



Appeal Decision

Site visit made on 19 November 2019

by A McCormack BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th December 2019

Appeal Ref: APP/E2001/W/19/3233683

Land East of 23 Ness Lane, Preston, East Yorkshire HU12 8SG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by West Ella Holdings Limited against the decision of East Riding of Yorkshire Council.
 - The application Ref 15/03802/OUT, dated 30 November 2015, was refused by notice dated 12 June 2019.
 - The development proposed is residential development of up to 24 dwellings (all matters reserved).
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Decision

1. The appeal is allowed and outline planning permission is granted for residential development of up to 24 dwellings (all matters reserved) at Land East of 23 Ness Lane, Preston, East Yorkshire HU12 8SG, in accordance with the terms of application Ref: 15/03802/OUT, dated 30 November 2015, and subject to the conditions set out in the schedule attached to this Decision.

Application for Costs

2. An application for costs was made by West Ella Holdings Limited against East Riding of Yorkshire Council. This will be the subject of a separate Decision. Due to the late submission of the Costs application, that Decision will be determined and issued by the Planning Inspectorate's Costs Team.

Procedural Matters

3. Outline planning permission was sought by the original application with all matters reserved and this appeal has been determined on that basis. As such, submitted plans and drawings, other than the location and site plan showing the site boundary and land in the appellant's ownership, have been considered as indicative or illustrative only and given limited weight.
4. The Council's reason for refusal on its Decision Notice refers to sub-section D.2 of Policy ENV6 of the East Riding Local Plan Strategy Document. During the appeal process, the Council has clarified that this reference is an error and should read as sub-section D.1(ii) of Policy ENV6. This has been agreed by the appellant. Having taken this into account, I have determined this appeal with reference to the correct sub-section of Policy ENV6.

Main Issue

5. From the evidence, I consider the main issue to be whether sufficient information has been provided on surface water drainage in order to appropriately assess the proposal in terms of flood risk.

Reasons

6. The appeal site is identified in the East Riding Local Plan as part of site allocation PRES-B for residential development. As such, the principle for such development on the site is established through the adopted development plan.
7. The Council's reason for refusal relates specifically to the proposed drainage method relying on watercourses in third party riparian ownership and that insufficient information has been provided to demonstrate that future maintenance and management of these watercourses could be secured.
8. Due to concerns relating to a suitable means of surface water drainage and flood risk, the original application was determined by the Council's planning committee rather than by officers under delegated powers, as was the case for proposals on adjacent land forming part of site allocation PRES-B. I note also that the reasons for this also related to the fact that some Members of the committee had local knowledge of the area and were also members of the relevant Internal Drainage Board (IDB) for the area. As such, I find that this was a reasonable approach in the circumstances and that the committee, in its assessment, was entitled to differ from the officer recommendation for the proposed development.
9. The appellant submitted a Flood Risk Assessment (FRA) in 2016 which covered the appeal site and an adjacent site to the north which has since been granted permission for residential development. Due to concerns raised about the level of detail in the FRA by the Lead Local Flood Authority (LLFA) and the IDB, the appellant prepared and submitted the Outline Drainage Strategy (the Drainage Strategy) to address these objections. It is noted that the Drainage Strategy supersedes only section 4.4 of the FRA with the other findings of the FRA remaining relevant.
10. Having carefully considered the appellant's submissions, I note that the evidence provided identifies difficulties and challenges in delivering an acceptable foul and surface water drainage solution for the appeal site. However, in my assessment, the evidence demonstrates that such an arrangement is possible, subject to meeting relevant conditions. These conditions were suggested and incorporated into the Council's delegated officer report with a recommendation to approve. Notwithstanding this, the committee refused the application for outline planning permission for the reason stated.
11. As the application sought outline permission with all matters reserved, whilst a level of detail could be expected relating to more fundamental matters of delivering the proposed scheme, such details should be proportionate in terms of the ability to deliver the proposal in principle. Furthermore, it is reasonable to expect that more detailed evidence be provided at the reserved matters stage. From what I have seen and read, the evidence reasonably demonstrates that suitable surface water drainage measures could be delivered without increasing the risk of flooding on the site or elsewhere. Conditions have been suggested which, in my view, would ensure that suitable arrangements are in place and appropriate measures delivered prior to development commencing. Moreover, these conditions have been agreed between the Council and the appellant.
12. Having considered all matters before me, I find that the submitted FRA, Drainage Strategy and most recent statutory consultation responses indicate that any flood risks created downstream of the proposed development can be reasonably managed through the imposition of suitable planning conditions. In addition, I note that the Council, as the LLFA, and the Environment Agency have no issue with the proposed drainage arrangements set out by the appellant in evidence.

Furthermore, the Council would retain control of approving a subsequent detailed scheme of attenuation, if required, once a more detailed development scheme is submitted at reserved matters stage.

13. Consequently, I conclude that the outline proposal provides sufficient information on surface water drainage matters to enable an appropriate assessment on flood risk to be carried out. Furthermore, in light of this, the proposed development would not be contrary to sub-section D.1(ii) of Policy ENV6 of the East Riding Local Plan Strategy Document and Paragraph 163 of the National Planning Policy Framework (the Framework). Amongst other things, this policy and guidance seeks to ensure that development does not increase flood risk within or beyond its site.

Other considerations

14. I have had due regard to the fact that outline planning permission has been granted for other areas of land forming the site allocation PRES-B which are situated immediately north of, and adjacent to, the appeal site. Moreover, outline approval appears to have been granted based on the same Drainage Strategy submitted in support of the proposal before me. As such, I have taken this into account as a material consideration and given due weight to it in my Decision.
15. I note also the range of concerns raised by interested parties who have commented on, and objected to, the proposal at both the application stage and appeal stage. These concerns relate to matters which, amongst other things, include access, traffic impacts, residential amenity for existing neighbours and the impact on the local landscape. Whilst I acknowledge that the concerns put forward are of great importance, I find that these issues are most appropriately considered in detail at the reserved matters stage rather than through the means of an outline application. Moreover, where some of these other considerations have been addressed in the Council's officer report, I have seen nothing to persuade me to take a different view to that set out by the Council in those matters.

Conditions

16. I have considered the conditions suggested by the Council. Where necessary, and in the interests of conciseness and enforceability, I have altered the conditions to better reflect the relevant advice within the Planning Practice Guidance.
17. In addition to conditions relating to the submission of detailed reserved matters, the timing of development and it being in accordance with the approved plans, I have included conditions which deal with matters that are in the interests of the character and amenity of the area, its existing and future residents and the provisions of the development plan. Conditions are also imposed relating to archaeological investigations, the prevention of increased flood risk and provision of satisfactory foul and surface water drainage as well as those to facilitate the protection of species and priority habitats, biodiversity and nature conservation and the prevention of land contamination. I have also imposed conditions relating to highway safety and the provision of affordable housing.
18. All of these conditions are reasonable and necessary to ensure that the approved scheme is an appropriate development in planning terms and in the interests of amenity, biodiversity, nature conservation and highway safety.
19. It is essential that the requirements of Conditions 5, 6, 7, 8 and 9 are agreed prior to development starting to ensure an acceptable development in respect of archaeological investigation, the prevention of pollution and increased risk of flooding, the provision of satisfactory surface water drainage, appropriate and

acceptable amenity for neighbouring occupiers and properties and ensuring the protection of species, habitats and biodiversity.

Conclusion

20. For the reasons given, and having had regard to all other matters raised, I conclude that the appeal should succeed.

A McCormack

INSPECTOR

Richborough Estates

SCHEDULE OF CONDITIONS

- 1) Details of the access, appearance, landscaping, layout and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) Notwithstanding the information and illustrative plans submitted with the application and the Design and Access Statement, the details to be submitted at reserved matters stage shall include a supplement to the Design and Access Statement with regard to access, appearance, landscaping, layout and scale.
- 5) The development hereby permitted shall not be commenced until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work, in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the local planning authority. Development shall be carried out in accordance with the approved details. The scheme shall provide for:
 - i) The proper identification and evaluation of the extent, character and significance of archaeological remains within the application area;
 - ii) An assessment of the impact of the proposed development on the archaeological remains;
 - iii) Proposals for the preservation in situ, or for the investigation, recording and recovery of archaeological remains and the publishing of the findings, it being understood that there shall be a presumption in favour of their preservation in situ wherever feasible;
 - iv) Sufficient notification and allowance of time so archaeological contractors nominated by the developer to ensure that archaeological fieldwork as proposed in pursuance of (i) and (ii) above is completed prior to the commencement of permitted development in the area of archaeological interest; and
 - v) Notification in writing to the Curatorial Officer of the Humber Archaeological Partnership of the commencement of archaeological works and the opportunity to monitor such works.
- 6) No development shall take place on site until details of the works for the disposal of foul sewerage have been submitted to, and approved in writing by, the local planning authority. No dwelling shall be first occupied until the approved sewerage details have been fully implemented in accordance with the approved plans.
- 7) No development shall take place on site until a scheme for the discharge of surface water from the site, incorporating a sustainable drainage system and associated management and maintenance plan, has been submitted to, and approved in writing by, the local planning authority. No dwelling shall be first occupied until the surface water drainage has been constructed in accordance with the approved scheme, and shall be managed and maintained in accordance with the approved plans.
- 8) No development shall take place on the site until a Construction Management Plan (CMP) has been submitted to, and approved in writing by, the local planning authority. The CMP shall clearly identify all construction activities likely to cause disturbance and shall include hours of working, operation of machinery, piling, transmission of dust and egress of mud from the site (including wheel washing

facilities), noise generation, storage of plant and materials used in the construction, a scheme for recycling or disposing of waste arising from the construction activities. Reference shall be made to appropriate British Standards or codes of practice for considerate contractors. The CMP should also include a construction noise assessment to be conducted using the BS5228:2009+A1:2014ABC method to define threshold noise levels at the nearest noise sensitive receptors and proposed mitigation. The development shall then only be carried out in accordance with the approved CMP.

- 9) No site clearance, site preparation or construction work shall take place until an Ecological Construction Method Statement (ECMS) and Ecological Enhancement and Management Plan (EEMP) have been submitted to, and approved in writing by, the local planning authority. The ECMS and EEMP shall be compiled by a suitably qualified ecologist, include a timetable for implementation and a detailed plan. The scheme shall provide full details of all ecological mitigation, enhancement and management measures along with a programme for the implementation and monitoring for each element of the development. The scheme shall also include:
- i) Details of appropriate habitat and species update surveys (where necessary);
 - ii) Details of Precautionary Methods of Working (PMW) for works, such as tree or hedgerow removal in relation to potential impacts on protected species such as bats, great crested newts and breeding birds;
 - iii) Full details of relevant on-site working practices to safeguard wildlife throughout the lifetime of the development, including action to be taken if protected species are found during construction, e.g. great crested newts and badgers;
 - iv) Details of a lighting strategy which secures dark corridors for bat foraging and nesting birds on the site boundaries;
 - v) Full details of measures incorporating a 25% box to building ratio to enhance nesting opportunities for birds across the site, and a 25% box/tube to building ratio to enhance bat roosting provision within the development. A detailed drawing specifying the precise location of the enhancement measures shall also be provided;
 - vi) Plans and full details for the layout and design of biodiversity enhancement measures for green corridors and public open spaces and the creation and establishment of new habitat features including; a method statement for site preparation and establishment of target figures, the extent and location of proposed works, details of aftercare and long-term management (where necessary) shall be provided;
 - vii) Details of site induction information and tool box talks for all relevant on-site working practices. Protocols to demonstrate that the site work force will be briefed about ecological issues on the site prior to commencement of construction shall also be provided.

Upon commencement of development all aspects of the approved ECMS and EEMP shall be implemented in full, unless otherwise agreed in writing by the local planning authority.

- 10) In the event that contamination is found at any time when carrying out the approved development, 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.

- 11) The Reserved Matters submission required by Condition 1 (above) shall include provision for a minimum of 15% affordable housing within the development. No development shall take place until the scheme for the provision of affordable housing within the site (unless the developers have previously entered into a binding agreement with the Council to secure the provision of all or part of the requisite elsewhere) has been submitted to, and approved in writing by, the local planning authority. The approved scheme shall thereafter be implemented.
- 12) The Reserved Matters submission required by Condition 1 (above) shall include provision of open space as part of the development within the site in accordance with policy C3 of the East Riding Local Plan Strategy Document and the Open Space Supplementary Planning Document (unless the developers have previously entered into a binding agreement with the Council to secure the provision of the required open space elsewhere in the area). The scheme shall include details of the laying out and construction of the open space, a timetable for its provision and arrangements for its future maintenance. The open space shall then be provided and maintained in accordance with the approved scheme, unless otherwise agreed in writing with the local planning authority.
- 13) No development shall take place unless in strict accordance with all of the recommendations for mitigation set out in the Preliminary Ecological Appraisal Report (Curtis Ecology, February 2016) as amended by the Supplementary Extended Phase 1 Ecology Survey (Durkin, August 2016), Great Crested Newt Reasoned Statement and Mitigation Proposals (Durkin, March 2016 [revised August 2016]) and Reasoned Statement and Mitigation Proposals for Badgers (Durkin, March 2016) as submitted with the application in all respects. Any variation thereto shall be agreed in writing by the local planning authority before such change is made.
- 14) The Reserved Matters submission required by Condition 1 (above) in relation to landscaping shall include:
 - i) Proposed finished levels or contours;
 - ii) Means of enclosure;
 - iii) Car parking layout;
 - iv) Other vehicle and pedestrian access and circulation areas;
 - v) Hard surfacing materials
 - vi) Minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc);
 - vii) Retention of existing hedgerows;
 - viii) Planting plans;
 - ix) Written specifications (including cultivation and other operations associated with plant and grass establishment);
 - x) Schedules of plants, noting species, plant sizes and proposed numbers/densities;
 - xi) A programme for the implementation of the landscaping works; and
 - xii) A scheme for the future maintenance of the areas not included within private curtilages.
- 15) The Reserved Matters submission required by Condition 1 (above) in relation to landscaping, shall include a Landscaping Masterplan for the site which shall include provision for the retention of the hedgerows around the site, and additional landscape buffer planting to the eastern border of the site.
- 16) In this condition, 'retained hedge' means the existing hedgerows around the site which are to be retained in accordance with the approved plans and particulars, and Paragraphs (a) and (b) below shall have effect until the expiration of one year from the date of the occupation of the development for its permitted use.
 - (a) No retained hedge shall be cut down, uprooted or destroyed, nor shall any retained hedge be topped or lopped other than in accordance with the approved plans and particulars without the written approval of the

local planning authority. Any topping or lopping approved shall be carried out in accordance with British Standard 3998:2010 (Tree Work – Recommendations).

- (b) If any retained hedge is removed, uprooted or destroyed or dies another hedge shall be planted at the same place and that tree shall be of such size, species and maturity and shall be planted at such time as may be specified in writing by the local planning authority.
 - (c) The erection of fencing for the protection of any retained hedge shall be taken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought on to the site for the purposes of the development and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made without the prior written consent of the local planning authority.
- 17) The Reserved Matters submission required by Condition 1 (above) shall make provision for all vehicular access to the site from Sproatley Road to the north only.
 - 18) The Reserved Matters submission required by Condition 1 (above) shall make provision for a pedestrian/cycle link from Ness Lane through the site to link with the remaining land within the residential allocation of PRES-B to allow access through this to Sproatley Road to the north.
 - 19) With the exception of vehicular access into the site, the area of land to be developed for residential development under this consent shall only be that portion of the site as highlighted on the indicative layout Drawing SK03 received on 23/01/2017 and shall not include the rest of the land within the red line area.
 - 20) The development hereby permitted shall be carried out in accordance with the following approved plan:

Drawing No: 1535:10 – 'Location Plan' received on 23/01/2017.

END OF SCHEDULE