

DEVELOPMENT MANAGEMENT
APPEALS LIST - 15th March 2024

APPLICATION NUMBER & SITE ADDRESS	APPEAL REFERENCE & STATUS	OFFICER & PROCEDURE
DM/0046/22/TPO 24 Park Avenue Grimsby North East Lincolnshire DN32 0DQ	AP/020/22 INPROG	Paul Chaplin Fast Track
DM/0795/22/FUL The Barns Killingholme Road Habrough North East Lincolnshire	AP/017/23 INPROG	Jonathan Cadd Written Representation
DM/0324/23/FULA 21 Church Lane Humberston North East Lincolnshire DN36 4HZ	AP/019/23 INPROG	Owen Toop Fast Track
DM/1098/22/OUT Land South Of Millennium Park Humberston Avenue Humberston North East Lincolnshire	AP/020/23 INPROG	Jonathan Cadd Written Representation

DM/0833/23/FUL 68 Brighowgate Grimsby North East Lincolnshire DN32 0QW	AP/001/24 INPROG	Bethany Loring Written Representation
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DM/0370/23/FUL Roundhead Filling Station 148 Cromwell Road Grimsby North East Lincolnshire DN31 2BA	AP/002/24 INPROG	Jonathan Cadd Written Representation
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DM/0686/23/FUL 2 Pinfold Lane Grimsby North East Lincolnshire DN33 2EW	AP/003/24 INPROG	Emily Davidson Written Representation
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DM/1174/23/FUL 214 Sandringham Road Cleethorpes North East Lincolnshire DN35 9AD	AP/004/24 INPROG	Bethany Loring Fast Track
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DM/0815/22/REM Land Field Head Road Laceby North East Lincolnshire DN37 7SS	AP/005/24 INPROG	Lauren Birkwood Informal Hearing
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DM/0470/23/OUT Land Field Head Road Laceby North East Lincolnshire DN37 7SS	AP/006/24 INPROG	Lauren Birkwood Informal Hearing
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Appeal Decision

Site visit made on 4 January 2024

by **J Downs BA(Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16 February 2024

Appeal Ref: APP/B2002/W/23/3321184

Land at Roundhill and Fairfield Plantations, Hatcliffe DN37 0SN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Dan Brown of Lincolnshire Flow against the decision of North East Lincolnshire Council.
 - The application Ref DM/0240/21/FUL, dated 4 March 2021, was refused by notice dated 13 December 2022.
 - The development proposed is mountain bike trails area with proposed associated landscaping and parking.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has indicated that they agree to the amended description used by the Council in their decision notice. I have amended the description of development to remove references to it being a retrospective application as this does not describe development and to remove other extraneous wording. At my site visit, I observed that the trails are in place, however the parking area has not been provided. I have assessed the proposed development on the basis of what I observed with respect to the trails area and as shown on the plans for the parking and landscaping.
3. On 22 November 2023 all designated Areas of Outstanding Natural Beauty (AONB) in England and Wales became National Landscapes. The legal designation and policy status of AONBs are unchanged, but I have replaced references, including those in policy and guidance, to the AONB with National Landscape (NL) in my decision to reflect this change.
4. On 19 December 2023, a revised National Planning Policy Framework (the Framework) was published. Those parts of the Framework most relevant to this appeal have not been materially amended. As a result, I consider that there is no requirement for me to seek further submissions and I am satisfied that no party's interests have been prejudiced by my taking this approach. I will refer to the updated paragraph numbers in this decision.

Main Issues

5. The main issues are the effect of the proposed development on:
 - the character and appearance of the area with respect to the landscape character of the Lincolnshire Wolds NL including its geological interest;

- biodiversity and protected species; and
- highway safety.

Reasons

Landscape Character

6. The site falls within the Lincolnshire Wolds NL which is designated for the purposes of conserving and enhancing natural beauty and section 85(1) of the Countryside and Rights of Way Act 2000 (CRoW) places a duty on me to have regard to these purposes. This duty is reflected in the policies of the Framework. Paragraph 182 confirms that great weight should be given to conserving and enhancing landscape and scenic beauty of the NL, and that the scale and extent of development should be limited.
7. The Management Plan 2018-2023 (MP) for the NL identifies that the chalk landscape has been extensively modified by glaciations. This has given rise to steep-sided and open-ended combs such as the Round Hill Valley Local Geological Site (LGS) within which the site lies.
8. I have not been provided with sectional drawings showing how the valley side has been altered to provide the trails area. However, it was clear from my site visit that some areas have been altered to provide the features along the trails. Inevitably this will have altered the profile of the valley side, particularly with the creation of clearly artificial obstacles such as the table close to the valley floor.
9. The Council has not disputed the appellant's evidence that the features have all been formed above ground, with no excavation. However, this nonetheless has altered the topography of the valley within an area of geological conservation importance which contributes to the landscape character of the NL as well as being of geological importance in its own right. Consequently, it has not conserved and enhanced the landscape and scenic beauty of the NL.
10. The MP also identifies peace and tranquillity as a special quality of the NL, particularly away from main roads and in sheltered combs. The appeal site is such a location. It is possible that there would be some noise arising from the use of the trails such as shouting and cheering by participants. However, there is no substantive evidence to demonstrate that this is particularly likely, or that the level of noise would be so significant as to materially harm the tranquillity of the NL. It is also unlikely that this, and the general activity associated with the trails, would harm the living conditions of surrounding residents, given the closest properties are identified as being 240m from the appeal site.
11. Recreational uses in the NL are not inherently uncharacteristic. The table feature at the foot of the valley would likely be visible to people using the Wanderlust Way which follows the highway at the site boundary in glimpses through gaps in the hedgerow or in winter when vegetation is more sparse. The jumps closest to the road may result in riders appearing above the hedge line. However, such glimpses would likely be of short duration both in terms of time and the distance across which they would be visible. Unexpected movements are not unusual either in the countryside or on the highway and it is reasonable to assume that horses being ridden on the highway would likely be handled by experienced riders who could respond appropriately if a horse was startled.

12. The application indicates there would not be staff on site, so there would be no means of limiting the number of visitors. It is also not clear in such circumstances how the zero-tolerance policy to littering would be enforced. While no toilet facilities are proposed, this is not uncommon for outdoor activities in rural areas. There is no substantive evidence before me to demonstrate the likelihood of pollution from users would be so significant as to harm the surrounding environment. No temporary toilet facilities are proposed therefore it is not incumbent on me to consider the effects of any such development.
13. The proposal would overall have a harmful effect on the landscape character of the Lincolnshire Wolds NL including its geological interest. It would be contrary to North East Lincolnshire Local Plan 2018 (NELLP) Policies 5, 41 and 42 which, inter alia, require landscape character to be given due consideration in the location of development proposals, the protection and enhancement of the landscape character and natural beauty of the NL and the protection, and enhancement of sites of geological conservation importance.

Biodiversity and Protected Species

14. The appeal site includes land within the Round Hill Valley Grassland Local Wildlife Site (LWS). The Preliminary Ecological Appraisal (PEA) also identifies the woodland on site as Deciduous Woodland priority habitat. No impacts to the woodland are anticipated and no tree felling is proposed.
15. The proposed car park would be sited on the grassland for which the site is designated. The PEA considered that the quality of the grassland had deteriorated since the 2009 survey, with only one scoring species noted although the survey was not carried out at the optimal time. The PEA recommends mitigation to restore the quality of the grassland but it does not make any reference to providing compensation for the loss of the habitat within the LWS to the car park. Furthermore, there is no robust evidence to establish a baseline against which any compensation and mitigation could be secured as the ecological survey was, by the report's own admission, not carried out during the optimum season for undertaking botanical surveys. I therefore could not be certain that effective mitigation and compensation could be secured.
16. The PEA noted the deterioration of the site was likely due to a lack of management and the appellant has identified that the proposal would bring management to the site that is not currently present. It would not be necessary for development to be carried out for the site to be appropriately managed therefore this would not weigh in support.
17. The PEA noted evidence of badger activity and assessed the effect of the works to install the bike trails. However it does not contain an assessment as to the effect of the use of the trails on badgers. I therefore cannot be certain that their use would not cause a disturbance to badgers.
18. Furthermore, the supporting ecological report was carried out in October 2020. The report itself notes that advice issued by the Chartered Institute of Ecology and Environmental Management advises that an ecological report remains valid for 12-18 months and that October was not the optimum season for undertaking botanical surveys. While I acknowledge the application took some considerable time to determine, the survey was some 30 months old at the

time the appeal was submitted. I cannot be certain it remains an accurate baseline upon which to assess the development.

19. I therefore cannot conclude that the development would not have an adverse effect on biodiversity and protected species. It would be contrary to NELLP Policy 41 which seeks to minimise the loss of biodiversity features and ensure appropriate mitigation and compensation where biodiversity may be harmed by development.

Highway Safety

20. The proposed car park area would provide for 10 parking spaces. The appellant has set out that there would be at the most 10 cars given the reduced scale of the proposal when compared with that originally submitted to the Council. However, there is no explanation or justification for how this figure was arrived at. Furthermore, it is not clear if the estimated visitor numbers refer to the original or amended application. It therefore has not been demonstrated that the proposed car park makes adequate provision for parking to serve the needs of the development.
21. The appellant acknowledges it would be potentially restrictive to the operation of the highway and visually undesirable for there to be parking along the verge on Ravendale Road. This would also increase the potential for conflict with horse riders, and to a lesser extent pedestrians using the Wanderlust Way, who would be more likely to use the verge as a refuge when vehicles are passing. I therefore cannot be certain that there would not be an adverse effect on the safe operation of the highway.
22. The appellant suggests that the site would be managed through rules for members. However it is stated elsewhere that the site would not be staffed, therefore it is unclear how these rules would be monitored or enforced. It is also not clear how non-members would be prevented from using the site which could encourage further visitors to the site.
23. The development would therefore have an unacceptable effect on highway safety. It would therefore be contrary to NELLP Policy 5 which requires development to be suitable with respect to access and traffic generation.

Other Matters

24. Planning permission can be granted for a temporary period. The Planning Practice Guidance¹ advises that the circumstances where this would be appropriate include where a trial run is needed in order to assess the effect of the development on the area or where it is expected that the planning circumstances will change in a particular way at the end of that period. While this would allow issues such as parking and the effect on the character and appearance of the area to be assessed, it would not overcome the harms I have identified with respect to the NL, geodiversity and biodiversity. Such a condition would therefore not be appropriate.
25. The provision of the trails would provide opportunities for recreation and exercise which in turn can promote wellbeing among users. It could be used by a range of the population and provide opportunities for families to spend time together. I accept it may be some distance to the next similar facility therefore

¹ Use of planning conditions Paragraph: 014 Reference ID: 21a-014-20140306 Revision date: 06 03 2014

the trails would reduce travel time and could bring some economic benefits into the area. There is no substantive evidence to show that users would be anything other than considerate of their environment, however equally there is no substantive evidence that the proposal would reduce any demand for illegal trails or that there would be crime reduction benefits arising. The site is in private ownership so there is no requirement for public access for walking. I have been referred to another decision of the Council but have not been provided with full details. In any event, I have determined this appeal on its own planning merits.

26. Section 149(1) of the Equality Act 2010 is that a public authority must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment, victimisation and any other prohibited conduct, advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
27. There is the potential for my decision to affect persons with the protected characteristic of age. The negative impacts of dismissing this appeal will arise from a lack of opportunity to pursue mountain biking as a hobby. However, having due regard to this, and to the principles set out in s149, in my view the adverse effects of dismissing the scheme on those with protected characteristics would be proportionate, having regard to the potential adverse effects of allowing the development.

Conclusion

28. The appeal proposal would conflict with the development plan when read as a whole. There are no material considerations of sufficient weight, including the policies of the Framework, to suggest the decision should be made other than in accordance with the development plan. Therefore for the reasons given, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

J Downs

INSPECTOR



Appeal Decision

Hearing held on 9 January 2024

Site visit made on 9 January 2024

by Louise Crosby MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st March 2024

Appeal Ref: APP/B2002/W/23/3329352

Land east of Midfield Road, Humberston, North East Lincolnshire, DN36 4TH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Cyden Homes Ltd against the decision of North East Lincolnshire Council.
 - The application Ref DM/0696/19/FUL, dated 29 July 2019, was refused by notice dated 30 August 2023.
 - The development proposed is 225 dwellings on land east of Midfield Road, Humberston with secondary access off Andrew Road.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal site is allocated for around 198 dwellings in policy 13 of the North East Lincolnshire Local Plan 2013-2032 (adopted 2018) (LP). Policy 13 also identifies the site as having a medium/high potential for hosting bird species associated with the Humber Estuary Special Protection Area (SPA). Table 5.12 of the plan identifies the site as having a 'moderate' potential to support birds protected by the SPA.
3. The appellant has entered into a Section 106 agreement with the Council. This would secure 20% affordable housing, an education contribution and a contribution to Cleethorpes Country Park as part of the proposed recreational disturbance mitigation. Consequently, at the hearing the Council did not seek to defend the third reason for refusal which relates to this matter. I shall deal with this matter in more detail below.

Main Issues

4. The main issue is the effect of the proposal on biodiversity.

Reasons

Biodiversity

5. The Council's first two reasons for refusal cover two separate biodiversity matters, firstly whether the site comprises land that is functionally linked to the SPA and Humber Estuary Ramsar and Humber Estuary Site of Special Scientific Interest (SSSI) and secondly whether the proposed mitigation to address the

impact of future recreational disturbance from the occupiers of the development on the SPA and the SSSI is adequate. I shall deal with each matter in turn.

6. Table 5.12 of the Local Plan Habitat Regulations Assessment (HRA), identifies the appeal site as having 'moderate' potential to support birds protected by the SPA. At that time, it was an open, tightly grazed horse paddock within 2km of the SPA. In 2015 and 2018/19 bird surveys of the appeal site found that it supported just over 1% of the SPA curlew population and smaller proportions of other SPA bird populations. As such it was agreed that it was 'functionally linked land' (FLL). Natural England consider that the loss of FLL of more than 1% of any SPA bird is likely to be a likely significant effect. This would require mitigation in the form of a managed habitat for curlew and a long term management plan. The appellant has offered no mitigation in this regard.
7. At the time of these bird surveys the site was leased to someone who grazed horses on the land. When the lease came to an end it was not renewed. Since then, the site has been disused and consequently has become overgrown. By September 2021, the site had become less suitable for curlews. Grazing had ceased, allowing the vegetation to grow taller than that preferred by curlew. Also, the boundary fencing had fallen into disrepair, and there was evidence of informal dog walking.
8. It was apparent at the site visit that it is being used illegally by local residents for recreational purposes, such as dog walking. Also, since the appellants' surveys in 2015 and 2018/19, a small housing development has been built to the southwest of the site, reducing the openness preferred by curlew. Further bird surveys were carried out during the winters of 21/22 and 22/23. The bird surveys consisted of many site visits over the two winters. During the surveys only one curlew was recorded on the appeal site.
9. These results indicate that it is no longer likely to regularly support 1% or more of the SPA population of curlew (or any other SPA bird). While the appellant asserts that this can therefore no longer be considered to be FLL the Council and Natural England take the view that if the appeal site were to return to its previous condition the numbers of curlew could increase and therefore it is still FLL.
10. There is little prospect of the current management changing to restore suitable conditions for curlews and other SPA birds. The agricultural management of the site is entirely in the gift of the landowner. Neither the Council nor Natural England can require the landowner to provide curlew foraging habitat and the landowner says they have no plans at the present time to reinstate regular grazing. In fact, it is in the owner's best interests to maintain the current, unsuitable conditions. Nevertheless, to just accept this argument would give a green light to other landowners and developers with allocated sites that are classed as FLL to allow their degradation in order to avoid the need to mitigate the loss.
11. Natural England considers that mitigation in the form of habitat enhancement/creation, specifically for curlew is required and that it is not possible to provide this on-site, due to likely levels of disturbance. The advice of Natural England carries great weight.

12. LP policy 13 requires sites identified as having medium or high potential to support SPA/Ramsar birds, where there is the potential for adverse effects resulting from the off-site habitat loss and/or disturbance that appropriate and timely measures are taken to mitigate such impacts. Such mitigation is likely to be in the form of alternative habitat managed specifically for the affected bird species and/or contributions towards the provision of strategic mitigation sites. The appellant has not identified an off-site area that would provide alternative habitat managed specifically for the affected bird species.
13. I agree with Natural England and the Council that the appeal site is still FLL, to do otherwise would undermine the retention or mitigation of other FLL. Consequently, mitigation is required. Since this has not been provided as part of the planning application or appeal scheme the proposal would conflict with LP policy 13. Moreover it would not be appropriate to require mitigation by planning conditions as mitigation needs to be proposed prior to planning permission being granted.
14. Turning to the second matter, both main parties and Natural England agree that some recreational disturbance would occur as a result of the development, and I concur. Paragraph 5.134 of the Local Plan HRA predicts that housing allocations, such as this one, are likely to result in increased recreational pressure on SPA birds in the Tetney Haven to Humberson Fitties sector. This is because there is a public car park which gives access to the shore and flood bank. The likely significant effect of increased recreational pressure on the shore in Cleethorpes is also noted. Advice from Natural England confirms that this policy is intended to include a commitment to mitigate recreational effects on both the SPA and also on FLL.
15. At the time that the planning application was determined by the Council there was a lack of agreement over the mitigation necessary. The appellant continued to negotiate with the Council and Natural England following the submission of the appeal, in relation to mitigation.
16. The appellant and the Council agree that the proposed package of measures which includes on site open space provision, a sustainable urban drainage scheme and a financial contribution of £78,917.00 towards improvements to Cleethorpes Country Park, which is within walking distance of the appeal site would adequately mitigate the harm.
17. Natural England accepts that improvements to Cleethorpes Country Park could be implemented to avoid recreation disturbance impacts on the Humber Estuary designated sites and agrees that the measures proposed are suitable in principle. However, they have concerns about the amount of mitigation being proposed. They consider that the proposed length of paths to be drained and improved should be increased to reflect the likely number of additional residents to ensure that the total mitigation package would encourage new residents, to use the facility and thus effectively mitigate against recreational disturbance on the Humber Estuary. Natural England's advice carries great weight on this matter, and I agree with their position on this matter.
18. For the reasons set out above, I find that the proposal would conflict with LP policies 5, 13, 40, 41 and 43 in so far as they seek to ensure that new development has regard to biodiversity.

Legal agreement

19. The Council confirmed at the hearing that the legal agreement overcame their third reason for refusal in relation to affordable housing and provision and a financial contribution to secondary education.
20. I am satisfied that these contributions are related in scale and kind to the proposed development and that they are necessary to make the development acceptable in planning terms.
21. Whilst these would be benefits of the scheme that attract some weight, they are required to make the development acceptable.

Conclusion

22. Whilst the proposal would see the development of this site which is allocated for housing in the LP and thus provide much needed market and affordable housing, the benefits of the scheme do not outweigh the harm to biodiversity and in particular the likely significant effects on the SPA and SSSI site due to a lack of suitable mitigation.
23. For the reasons given I dismiss the appeal.

Louise Crosby

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Michael Knott of Stantec
Karen Colebourn of EPR
Andrew Burling of Cyden Homes
Steven Ibbotson of Cyden Homes

FOR THE LOCAL PLANNING AUTHORITY:

Richard Limmer, Planner, North East Lincolnshire Council
Martin Dixon, Planner, North East Lincolnshire Council
Mr Levi Anderson-Jordan, Environmental Strategy Officer, North East Lincolnshire Council
Rachel Graham, Ecology Manager, North East Lincolnshire Council

INTERESTED PARTIES:

Cllr Elizabeth Shawhulme
Cllr Stan Shreeve
Cllr Hayden Dawkins

John Crickett, local resident

DOCUMENTS

1. Signed and sealed Section 106 agreement dated 9 January 2024.