
Appeal Decision

Site visit made on 17 January 2017

by Roy Merrett BSc(Hons) DipTP MRTPI

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

Decision date: 15 February 2017

Appeal Ref: APP/E2001/W/16/3159721

Garden House, Beverley, East Riding of Yorkshire HU17 8DP

- 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 Jonathan Hall against the decision of East Riding of Yorkshire Council.
 - The application Ref DC/15/01853/PLF/EASTSE, dated 12 June 2015, was refused by notice dated 28 April 2016.
 - The development proposed is the provision of a new dwelling comprising 3 no. bedrooms, 2 no. bathrooms and garage with private garden to the rear including the proposal to fell 1 no. Birch tree and 1 no. Apple tree.
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Decision

1. The appeal is allowed and planning permission is granted for the provision of a new dwelling comprising 3 no. bedrooms, 2 no. bathrooms and garage with private garden to the rear including the proposal to fell 1 no Birch tree and 1 no. Apple tree at Garden House, Beverley, East Riding of Yorkshire HU17 8DP in accordance with the application Ref DC/15/01853/PLF/EASTSE, dated 12 June 2015 and subject to the conditions in the schedule below:-

Main Issues

2. The main issues are the effect of the development on i) the character and appearance of the Beverley Conservation Area (CA) and ii) the living conditions of nearby residents with particular regard to outlook and overshadowing.

Reasons

Character and Appearance

3. The site comprises a roughly square parcel of garden land, enclosed by brick boundary walls and which is situated to the rear of a line of dwellings on York Road. It is surrounded on three sides by garden land, which relates to different properties, and is accessed from a relatively narrow private lane which runs to the rear of the aforementioned York Road dwellings.
 4. It is undisputed by the parties that the appeal site lies within the CA, with the adjacent dwellings fronting York Road forming an imposing line of fine traditional properties which mark the western gateway to the town. These dwellings generally incorporate garden and yard space immediately to the rear, though a small number of properties, including No 14, adjoining the north-east boundary of the site, benefit from additional garden areas, detached from the
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main property by the rear access lane. Notwithstanding the presence of expansive garden areas to the south-west and north-west of the site, the aforementioned detached gardens are more the exception than the rule within the immediate area, and do not in themselves contribute strongly to the character of the locality.

5. The land adjacent to the appeal site is predominantly open garden space, free from significant built development, with the exception of relatively small outbuildings including garages. However at either end of the rear access lane, the street scene is punctuated by the dwellings known as Sternes and Park House which are buildings of significant size, with the latter in particular marking a precedent for dwellings recessed from the York Road frontage. The CA in this part of the town is therefore characterised by traditional large dwellings and outbuildings set in open and verdant garden spaces but where, with the exception of the York Road frontage, a strongly uniform pattern of development is absent.
6. The proposed development, whilst it would exceed the height of the existing boundary wall, would have a relatively squat form with its external walls substantially devoid of openings and features. This would tend to give the development a recessive quality, with primary doors and windows facing in towards a central court yard area, and the main external opening limited to a garage door for practical reasons. Accordingly, whilst the development would fill more of the site, viewed from the lane it would be commensurate with the appearance of the relatively plain brick elevations of boundary walls and outbuildings, would mitigate the loss of the existing boundary wall and would not tend to draw the eye as an imposing building in its own right. Furthermore, the continuity of the frontage along York Road would screen the proposed development, so that it would not be significantly visible from the public realm.
7. A small number of trees would be lost to development however the visual impact of this would be mitigated by the generally verdant surroundings of the locality and limited visibility from the public realm. Replacement planting is also proposed.
8. The proposed development would therefore be limited in scale; would be consistent with the character of its surroundings and would not disrupt any sense of uniformity along the street scene. I conclude that it would preserve the overall character and appearance of the CA and the surrounding area. It would therefore be in accordance with Policies ENV1 and ENV3 of the East Riding Local Plan Strategy Document 2016 (LP) and the National Planning Policy Framework (the Framework) insofar as they seek to promote good design that respects the character of its surroundings and preserves or enhances Conservations Areas.

Living conditions

9. The Council has raised concerns with regard to the impact of the development on the residents of No 14 York Road and the property known as Ashton Villa in terms of outlook and overshadowing.
10. The development would be immediately adjacent to the detached garden area associated with No 14, segregated from the main dwelling by the rear service lane. The increase in the height of built development along the north-east

boundary of the site, would result in some increased overshadowing during the afternoon and would change the nature of outlook from the garden in that direction. However the sense of increased enclosure would be mitigated by the variation in height of the proposed north-east elevation, with the central section incorporating a substantial single storey flat roof element, albeit that this would be edged with a glazed privacy screen. Furthermore, the garden situated immediately to the rear of the No 14 dwelling would continue to be available and unaffected by the development.

11. Ashton Villa is a traditional terraced cottage with a very long and narrow rear garden. The development site would be offset from direct views from the rear elevation of this cottage. Whilst the north-west elevation of the proposed building would adjoin the rear garden, this would be a significant distance from the rear of the cottage. Therefore whilst some increased overshadowing of the garden would be expected, the impact would be greatest on the area further away from the cottage and would not be significant in terms of the relatively large area of garden situated closest to that building.
12. Similarly although the increased mass of the proposed development would be visible from the rear of Ashton Villa and its immediate rear garden, this would be at distance and an oblique angle. The development would be more imposing when viewed from the adjacent part of the rear garden, however an open outlook would continue to be available along the garden itself, with the spacious and verdant grounds of the tennis club continuing to be visible to the north.
13. I therefore conclude that the proposal would not result in harm to the living conditions of nearby residents with particular regard to outlook and overshadowing. It would not therefore conflict with Policy ENV1 of the LP or with the Framework insofar as they seek to secure a good standard of amenity for all existing and future occupants of land and buildings.

Other Matters

14. A number of additional concerns have been raised by third parties including the Beverley Town Council and Beverley and District Civic Society. With regard to the possibility of the rear garden of No 14 being overlooked from the roof terrace area I am satisfied that this could be overcome through a condition requiring the roof garden screens to be fitted with obscure glazing. The presence of the taller flank buildings either side of the roof garden and separation distances involved would prevent any significant overlooking in these directions. Similarly the use of obscure glazing in the proposed upper floor store room window would avoid the rear gardens of York Road properties being overlooked from this point.
15. In terms of parking I am satisfied that the site would be accessible via the existing service lane, much as other domestic garages to the rear of York Road are at present. The number of additional traffic movements would be extremely small and with the relatively confined space serving to control vehicle speed, there would be no harm to highway safety. As for visitor parking there would be scope to provide an additional space within the plot. However notwithstanding this, the site would be within a relatively short walking distance of the town centre where there would be access to public parking and public transport services.

16. Concern has been raised regarding construction related activity obstructing the service lane, however I have not been provided with any compelling information to suggest that this would occur. The service lane is in private ownership and the question of any private rights allowing free passage over this area is not a matter for consideration in this appeal. I see no reason why construction materials could not be delivered to the site in small loads therefore minimising any risk of obstruction. Whilst the proposal is likely to result in some disturbance to local residents during the construction period this would only be for a relatively short time due to the small scale of the project. The small scale of development means that its effect in terms of wear and tear on the surface of the road would be minimal.
17. The question of adequate access for the emergency services, should this ever be required, was also raised. However I note that other properties are served off the rear lane and no substantiated evidence has been provided that this would be a problem. This was not a reason for the Council refusing planning permission and I have no information that would lead me to take a contrary view noting that the Council's highway officers have not objected to the scheme on this basis.
18. In terms of the relevance of the Party Wall Act, this would be a private matter between individuals and not for my deliberations in this appeal. I have not been provided with any evidence to suggest that the development would lead to a fire hazard or any ground stability issues, or similarly that given the very limited additional activity within the back lane that would be expected, that there would be an additional security risk.
19. A storage area for refuse bins is provided and I note that the Council has raised no objection to the scheme in this regard. It is likely that bins would need to be moved to York Road in preparation for rubbish collections, however any additional visual impact resulting from this would be negligible. In terms of concern about chimney smoke effecting surrounding properties due to the limited height of the building, the relationship would be little different to that between a bungalow and two storey dwellings on a residential estate and therefore not unusual in this respect.
20. Concern has been raised that the development would interfere with rights under Article 1: The Peaceful Enjoyment of Property and Article 8: The Right to Respect for Private and Family Life and for the Home of the Human Rights Act 1998 (HRA). However these are qualified rights and Article 8(2) provides that interference may be justified where it is in the interests of, amongst other things, the economic wellbeing of the country which has been held to include the protection of the environment and upholding planning policies. Furthermore Article 1 provides that no one shall be deprived of his possessions except, subject to conditions, in the public interest.
21. In this case I have found the development to be in accordance with planning policies. Furthermore whilst I acknowledge that residents would experience change to their surroundings, I have not identified harm and as such the impact of this would be outweighed by the wider public interest of the need to increase the supply of housing as set out in national policy. Accordingly the degree of interference that would be caused would be insufficient to give rise to a violation of rights under Article 1 or Article 8.

22. The development would inevitably have some impact, albeit it very small, on wildlife. Whilst I agree that this is unfortunate I have not been provided with evidence that the retention of what is such a small parcel of land for this reason would justify the refusal of planning permission in this case.
23. I have considered the argument that the grant of planning permission would set a precedent for other similar developments. However each application and appeal must be determined on its own individual merits and a generalised concern of this nature would not in itself justify withholding planning permission in this case.
24. With regard to the effect of the development on property value and view I am unable to attach any significant weight to individual private property interests of this nature.

Conditions

25. I have considered the conditions suggested by the Council. Conditions specifying the plans, details of the external materials, rooflights and landscaping are needed to safeguard the character and appearance of the area. A condition requiring the use of obscure glazing and setting a minimum height in relation to screen panels and requiring obscure glazing to the store room window is required to prevent overlooking.
26. A condition controlling the provision and retention of vehicle parking within the site is required to protect the living conditions of residents and in the interests of highway safety.
27. The Government's Planning Practice Guidance states that conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances. I am however satisfied that such a condition is required to control future extensions, alterations and outbuildings to the property to protect the living conditions of residents and the character and appearance of the area.
28. I have amalgamated some of the suggested conditions and made minor alterations to the wording of others for clarification and to ensure they meet the tests for conditions as specified in national planning guidance. Conditions regarding materials, rooflights and landscaping works are specified as pre-commencement conditions as they are considered fundamental to the development permitted.

Conclusion

29. For the above reasons and having considered all other matters raised I conclude that the appeal should succeed and planning permission be granted.

Roy Merrett

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this decision.
- 2) The development to which the permission relates shall be carried out in accordance with the following approved plans and specifications: 106 Rev C; 102 Rev B (insofar as it relates to the Location Plan).
- 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 commence until samples of the rooflights have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved samples and thereafter retained.
- 5) Before the dwelling hereby permitted is first occupied the parking space including garage shall be provided in accordance with the approved details and thereafter shall be kept available for such use.
- 6) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping.
- 7) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no extensions, alterations or outbuildings included within Classes A, C, D or E of Part 1 of Schedule 2 to that Order shall be developed.
- 9) Obscure glass, to a minimum standard of Pilkington Privacy Level 3, or equivalent shall be installed in the first floor window in the south-east elevation (shown to serve the storage space) and in the screens to the roof garden before the development hereby permitted is first brought into use and shall thereafter be retained (replacement of the glass with an identical type would not necessitate the Council being notified).
- 10) The screen panels to the roof garden adjacent to the north-east boundary of the site shall be no lower than 1.7 metres in height above finished floor level and shall be fitted prior to the development being brought into use. The panels shall be retained as such thereafter.