

**APPEAL REFS:**

**APP/E2001/A/13/2200981 and APP/E2001/A/14/2213944**

**LAND TO THE EAST AND WEST OF BRICKYARD LANE, MELTON PARK, EAST RIDING, HU14 3RS**

**PROCEDURAL NOTE 1: 14 APRIL 2014**

APPEALS BY ST MODWEN DEVELOPMENTS LTD AGAINST THE DECISIONS OF EAST RIDING OF YORKSHIRE COUNCIL TO REFUSE TO GRANT OUTLINE PLANNING PERMISSION:

**APPEAL A:** residential development of up to 510 dwellings, 50 bed care home, 20 sheltered apartment units for elderly persons, 16 dormer bungalows for elderly persons, a local centre maximum 680sqm (total internal floor area) to include retail; community and leisure uses within use classes A1, A3, A5 and D1, informal and formal recreation open space including children's play areas and sports pitches, sports changing block, landscaping, drainage works including ponds, cycle way and footway links, new highways access, internal roads and car parking area (access to be considered).

**APPEAL B:** residential development of up to 390 dwellings, 50 bed care home, 20 sheltered apartment units for elderly persons, 16 dormer bungalows for elderly persons, a local centre maximum 680sqm (total internal floor area) to include retail; community and leisure uses within use classes A1, A3, A5 and D1, 7.7ha of employment land use class B1 and/or B2 and/or B8, informal and formal recreation open space including children's play areas and sports pitches, sports changing block, landscaping, drainage works including ponds, cycle way and footway links, new highways access, internal roads and car parking area (access to be considered).

**Purpose of procedural note**

1. The purpose of the note is to establish the procedural and administrative arrangements for the inquiry. A further procedural note will be issued in due course to establish a timetable for the hearing of the various cases. The note is being circulated to the two main parties – the appellant, the East Riding of Yorkshire Council and the Rule 6 (6) party Save Our Ferriby (SOF). The note is also being circulated to the North Ferriby Parish Council and persons who have indicated that they wish to speak at the inquiry. The

Inspector would be grateful if the parties would circulate it to others with an interest in the appeals.

2. The appeals were recovered for decision by the Secretary of State for Communities and Local Government by directions dated 15 July 2013 and 27 February 2014. The reason given for recovery is that the appeals involve proposals for residential development of over 150 units or on sites of over 5 hectares which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities. The appeals were linked by letter dated 27 February 2014

### **Appointed Inspector**

3. Mrs KA Ellison BA, MPhil, MRTPI has been appointed by the Secretary of State to conduct the inquiry and to write a report to the Secretary of State together with a recommendation as to the decision that should be made on each appeal.

### **Appointment of the Programme Officer**

4. The Council has offered to appoint a programme officer for the inquiry. Given the scale of the inquiry and the high level of local interest which has been expressed, the Inspector considers this would be extremely helpful.
5. Although the programme officer would be appointed by the Council, s/he would act as an impartial officer of the inquiry and be responsible to the Inspector. The main duties of the programme officer will be to act as a contact for all participants, to assist in organising and publicising the inquiry timetable, to maintain an inquiry library and to ensure that all proofs and documents submitted to the inquiry are recorded and circulated.
6. Please provide Robert Cook, the case officer at PINS, with the contact details for the programme officer once they are known.

### **Date and venue for the inquiry**

7. The inquiry will open at 10.00 hours on Tuesday 29 April 2014. The inquiry will be held at East Riding of Yorkshire Council, County Hall, Beverley HU17 9BA.

8. The Inspector has given careful consideration to the representations from SOF and local residents supporting a choice of venue nearer to the appeal site. She notes that it will be more difficult for local residents to attend inquiry sessions at Beverley, due to the distance involved and travel costs. She also acknowledges the strength of local feeling on this matter, as indicated in the numerous representations received. However, although the proposals are undoubtedly of great concern locally, they are also of wider national and regional importance. This is reflected in the fact that it will be the Secretary of State, rather than the Inspector, who will make the final decisions. It is important therefore, to ensure that the testing of the evidence is not hampered and that the progress of the inquiry is not delayed as a result of practical issues such as connectivity, security or availability of supporting facilities.
9. With that in mind, she considers the more prudent course of action is to adopt County Hall, Beverley as the main venue for the inquiry. However she wishes to ensure that the local community can feel confident that the report she submits will give a full and fair account of their planning concerns. To this end, she considers it would be advisable for locally-based bodies such as the Parish Council and SOF to establish whether there are any local residents who would wish to address the inquiry in person. This would be with a view to making provision within the inquiry programme for a session or sessions to be held in the Melton/North Ferriby area.

### **Duration of the inquiry**

10. At the adjourned inquiry, the length of the resumed inquiry and sitting days were agreed. It is anticipated that the inquiry will sit on the following days: April 29, 30; May 1, 2, 6, 7, 8, 9, 13, 14, 15, 20, 21, 22 and 23. These dates will be kept under review as the inquiry progresses.

### **Inquiry procedures**

11. The inquiry will follow the Town and Country Planning (Inquiries Procedure) (England) Rules 2000.
12. It is expected that the inquiry will sit from 10.00 to about 17.00 hours each day with an hour's break for lunch taken at about 13.00 hours. The exception to these sitting hours will be if a session of the inquiry is held at another venue.

The sitting hours on that day will be subject to further discussion.

13. After the Inspector's opening announcements on the first day of the inquiry, the advocate representing the appellant will be invited to make an opening statement which briefly sets out the appellant's case and also explains the nature of the proposal. Those representing the Council and SOF will then be invited in turn to make a short opening statement setting out their respective cases.
14. After these opening statements, the Council will be asked to call each of its witnesses in turn. The opportunity to question the witnesses will be given to the appellant's advocate.
15. In a Planning Inquiry, a party may speak in favour of the appeal proposal or against it. There is no provision within the Inquiry Rules for a second opposing party to test the case of the first opposing party. That is the preserve of the appellant. Thus, it is not permissible for SOF to cross examine any of the Council's witnesses. Where SOF's case differs from that of the Council, it is for SOF to provide evidence in support of the case it wishes to make. In this way, inquiry time will be put to best use. It would also enable SOF to devote its full resources to putting its best case forward to the Secretary of State.
16. Once the Council's evidence has been completed, SOF will be asked to call each of its witnesses in turn. The opportunity to question the witnesses will be afforded to the appellant.
17. It will then be the turn of the appellant, who will be invited to call witnesses. The opportunity to question these witnesses will be given first to the Council, then SOF and last, those who are objecting to the proposal and have notified the Inspector that they wish to speak at the inquiry.
18. Generally, there will then be an opportunity for interested persons who are objecting to the proposal and wish to speak to put their views to the inquiry. However, the possible inquiry session at a venue closer to the appeal site may be programmed at an earlier point in the inquiry. The appellant's advocate has the opportunity to ask questions of those who address the inquiry. Although they are not

obliged to answer questions, their evidence will be given more weight if it is tested by questioning.

19. The Inspector will ask questions at any stage of the proceedings.
20. It is often the case that interested persons and, sometimes witnesses for the main parties and Rule 6(6) party are unable to attend at certain times for business or domestic reasons. Any such constraints should be made known, so that the inquiry timetable can be constructed to best effect.
21. Following a session where conditions and any Planning Obligations are discussed, the Inspector will hear closing submissions from SOF, then the Council, then the appellant.
22. Either during or after the inquiry, the Inspector will visit the site and its surroundings. The main parties will be expected to accompany the Inspector. Representatives of SOF will be offered the opportunity to accompany the Inspector on the site visit. Others may do so at the Inspector's discretion. Arrangements for the site visit will be announced during the inquiry.
23. It is anticipated that the venue for the inquiry will have photocopying facilities. It is also hoped that tea and coffee making facilities will be available. Short breaks for tea or coffee in mid morning and mid afternoon are often a good way of providing relief when long sessions of evidence are being heard. Such breaks also provide a valuable opportunity for the parties to discuss matters on an informal basis, such as agreeing the wording of suggested conditions. Confirmation of the facilities at the inquiry venue will be provided in due course.

### **Proofs of evidence**

24. Proofs of evidence from the Appellant, the Council and SOF have already been submitted. Once appointed, the programme officer will require two further sets of proofs from the Appellant, the Council and SOF, one for the inquiry library and one which will go to the Secretary of State when the report is submitted.
25. All proofs of evidence over 1,500 words long should have been accompanied by a summary. To save time, only summaries will be read at the inquiry. There are some

proofs over 1,500 words long which have not been accompanied by a summary. Summaries of these should be provided to the programme officer once her/his contact details are known. S/he will require 4 copies of each summary: one copy to go to the other two parties to the inquiry, one copy to be put into the inquiry library and one copy for the Inspector.

26. The programme officer will be responsible for referencing all documents and for ensuring that one copy of all proofs of evidence and accompanying documents, plans and photographs are included in the inquiry library. Up until the day before the opening of the inquiry, the inquiry library will be held by the Council so that it is available for consultation by local residents and others. To this end, the Inspector will ask the programme officer to liaise with the Council to include the various proofs and other material for the inquiry library, once it has been referenced.
27. From the opening of the inquiry, the inquiry library will be kept at the inquiry venue and become the responsibility of the programme officer.
28. From an initial look at the proofs and other papers, the Inspector considers the main matters for the inquiry will relate to:
  - Whether the proposals comply with the development plan and whether they accord with emerging policies, particularly in respect of policies for the supply of land for housing and employment; whether the proposal would prejudice the emerging ERYC local plan;
  - Whether the proposals accord with national planning policies, particularly in respect of whether either or both may represent a sustainable form of development;
  - The likely effect of the proposals on the supply of employment land; the relationship of the proposals to wider economic development objectives, including the potential of the Humber to become established as a centre for renewable energy;
  - Whether the Council can demonstrate a five year supply of land for housing and the contribution which the proposals could make to that supply;

- the effect of the proposals on the character of the area, with particular reference to the identity of the settlements of Melton and North Ferriby;
- The effect of the proposals on land and facilities for recreation and open space in the Melton/North Ferriby area, including in relation to Long Plantation Wood;
- The impact of the proposals on the living conditions of those living in the surrounding area, particularly with regard to levels of noise, dust, road traffic and concerns over the reuse of potentially contaminated land;
- Whether any of the impacts of the proposals are capable of being mitigated by the imposition of appropriately worded conditions or through a planning obligation.

29. This list of matters is provisional at this stage. Also, it does not preclude other matters being raised at the appropriate time but it must be noted that any further matters must be related to the planning merits of the appeal proposals.

### **Opening and closing submissions**

30. Opening and closing submissions should be in writing. In addition, an electronic copy of the closing submissions should be sent to Robert Cook, the case officer in the Planning Inspectorate. The Inspector's reporting of the cases will rely heavily on the closing submissions.

### **Statement of common ground**

31. A statement of common ground is a record of matters of a factual nature that have been agreed between the main parties. It can help the inquiry to run to time by having factual matters agreed rather than remaining open to dispute. A statement of common ground (SCG1) dated 6 September 2013 was submitted by the appellant in accordance with the timetable for the adjourned inquiry.

32. The Inspector has been provided with a Draft Statement of Common Ground between the Appellant and the Council dated February 2014. It is expected that an agreed version of this Statement of Common Ground (SCG2) will be provided prior to the inquiry. The Inspector considers it would also be helpful for the Appellant and the Council to consider whether there is any scope to agree baseline

positions as to which sites should comprise, respectively, the Employment Land Supply and the Housing Land Supply. It should then be possible to prepare two lists of sites, one for employment land, the other for housing land, where agreement cannot be reached on inclusion in the respective assessment of supply, either in principle or in respect of matters such as deliverability or capacity. Such lists should give the name of the site and identify the matter(s) in dispute.

33. Before the opening of the inquiry, the Inspector also considers that the scope for a Statement of Common Ground between the Appellant and SOF should be explored (SCG3). As well as setting out those areas of agreement and disagreement between the parties, it should also set out those areas of agreement and disagreement with SCG2. It would be helpful if SCG3 was submitted prior to the opening day of the inquiry.

### **Inquiry timetable**

34. To enable the preparation of an inquiry timetable, which will be the subject of a further procedural note, it would be of assistance if the appellant, the Council and SOF would notify Robert Cook, the case officer, of the names of advocates who will be representing them and the names and qualifications of witnesses who will be called. They should also provide an estimate of the time that they are likely to take in presenting their cases. This is to include opening submissions, examination in chief, cross-examination and closing submissions. At the same time, the case officer should be notified of dates when witnesses are unavailable.
35. The Inspector will endeavour to have a draft inquiry timetable circulated by 23 April. The draft timetable will also act as a check to see if the time allocated to the inquiry is appropriate.

### **Environmental Statement**

36. East Riding of Yorkshire Council issued screening opinions in November 2012 and October 2013. Both concluded that the proposals did not comprise EIA development. Although both North Ferriby Parish Council and SOF have commented on the absence of an Environmental Statement, the Inspector sees no reason at this stage to take issue with the screening opinions prepared by the Council.



## **Core documents**

37. The Inspector wishes the parties to establish an agreed list of core documents which should be included in the inquiry library. It is likely that many of the documents have already been provided in appendices to evidence, in which case there is no need for further copies to be provided to the Inspector or, in due course, the Secretary of State. Nevertheless, the relevant documents should be included in the core documents list and their location in the evidence identified.

## **Costs**

38. SOF has raised the question of costs. The general principle is that parties to a planning appeal normally meet their own costs. However there is provision for costs to be awarded against a party where unreasonable behaviour has led to unnecessary or wasted expense.
39. In the past, it has been the case that matters of costs would be raised by one party against another. However, Appeal B was made after 1 October 2013. From that date, Inspectors were also given the power to initiate awards of costs, whether or not an application was made by one of the parties to an appeal.
40. Further information is available in the Planning Practice Guidance. (<http://planningguidance.planningportal.gov.uk/> )

## **Planning Practice Guidance**

41. Please ensure that all references to the Planning Practice Guidance. Would those witnesses who have referred to the Guidance are to the up to date published version rather than the Beta version.

## **Guidance for the Rule 6(6) Party**

42. Rule 6(6) status gives SOF certain rights in relation to the inquiry but also brings with it responsibilities. The main advantages are that SOF should receive copies of inquiry documents at the same time as the other main parties. SOF will be entitled to call witnesses to support its case and to cross examine the Appellant's witnesses on matters related to its case. However, SOF should be aware that its

responsibilities include making sure that its case concentrates on areas not already dealt with in the evidence from the local planning authority and keeping to the inquiry timetable.

43. The Inspector would commend the following document to SOF: *Guide to Rule 6 for interested parties involved in an inquiry – planning appeals and called-in applications*. The Group may find it useful when making their final preparations for the inquiry.  
(<http://www.planningportal.gov.uk/planning/appeals/guidance/guidanceontheappealprocess>).

### **Conditions**

44. The Council has provided a list of conditions which could be imposed were the Secretary of State to allow the appeals (Susan Hunt, appendix 13). The Inspector wishes to be informed as to the progress of discussions between the Council and the appellant as to whether an agreed list of conditions can be put to the Secretary of State. Once the position between the Council and the appellant has been established, the Inspector will seek the views of other parties to the appeal on this matter.

### **Conclusion**

45. These are the matters which appear to require the Inspector's immediate attention. Any other procedural matters which are raised will be addressed within the further procedural note which will be issued concerning the draft programme.

*K.A. Ellison*

Inspector