU itself and its execution, and whether the Council could rely on it to secure affordable housing of a size and type that would meet a local need. The provisions in the UU around affordable housing do not provide certainty as to what I would be granting, and it does not detail how the houses would be legally secured as affordable housing in perpetuity. Moreover, the appended plan to the UU is unsigned.
40. Nonetheless, and notwithstanding the Council's current housing supply position, the proposal would deliver an additional eighteen dwellings, boosting the supply of housing. There would also be environmental, social and economic benefits including from the landscaping, the biodiversity gain condition, the construction works, spend from future occupiers, and the addition of energy efficient dwellings to the local housing stock in a sustainable location. These are matters that are supported by the Framework. The absence of harm in relation to other considerations including highway safety, or the living conditions of occupiers of neighbouring properties weighs neither for nor against the proposal.
41. I have found that the site does not represent an appropriate location for the proposed development having particular regard to the housing strategy for the area, including the coalescence of settlements and the provision of affordable housing, local and national flood risk policy, and the effect of the proposal on biodiversity. It is contrary to the development plan when taken as a whole.
42. I recognise that housing has been granted elsewhere in Goole in the past and the appeal site also historically had planning permission. Moreover, its status has evolved from previous development plans. However, planning permission has lapsed, and the strategy for Goole has altered significantly. The LPU has been through examination and this strategy, and policies scrutinized, and it has only recently been adopted, and is consistent with the Framework.

43. As such, the conflict with relevant policies of the LPU is a matter that weighs significantly against the appeal proposal before me now. Indeed, the spatial strategy of the area would be undermined if it was allowed, bearing in mind that paragraph 15 of the Framework reminds decision-makers that the planning system should be genuinely plan-led. This reflects the primacy of the development plan set out in Section 38(6) of the Planning and Compulsory Purchase Act 2004.
44. To allow development contrary to the LPU would therefore undermine and dilute the plan-led system and the future pattern of development in the area. In this regard, the totality of the benefits from the scheme, site history and other developments in Goole, are not sufficient to outweigh my findings in relation to the current conflict with the development plan from the appeal proposal.

Conclusion

45. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. For the reasons given above the appeal should be dismissed.

Mr R Walker

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Kevin Pullan	Appellant
Shemuel Shiekh	Counsel for the Appellant

FOR THE COUNCIL:

Calum Rowley	East Riding of Yorkshire Council
Stephanie Robson	East Riding of Yorkshire Council
Jennifer Woollin	East Riding of Yorkshire Council
Jack Southon	WSP

FOR THE ENVIRONMENT AGENCY

Gillian Whitley	Environment Agency
Aaron Miles	Environment Agency

ADDITIONAL DOCUMENTS

- Letter regarding Counsel presence;
- EDNA Technical Report;
- Drg 60/18 Sheet 4 (Full copy of the plan);
- Drg 60/17A;
- Drg 60/018 SHEET 2A; and
- Drg 60/18 SHEET 5.