
Appeal Decision

Site visit made on 18 January 2017

by S J Lee BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 8TH February 2017

Appeal Ref: APP/Y2003/W/16/3160081

Land between 14 and 18, High Street, Kirton-in-Lindsey DN21 4LX

- 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 Mark Gaskin against the decision of North Lincolnshire Council.
 - The application Ref PA/2016/520, dated 15 April 2016, was refused by notice dated 31 August 2016.
 - The development proposed is four flats within two buildings (including demolition of existing building).
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Decision

1. The appeal is allowed and planning permission is granted for four flats within two buildings (including demolition of existing building) at Land between 14 and 18, High Street, Kirton-in-Lindsey DN21 4LX in accordance with the terms of the application, Ref PA/2016/520, dated 15 April 2016, subject to the conditions in the attached schedule.

Preliminary Matters

2. Part E of the appellant's appeal form indicates the description of the development changed from that stated on the application form. I am satisfied the Council considered the application on this basis, as have I. The description in the heading above uses the revised description, although I have removed superfluous wording that does not relate to development.
3. There is no dispute between the parties that this proposal is identical to the one granted planning permission in 2013¹. That permission has expired and thus I must re-consider the merits of the proposal. However, there has been no change to national or local policy since the earlier decision was made and thus I consider the previous permission to be a material consideration of some importance.

Main Issues

4. The main issues are the effect of the development on:
 - (a) The character and appearance of the area;
 - (b) The living conditions of future occupants, with particular regard to private amenity space and access; and

¹ Application reference PA/2013/0203.

- (c) The safety and convenience of users of the adjacent highway network, with particular regard to visibility.

Reasons

Character and appearance

5. The appeal site comprises a vacant plot of land which forms a gap in the frontage of High Street. The site is within the Kirton Conservation Area (KCA) and has an unmaintained and overgrown appearance. To one side of the site is a Grade II Listed Building (No 18), which is in commercial use and on the other is a residential property with a side garden. The site opens up behind the residential property and backs onto Coachyard Mews, which is a small high density residential development. The site lies opposite the Town Hall, which is also a Grade II Listed Building and is a short distance from the Market Place.
6. The development would consist of two detached buildings. The building adjacent to the frontage (B1) would accommodate two dwellings in a three storey pitched roofed building with its gable end facing the road. These would be split vertically, with the accommodation for each dwelling spread across the three floors. This part of the development would be similar in style, orientation and materials to No 18, although it would be slightly narrower and have windows at all three levels facing the road. It would also include an access corridor providing pedestrian access to the two ground floor doors into the dwellings and the rear of the plot.
7. The building (B2) to the rear of B1 would be two storeys with a pitched roof. The flats would be split horizontally. This building would be more modern in appearance than B1, with a relatively low eaves height, a full height glazed feature in the front elevation and roof lights in the two principal roof slopes. B2 would also be sited at an angle to B1 and be located behind a shared courtyard.
8. The site would be of a sufficient size to accommodate the two buildings without appearing cramped from the roadside. This would be helped by the distance that B2 would be set back from the road and the angle between it and B1. The difference in heights between the two would also complement each other and help ensure the development would not be an unduly dominant or intensive form of development.
9. B1 would fill part of the gap in the frontage, but there would still be space on either side of the building. This would ensure that it would not look uncomfortably squeezed into the space provided. This would not be out of keeping with the nature of the remainder of this side of High Street, which is an attractive traditional high street comprising of a largely unbroken row of tightly knit buildings of different heights, styles and shop fronts. B1 would complement the existing street scene and not appear out of place in terms of either its appearance or the resulting increase in density of development. The space between B1 and B2, and the siting of B2 to the rear of the site, would also ensure the two buildings would not appear as an over intensive use of the site when viewed from the roadside.
10. B2 would sit to the rear of the site and would not be a particularly prominent feature from the road side. The roofline would be visible from High Street and Coachyard Mews, but this would be in the context of the high density of the

existing pattern of development in the area, including Coachyard Mews. The building would be set against the range of buildings and roof profiles that are visible from a range of nearby vantage points and would not appear out of place as a result.

11. The Council have not specifically referred to the impact on defined heritage assets. However, as the site is within a Conservation Area and in close proximity to listed buildings I am required under Section 66(1) and Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to give special regard to the desirability of preserving the setting of listed buildings and the character or appearance of the KCA. As the Council's general area of concern is that of the impact of the development on the character of the surrounding area, this would also seem indivisible from considering the effect on heritage assets.
12. The Council's conservation officer stated the existing gap in the frontage to be uncharacteristic of the linear nature of the street and its historic character. I saw nothing that would lead me to conclude differently. The filling of the gap with what I consider to be a sympathetically designed building would not harm the character or appearance of the KCA. The design of B2 would also complement the nature of the nearby built form and would not detract from the existing character or appearance of the area.
13. Neither of the proposed buildings would have a harmful effect on the setting of No 18 or the Town Hall, as they would not be seen in the context of the principle views of these buildings. As noted above, B1 would be of a complementary design and be appropriate to the prevailing character of the street. B2 would also be set sufficiently far back into the site to not have an effect on the setting of these buildings.
14. As such, I do not consider the development would constitute the overdevelopment of the site, result in a cramped or contrived appearance and would not appear out of keeping with the prevailing character or density of the area. Moreover, the complementary nature of the development ensures it would have only a neutral effect on the KCA, thus ensuring its character and appearance would be preserved. In addition, there would not be any harmful impact on the setting of nearby listed buildings.
15. There would not, therefore, be any material harm to the character and appearance of the area. Accordingly there would be no conflict with saved policy H5(c) of the North Lincolnshire Local Plan (2003) or policy CS5 of the North Lincolnshire Core Strategy (2011) which seek, amongst other things, to ensure that development is of a high standard of design, is in keeping with the scale and character of the area and takes account of the existing built heritage. I also find no conflict with paragraph 131 of the National Planning Policy Framework (the Framework) in terms of the desirability of preserving heritage assets.

Living conditions

16. The development would provide a small area of shared amenity space to serve the dwellings in the form of a shared courtyard. It is not unusual for flats to be provided with a reduced level of garden or other amenity space. This is a high density area and it would be reasonable to assume that there would not be an expectation of a large amount of space to be provided for any of the units. The

dwellings would be modest in scale and notwithstanding their configuration are likely to be considered as providing accommodation commensurate with flats, rather than family dwellings. The amenity space would be limited, but I consider it would meet the likely expectations of future occupants without harming their living conditions to any material degree.

17. Policy H5(i) does not require space to be provided for upper floor flats and this reflects the likely expectations of potential occupants of flats. The policy does require private amenity space to be provided for other types of residential development. There would be residential uses on the ground floor, but the scale and function of the units would not be dissimilar to each other. As such, I do not consider the living conditions or expectations of those living in Units 1, 2 or 3 to be significantly different to those on in Unit 4 for whom the policy does not require amenity space to be provided. However, as there would be an element of ground floor residential development, the provision of shared space would result in some conflict with the requirements of policy H5(i).
18. While not stated implicitly in the Council's evidence, it is reasonable to assume that their concerns regarding access relate to the personal safety and convenience of future occupants. The access corridor would provide a single point of access for all residents of the dwellings. The plans indicate this would be a gated access and thus unlikely to be accessible to non-residents. This should provide a degree of comfort that this arrangement would not create any undue safety risks from a perceived lack of surveillance.
19. The Council's appeal statement makes reference to the lack of vehicular access. It is not surprising that a development that provides no off-street parking would not have a vehicular access and the nature of their concern is not explained further. An interested party has raised a concern, however, relating to the access for emergency vehicles. I have nothing before me to suggest appropriate access for emergency services could not be achieved, albeit it is recognised that vehicles themselves would not be able to enter the site. This does not mean the rear of the site is inaccessible or too far from the roadside to be served. I am not convinced, therefore, that the access arrangements constitute a material risk to the safety of future occupants or their living conditions.
20. In conclusion, in relation to the provision of amenity space, while I am satisfied there would be no material harm to the living conditions for future occupants, there would be conflict with the specific requirements of policy H5(i) in terms of the provision of shared, rather than private, space. However, I see no conflict with policy H5(f) in terms of the provision of an adequate and appropriately designed access to the development. In both cases, I am also not satisfied that there is any reasonable basis for concluding that living conditions that were found to be adequate for the occupiers of the dwellings, and accepted by the Council with regard to the previous permission, would now be considered to be unacceptable.

Highways

21. The development would not have any off-street parking provision. The expired permission also provided no parking and the Council have not suggested there has been any material change to traffic levels or highway safety since this decision was made. I also note that the Highway Authority do not object to the proposal.

22. It is reasonable to assume the development would lead to an increase in demand for on-street parking, but there is also no substantive evidence before me to suggest insufficient capacity exists in the area to accommodate it, or that it would result in obstructive or dangerous parking. There are no parking controls in place in the vicinity of the site, though part of High Street is one way only, which would help to reduce any potential conflict between vehicles. A public car park is also available at the Market Place, a short distance from the site where a number of public spaces are available.
23. I observed on-street parking taking place along High Street and other side streets near to the site. The on-street parking restricts traffic to a single lane on High Street and this may lead to drivers having to wait or give way to passing cars. I also saw that there were still places to park on High Street, and other nearby streets, and that the turnover of spaces on the street was quite high. I recognise that my visit can only represent a snap shot of the situation, but I saw nothing to suggest that the parking taking place was unacceptably obstructing traffic or that it was likely to cause a significant inconvenience to road users or residents.
24. While the Council states there are existing issues with on-street parking and congestion, they have not provided any substantive evidence to persuade me that there are severe transport problems in the area, or that the development would have an unacceptable impact on the efficient operation of the highway network in the vicinity of the site or convenience of highway users. The Council have not identified any policies in their second reason for refusal in relation to highway matters but have highlighted policy H5(g) in their statement. As a result of the above, there would be no conflict with this policy, which seeks to ensure on-street parking does not take place to the detriment of the free and safe flow of vehicles using the public highway.

Other matters

25. The neighbour has raised a concern regarding overlooking from building B2. I am satisfied, however, that there would be sufficient distance and screening between the habitable rooms of the dwellings and the garden to ensure there would be no undue risk to the privacy of the neighbouring occupants. This would also be helped by the relatively low height of the upper floor windows. This issue would not, therefore, alter my overall conclusions as to the acceptability of the development.
26. Concerns have been raised relating to the potential felling of trees. Any issues relating to the ownership of trees lie outside the scope of this appeal and are matters to be addressed between the appellant and interested parties. However, the Council's tree officer is satisfied that an appropriately worded condition would ensure adequate protection for retained trees and I have no reason to disagree with this conclusion. Similarly, any issues relating to the ownership of walls are not a matter before me.

Conclusion

27. Planning law requires applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise². In relation to matters pertaining to the character and

² Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990.

appearance of the area, access arrangements and highway safety, I am satisfied that the development would meet the requirements of the development plan.

28. The plan requires the provision of private amenity space for all dwellings other than upper floor flats. Thus, there is some limited conflict with the development plan in this regard. Nevertheless, I consider that owing to the nature of the development there would be no material harm to the living conditions of future occupants as a result of the amount and nature of amenity space provided. Moreover, I have given significant weight to the Council's previous decision on this site and the fact there has been no change in circumstance or policy since this decision was made and there is nothing to suggest a different conclusion should be reached. In this case, when considering the development as a whole, I consider material considerations exist that would indicate a decision other than in accordance with the specific requirements of policy H5(i).

29. For the reasons given above I conclude that the appeal should be allowed.

Conditions

30. In terms of conditions, I have had regard to those set out in the Council's officer report. I note these also correspond closely to the conditions attached to the expired permission. I have considered these in accordance with the guidance contained in the Planning Practice Guidance (PPG). In addition to the standard condition which limits the lifespan of the planning permission, I have imposed conditions specifying the relevant drawings as this provides certainty.
31. I have imposed a condition requiring samples of materials to be used and the details of the windows and doors to be agreed in the interests of the character and appearance of the KCA. Owing to the site's location within a defined heritage asset, it is necessary for these issues to be addressed prior to the development taking place. I have made minor amendments to the wording of these in the interests of precision and clarity.
32. For the same reason, and to ensure adequate protection for retained trees, I have imposed a condition requiring the production and agreement of a tree protection plan and its implementation. To ensure there is no damage to trees at any stage in the development process, this must also be addressed prior to development taking place.
33. Kirton-in-Lindsey is a medieval settlement and there may be archaeological remains under the site. As such, it is necessary to impose conditions relating to the agreement of an archaeological mitigation strategy and its implementation in the interests of the historic environment and protection of heritage assets. This must be addressed prior to any development taking place, to ensure if assets do exist, they are appropriately addressed from the outset.
34. In the interests of protecting the living conditions of nearby residents, I have imposed a condition limiting the hours of operation on the site during construction.
35. I have not imposed the recommended condition on a biodiversity management plan or its implementation. While the site is currently overgrown, there is no reference within the Council's officer report of any protected species on the site

that would justify this condition. Moreover, no other evidence was submitted with the appeal that demonstrated the presence of bats on the site or that this was a particular concern of the Council. As such, I have no substantive evidence to demonstrate this condition is necessary.

36. Finally, I have not imposed the recommended condition on contamination. The officer's report states there is no evidence of any contamination on the site, or that there were ever uses on the site which may have led to contamination. Therefore, I do not consider the condition to be necessary in this case.

S J Lee

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans 12.2796.08, 12.2796.09, 12.2796.10 other than as required by conditions 3 and 4.
- 3) No development shall commence until samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved samples.
- 4) No development shall take place until detailed drawings, at a scale of 1:10, of the windows and doors have been submitted and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved detailed.
- 5) No development shall take place until a tree protection plan and arboricultural method statement have been submitted to and approved in writing by the local planning authority. Any works carried out shall be in accordance with the approved details.
- 6) No development shall take place until an archaeological mitigation strategy, as defined in the brief prepared by North Lincolnshire Historic Environment Record, has been submitted to and approved in writing by the local planning authority. The strategy shall include details of the following:
 - i) Measures to ensure the preservation in situ, or the preservation, of archaeological features of identified importance
 - ii) Methodologies for the recording and recovery of archaeological remains, including artefacts and ecofacts
 - iii) Post-fieldwork methodologies for assessment and analyses
 - iv) Report content and arrangement for dissemination, and publication proposals
 - v) Archive preparation and deposition with recognised repositories
 - vi) A timetable of works in relation to the development, including sufficient notification and allowance of time to ensure that the site work is undertaken and completed in accordance with the strategy
 - vii) Monitoring arrangements, including the notification in writing to North Lincolnshire's Historic Environment Record of the commencement of archaeological works and the opportunity to monitor such works
 - viii) A list of all staff involved in the implementation of the strategy, including sub-contractors and specialists, their responsibilities and qualifications.
- 7) The archaeological mitigation strategy shall be carried out in accordance with the approved details and timings, subject to any variations agreed in writing by the local planning authority.

8) A copy of any analysis, reporting or publication or archiving as part of the mitigation strategy shall be deposited at North Lincolnshire's Historic Environment Record within six months of the date of completion of the development hereby approved by this permission or such other period as may be agreed in writing by the local planning authority.

9) Demolition, site clearance and construction operations shall be limited to the following days and hours:

- 0700 to 1900 Monday to Friday
- 0700 to 1300 on Saturdays

No operations shall take place on Sundays or Bank or Public Holidays.

HGV movements shall not be permitted outside of these hours during the construction phases without prior written approval from the local planning authority.

Installation of equipment on site shall not be permitted outside these hours without prior written approval from the local planning authority.