
Appeal Decision

Site visit made on 3 May 2017

by Andrew McCormack BSc (Hons) MRTPI

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

Decision date: 6 June 2017

Appeal Ref: APP/E2001/W/17/3167550

4 South Street, Middleton on the Wolds, East Riding of Yorkshire YO25 9UB

- 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 Miss Claire Ross against the decision of East Riding of Yorkshire Council.
 - The application Ref DC/16/03237/PLF/EASTNE/PP-03952009, dated 7 December 2015, was refused by notice dated 11 January 2017.
 - The development proposed is construction of a new dwelling on disused land between number 2 South Street and number 5 Chapel Lane.
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Decision

1. The appeal is dismissed

Procedural Matter

2. The appeal site is the subject of a previous planning permission Ref: 15/00137/PLF which includes a condition requiring the land to be used as private amenity space relating to Nos 2a and 4 South Street (Nos 2a and 4) and for such use to be retained. Since the granting of that permission, I am led to understand that the condition was initially implemented. However, a legal agreement has been entered into between the relevant property owners resulting in changes to land ownership and the site boundaries between properties. Whilst this has enabled the proposed development the subject of this appeal to come forward, it has resulted in a potential breach of Condition 3 of planning permission Ref: 15/00137/PLF with regard to retaining the land forming the appeal site as private outdoor amenity space for Nos 2a and 4.
3. The Council has indicated that enforcement action may be taken regarding these matters depending upon the outcome of this appeal. Whilst I have not identified the above as a main issue, it is a material consideration in the determination of this appeal. As such, I have given it moderate weight. Accordingly, I have assessed the appeal proposal on that basis.

Main Issue

4. The main issue is the effect of the proposal on the living conditions of neighbouring and future occupiers with regard to outdoor amenity space.

Reasons

5. The appeal site is situated at the end of a terrace of houses on the north side of South Street and lies within the Middleton on the Wolds Conservation Area
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- (CA). It is within an established residential area to the south of the village centre which is characterised by a wide range of residential properties. The site is relatively enclosed and well-screened by buildings to the east and west. There is a wall to the northern rear boundary beyond which is a storage area and car park which serves properties at Rose Court.
6. Policy ENV1 of the East Riding Local Plan 2016 (LP) states that development should be of a high quality design that safeguards and respects the character and appearance of the area, optimises the potential of its site and contributes to a sense of place. Policy ENV1 also states that the amenity and needs of future occupiers and existing occupiers adjacent to the site are to be considered. Paragraph 17 of the National Planning Policy Framework (the Framework) states within its core planning principles that development should always seek to secure a good standard of amenity for all existing and future occupiers of land and buildings. In addition, Paragraph 53 of the Framework indicates that caution should be applied regarding development within gardens as this may result in harm to the local area.
 7. The proposed dwelling would be built on land previously granted permission under approval 15/00137/PLF as private outdoor amenity space relating to Nos 2a and 4. I am led to understand that this use has been implemented and that the site has been used informally for off-street parking. However, irrespective of the land ownership matters and legal agreements referred to in this case, it is evident that the proposed development would significantly reduce the amount of outdoor space available to adjacent properties and the new dwelling. Whilst properties within the adjoining terrace have small outdoor areas, I find that the proposed outdoor amenity space in this new development would be inadequate for the future occupiers of the proposed dwelling.
 8. The proposal would be a cramped development on a small and enclosed site. The private outdoor space for the proposed dwelling would be limited and its value to future occupiers would be diminished further by the required shared access for neighbouring occupiers of Nos 2a and 4. With regard to the effect of the changes to land ownership and site boundaries, I find that the cramped nature of the proposal and the smaller areas of outdoor space at Nos 2a and 4 would also have a detrimental effect on the living conditions of the occupiers of those neighbouring properties.
 9. The proposed development would result in the permanent loss of the outdoor amenity space for the development approved under planning permission Ref: 15/00137/PLF. The change of land ownership and the amended site boundaries have resulted in reduced private outdoor amenity space for Nos 2a and 4. I appreciate the appellant's statement that the refusal of planning permission would not result in the reinstatement of the amenity space approved under 15/00137/PLF. However, the requirements of Condition 3 attached to that planning permission are tied to the land rather than the landowner or applicant and therefore remain in place. Thus, I note that there is the potential for enforcement action. However, this is a matter for the Council to determine.
 10. Whilst I have had due regard to the above, it does not form part of the main issue and it is not determinative in this appeal. Therefore, I have not considered such matters any further. Notwithstanding this, I confirm that I have assessed the proposal on its own merits and considered the appeal on the

basis of all of the evidence before me. As a result, notwithstanding the appellant's argument relating to the legal agreements and land ownership, amongst other matters, I find that the scheme would have a significant adverse impact on the living conditions of neighbouring occupiers of Nos 2a and 4 and the future occupiers of the proposed dwelling regarding private outdoor amenity space.

11. I acknowledge that the proposal would be in an accessible and sustainable location and would provide a small and limited amount of private outdoor amenity space. In addition, I note the support of the local highway authority and the conservation officer. I note also that, subject to external materials, the proposal would not be harmful to the character or appearance of the CA and would therefore preserve it as a designated heritage asset. Furthermore, I acknowledge the appellant's view that the proposal would not remove or affect any existing adjacent amenity space for other properties.
12. However, due to its cramped position on land identified and approved as private outdoor amenity space for adjacent properties, I find that the proposal would not adequately provide an acceptable level of private outdoor amenity space for the future occupiers of the proposed dwelling or the neighbouring occupiers of Nos 2a and 4. As a result, it would have a significant adverse impact on the living conditions of those occupiers. Therefore, having considered all matters before me, I find that the benefits of the proposal would be outweighed by the significant harm I have identified.
13. Consequently, I conclude that the proposed development would have a significant harmful effect on the living conditions of neighbouring and future occupiers with regard to private outdoor amenity space. It would therefore be contrary to Policy ENV1 of the LP and the core principles and relevant guidance within the Framework. Amongst other matters, this policy and guidance seeks to ensure that development has no adverse impact on the living conditions of neighbouring and future occupiers of the development, including private outdoor amenity space.

Conclusion

14. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

Andrew McCormack

INSPECTOR