



Appeal Decision

Site visit made on 12 July 2017

by D Guiver LLB(Hons) Solicitor

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

Decision date: 26 July 2017

Appeal Ref: APP/V2004/W/17/3170411

Land rear of 63 to 79 Albany Street, Kingston-upon-Hull HU3 1PN

- 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 D Grasby and Mrs N Grasby against the decision of Kingston-upon-Hull City Council.
 - The application Ref 16/00917/FULL, dated 17 June 2016, was refused by notice dated 1 February 2017.
 - The development proposed is the removal of existing garages and erection of one and a half storey building to provide 6 flats and car parking
-

Decision

1. The appeal is allowed and planning permission is granted for the removal of existing garages and erection of one and a half storey building to provide 6 flats and car parking at land rear of 63 to 79 Albany Street, Kingston-upon-Hull HU3 1PN in accordance with the terms of the application, Ref 16/00917/FULL, dated 17 June 2016, subject to the conditions in the attached Schedule.

Preliminary Matters

2. The appellants revised the proposal to reduce the number of flats in the original scheme from eight to six units. The Council accepted this revision and I have adopted this description of the proposed development from the planning appeal form.
3. The Council states that the proposal should be subject to a planning obligation to make a contribution towards the provision of public open space, children's play areas and recycling facilities pursuant to Section 106 of the Town and Country Planning Act 1990. The Council did not rely on a lack of any planning obligation as a reason for refusal and introduced the requirement in its evidence for this appeal. The appellant has made specific submissions about the necessity of a planning obligation and I will address this issue below.

Main Issues

4. The main issues are:
 - a) the effect of the proposed development on the living conditions of the occupants of neighbouring properties; and
 - b) whether a financial contribution towards the provision of public open space, children's play areas and recycling facilities is necessary.

Reasons

Living Conditions

5. The appeal site comprises an enclosed space to the rear of properties on Albany Street to the east, Mayfield Street to the west and Cranbourne Street to the north. The southern boundary comprises part of the fence to the rear garden of 61 Albany Street. The site is divided into two parts, with 20 or so garages occupying the northern end and a hard-surface open area at the southern end. There is an access road from Albany Street that forms part of the site and runs between 67 and 69/71 Albany Street.
6. The proposal is to demolish the garages and construct a building containing six dwellings on two floors. The building would have two parallel gable-ended main roofs, aligned roughly north to south, and joined across the centre by a pitched roof sitting between the innermost pitches of the main roofs. In addition there would be six exterior doors providing a means of access to the ground floor flats and to shared areas for all units. The remainder of the site would be used to provide car parking spaces for the occupants of the dwellings to the south of the building, and landscaping to the north.
7. The first-floor accommodation in the proposed building would be in the roof space and first-floor windows would look north and south from the gables. There would also be high-level roof lights on the outermost pitches of the main roof, approximately 1.7 metres above the internal floor level, to provide natural light for the kitchens and bathrooms in the first-floor dwellings.
8. The first-floor windows in the northern gable would look out over a landscaped area and would be six metres or so from the northern boundary with the dwellings at 33 to 39 Cranbourne Street, and approximately 20 metres from the rear elevation of those properties.
9. There are a number of mature trees sitting close to the appeal site boundary that provide significant screening for the nearest properties north, east and west of the proposed building location. I consider that the distance to the boundary with the dwellings on Cranbourne Street, together with the proposed landscaping, is sufficient to ensure that there would be no unacceptable detrimental effect on the privacy of the occupiers of those properties.
10. The proposed building would sit closest to the properties on Mayfield Street, which have significantly shorter rear gardens than those on Albany Street and Cranbourne Street. However, the north to south orientation of the proposed building and the proposed ridge height would not result in an unacceptable loss of direct light to the rear of these properties.
11. The Council is concerned that the proposed building would be dominant and enclosing for the dwellings on Mayfield Street. However, the existing garages create a solid barrier around the northern end of the site and already create a sense of enclosure for properties bordering the site, especially to the buildings at 88 to 96 Mayfield Street. The eaves of the proposed building would be lower than the rear wall of the existing garages, would sit further away and would not extend across the rear boundaries of No 88 or No 96. The removal of the garages and the construction of the building would create a more open feel to the site and for the occupiers of neighbouring properties.

12. I therefore conclude that the proposed development would be in accordance with Policies BE1 and H1 of the Hull CityPlan 2000 (the Local Plan), which together seek to ensure that housing developments do not have a detrimental impact on the living conditions of the occupiers of neighbouring properties.
13. The Council also expresses a concern about the impact of the development on the outlook from neighbouring properties and refers to Policy SP5 of the Joint Structure Plan for Kingston-upon-Hull and the East Riding of Yorkshire 2005, which seeks to ensure that developments integrate with their surroundings and achieve a high standard of design. In its current form the appeal site is a large hard-surfaced area, much of it broken, together with a number of garages, many of which are unused. The site has a neglected feel and the proposed development would provide a high quality building that I consider would make a positive contribution to the character of the area. I therefore conclude that the proposed development would be in accordance with Policy SP5.

Section 106 Planning Obligation

14. Regulation 122 of the Community Infrastructure Levy Regulations 2010 and Paragraph 204 of the National Planning Policy Framework together state that planning obligations should only be sought where they meet the following three tests:
- they are necessary to make the development acceptable in planning terms;
 - they are directly related to the development; and
 - they are fairly and reasonably related in scale and kind to the development.
15. Saved Policy G5 of the Local Plan states that the Council may seek a planning obligation to achieve the appropriate use of land, an improved range of facilities and a properly planned environment. The Council seeks a financial contribution for recycling. The Council drafted a suggested Unilateral Undertaking for the appellants, which refers to payment for the provision of bins, which I consider to be ancillary equipment rather than land use or provision of facilities for recycling. Given the scale of the proposed development, I consider that the provision of the area for the storage of recyclable waste shown on the approved plans would be an appropriate provision of land and facilities for the purposes of the Policy.
16. I conclude that the proposed development would be in accordance with Policy G5 of the Local Plan and the necessary recycling facilities can be secured by a condition. Therefore a planning obligation with regard to the provision of bins is not required to make the development acceptable in planning terms.
17. Saved Policy NE6 of the Local Plan requires developers of new housing to provide publicly accessible urban green spaces and children's play areas on the development site in proportion to the number of dwellings built. If this cannot be achieved to the policy requirement is to improve an existing nearby urban green space or create a new area. I consider that the provision of open space is an important objective.
18. The appellant disputes the need for any contribution to open spaces, arguing that it is not necessary to make the proposed development acceptable and is not fairly related in scale or kind to the proposed development.

19. The Written Ministerial Statement dated 28 November 2014 (the WMS) stated that no affordable housing or tariff style contribution should be sought from developers of small housing schemes of ten or fewer units with a combined gross floor space of less than 1000 square metres. The statutory position is that planning applications must be decided in accordance with the development plan unless material considerations indicate otherwise. I have had regard to the WMS as a material consideration and, having taken account of the Council and appellant's views I give it significant weight. The scale of the proposed development falls within the scope of the WMS.
20. The appeal site is not suitable for a public area and the urban landscape in the area around the appeal site does not provide significant scope for the establishment of additional publicly accessible green spaces. The scale of the proposed development is such that any space provided would be limited to 360 square metres and an additional 6 square metres of children's play space. Any contribution in lieu would have limited impact on improving any nearby large open spaces.
21. The Council has provided little evidence to show an unmet need for public open space and children's play areas in the neighbourhood of the appeal site. There is a large open space, which includes a children's play area, approximately 200 metres away on Peel Street, which runs parallel with Albany Street and considerably larger open spaces on Spring Bank and at Pearson Park within 500 metres or so of the appeal site. Taking the WMS into account, I consider that a planning obligation for payment in lieu of an open space provision is not fairly and reasonably related in scale and kind to the development. Therefore, on the evidence before me I conclude that a planning obligation is unnecessary in this case to make the proposed development acceptable in planning terms.

Other Matters

22. Occupiers of neighbouring properties have raised a number of concerns in relation to traffic, parking and highway safety. I note that the Council's Highways Department has not raised any safety concerns and states that the proposed access to the site provides a safe passage for vehicles and pedestrians.
23. The site provides for off-street parking in excess of the Council's requirements and therefore there should be limited impact on parking on Albany Street. While the proposal would inevitably result in traffic to and from the site, I consider it would not be significantly different from the levels of traffic that might be expected if the existing garages were put to their primary use.
24. Other concerns were raised in relation to the security of surrounding buildings should the removal of the garages currently on site result in a lower and less secure rear boundary, and the impact of the development on trees. However, while the exact nature of boundary treatments is yet to be determined, occupation of the proposed dwellings will result in more activity and natural surveillance that would deter crime and disorder compared to an empty and unlit site. There are no trees on the site and I note that the Council does not consider there to be any risk of harm to existing trees in neighbouring properties.

Conditions

25. The conditions set out in the accompanying schedule are based on those suggested by the Council. Where necessary I have amended the wording of

these in the interests of precision and clarity in order to comply with the advice in the Planning Practice Guidance.

26. In the interests of proper planning I have imposed the standard conditions in respect of time limits. For certainty I have imposed a condition requiring compliance with the amended plans. In the interests of highway safety and I have imposed a condition to ensure that off-street parking and turning will be provided and retained.
27. To ensure the amenity of neighbours is not unnecessarily disrupted I have imposed a condition limiting the hours of work on the site. Once site levels are determined the Council can also approve any scheme in relation to glazing including obscure glazing where appropriate. The Council has requested an investigation and risk assessment in relation to possible land contamination. However, the effect of any contamination on the progress of the development can be adequately controlled by condition and I have therefore imposed one.
28. The Environment Agency has determined that the appeal site is in a flood plain. The site was previously considered to be medium risk but has been reclassified as a low risk area. However, apart from two relatively small areas of landscaping, the proposal would result in the site comprising a predominantly hard-surface area. I have therefore imposed a condition in relation to the approval of site levels to enable an assessment and minimisation of the risk of flooding to the proposed dwellings and neighbouring properties from surface water run-off.
29. Final details are yet to be determined for external materials and glazing for the buildings to be constructed, and for landscaping and boundary treatments. I have therefore imposed a condition to ensure that these are resolved before development commences. I have also imposed conditions relating to the provision and retention of cycle storage and storage for refuse and recyclable waste for similar reasons.

Conclusion

30. For the reasons given above, and taking into account all other matters, I therefore conclude that the appeal should succeed.

D Guiver

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 16.210.1C and 16.210.2B.
- 3) Notwithstanding condition 2, no development shall take place until details of external facing materials and glazing, boundary treatments and a scheme of landscaping have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) Notwithstanding condition 2, no development shall take place until details of a scheme for six under-cover and lockable cycle storage spaces have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details before first occupation of any dwelling and shall thereafter be kept available at all times for the storage of cycles.
- 5) Notwithstanding condition 2, no development shall take place until details of a scheme for the provision of refuse and recyclable waste storage have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details before first occupation of any dwelling and shall thereafter be kept available at all times for the storage of refuse and recyclable waste.
- 6) No development shall take place until the following information shall have been submitted to and approved in writing by the local planning authority:
 - i) a full site survey showing: the datum used to calibrate the site levels; levels along all site boundaries; levels across the site at regular intervals and floor levels of adjoining buildings;
 - ii) full details of the proposed finished floor levels of all buildings and hard landscaped surfaces.

The development shall be carried out in accordance with the approved details.

- 7) Demolition or construction works shall take place only between 0730 and 1930 on Monday to Friday and 0800 to 1230 on Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 8) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.
- 9) No dwelling shall be occupied until space has been laid out within the site in accordance with drawing no. 16.210.2B for the parking and turning of ten cars and that space shall thereafter be kept available at all times for the parking and turning of vehicles.