
Appeal Decision

Site visit made on 16 August 2017

by S J Lee BA(Hons) MA MRTPI

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

Decision date: 25th August 2017

Appeal Ref: APP/E2001/W/17/3176305

Land to the West of Beckside Villas, Back Lane, Danthorpe HU12 9BW

- 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 & Mrs Sam Swyer against the decision of East Riding of Yorkshire Council.
 - The application Ref DC/16/03847/PLF, dated 10 November 2016, was refused by notice dated 18 April 2017.
 - The development proposed is demolition of existing B8 storage building and erection of replacement B8 storage building.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing B8 storage building and erection of replacement B8 storage building at Land to the West of Beckside Villas, Back Lane, Danthorpe HU12 9BW in accordance with the terms of the application, Ref DC/16/03847/PLF, dated 10 November 2016 subject to the conditions in the attached schedule.

Preliminary Matters

2. It is evident that the proposal evolved during its consideration by the Council. For the avoidance of any doubt, I have considered the appeal on the basis of the elevations submitted to the Council on 22 March 2017. I am satisfied the Council considered the application on the basis of these plans.
3. The parties have drawn my attention to a relatively recent appeal on this site¹ for the erection of a "live work" dwelling. This appeal is an important material consideration to which I have had regard in my decision.

Main Issue

4. The main issue in this case is the effect of the development on the character and appearance of the area.

Reasons

5. The appeal relates to the replacement of an existing storage building that sits at one end of a row of dwellings along Back Lane. As noted by the previous Inspector, the pattern of development here is largely linear in nature and is typified by scattered properties and groups of properties interspersed and surrounded by open fields. The character of the area is therefore that of the open countryside.

¹ Appeal reference: APP/E2001/W/15/3137435

6. The existing building is set back from the road and has a relatively low profile, with a semi-circular roof and large timber doors facing the road. It does not appear to be in a particularly good state of repair and does little to enhance the existing street scene or character of the area. The building extends back into the site perpendicular to the road, with a cart road to one side separating the building from the nearest dwelling and an area of unmaintained open land to the other. A stream and bank of trees provides some separation and screening from Brookside Lodge.
7. The Council raises no concern over the use of the building and is satisfied that the design addresses their earlier concerns over the living conditions of those living at No 2. I saw nothing to suggest I should conclude otherwise. Nonetheless, they continue to have concerns over the impact of the development on local character. The previous Inspector considered the proposal before him would be an overly prominent and disproportionate development in relation to the semi-detached properties to the east of the site. He also found that the development would reduce the visual gap between the main form of Danthorpe and other nearby properties, which he considered to be a key aspect of local character. From my own observations, I would agree that this is an importance characteristic of the area around the site.
8. As before, the development would take place predominantly on the footprint of the existing building. However, the appellants have sought to address the concerns raised by the Council and Inspector by significantly reducing the height of the building from that previously proposed. It would also be narrower and be reduced in length. While the building would still be taller and marginally wider than the existing building, the general reduction in height, width and length, and the introduction of the split level design, all combine to result in a development of considerably less scale and bulk than what was previously considered. The design of the building has also been simplified, with less fenestration. Accordingly, the two developments are materially different and that before me would not have the same impact on the character of the area.
9. While the development would be marginally wider than what currently exists, any physical encroachment into the open countryside would not be significant. The development would also follow the existing linear pattern of buildings along the street and would not significantly affect the existing spacing of buildings. The height of the building would not appear overly tall or out of proportion with the neighbouring dwellings, nor would it appear unduly dominant or intrusive in the street scene as a result.
10. The Council has criticised the design as being uninspiring, but its simple form is appropriate for the proposed use. While the building would be orientated differently to neighbouring dwellings, the pitched roof design and use of the suggested materials would complement the nearby properties and help to ensure the building would not appear incongruous, particularly in the context of there being a building already on the site. The development would appear as a relatively low key and simple building, not completely dissimilar to an agricultural outbuilding, which would not be out of place in a location such as this. The development would also result in some improvement to the appearance of the site through the replacement of a somewhat tired and dilapidated building.

11. The development would mainly be seen when approaching from the west, as the existing dwellings provide a significant degree of screening from the other direction. The trees along the edge of the stream also provide some screening, but the building would still be seen through them on the approach. The building would therefore be visible and prominent from some publically accessible vantage points. Nonetheless, neither the design of the building or the relative increase in scale of the built form that already exists would be sufficient to result in a significant or harmful reduction in the visual gaps or sense of space between buildings, an overt encroachment of the built form into the countryside or any material harm to its intrinsic beauty.
12. Taking all above matters into account, I find that the development would not have an unacceptable impact on the character or appearance of the area. Accordingly, there would be no conflict with East Riding Local Plan – Strategy Document (2016) policies S4, EC1, ENV1 and ENV2 which seek, amongst other things, to ensure employment related development in the countryside has regard to its context and the character and appearance of the area. There would also be no conflict with the National Planning Policy Framework insofar as this requires development to be of a good standard of design which responds to local character.

Conditions

13. I have considered the suggested conditions from the Council and the appellants' comments on these in accordance with the Planning Practice Guidance (PPG). In addition to the standard condition which limits the lifespan of the planning permission, I have imposed a condition specifying the relevant drawings as this provides certainty.
14. Condition 3 is necessary in the interests of the character and appearance of the area. Condition 4 is necessary in the interests of highway safety. Condition 5 is necessary to ensure the site can be adequately drained. Condition 6 is required to ensure the protection of trees. Although there is no direct evidence of contamination, the Council has suggested a precautionary condition outlining what would be required in the event contamination is found. This is reasonable and I have therefore imposed the suggested condition (7). Condition 8 is necessary to provide protection to wildlife and provide enhancements in line with local policy. This is by necessity a pre-commencement condition to ensure development is carried out in accordance with the approved details.
15. The PPG states that the removal of permitted development rights will rarely meet the test of necessity and should only be used in exceptional circumstances. In this case, owing to the proximity of No 2 it would be necessary and reasonable to remove permitted development rights relating to the extension or alteration of the building in the interests of living conditions. Condition 9 addresses this.
16. I do not consider it necessary or reasonable to restrict permitted changes of use of the building to Use Class B1. The Council has suggested the condition is necessary in the interests of retaining some control and ensuring residential amenity is not adversely affected. The Town and Country Planning (Use Classes) Order 1987 as amended defines Class B1 as being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit. As such, by definition it should not be necessary to restrict changes of use to

B1 for the reasons given by the Council and thus I do not consider sufficient justification has been provided to demonstrate this is an exceptional circumstance.

17. I have also not imposed the suggested condition restricting the use of the building to the appellants only. The reason given for the condition states there are concerns about the effect of the development on living conditions and that it is the specific nature of the appellants' joinery business which justifies the B8 use here. There is no reference in the Council's evidence relating to any restriction on the current use of the building or any concern over the use of the building and its effect on the living conditions of neighbours. I do not consider that sufficient justification has been provided to demonstrate such a condition is reasonable or necessary in this case.
18. I have not imposed the appellants' suggested condition on hours of operation. There is no evidence to suggest that such a condition is necessary to protect the living conditions of nearby residents as the building would be used for storage only. Comings and goings from the building are unlikely to result in material harm.

Conclusion

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

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: Location Plan (received 06/03/2017) and 17.110.1 Rev C (received 22.03.2017) other than as required by conditions 3, 4 and 8.
- 3) No development shall take place above damp course level until details 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 details.
- 4) No part of the development shall be brought into use until the vehicular access has been constructed to an appropriate standard, to be agreed with the Council's Streetscene Services Team, and the vehicle parking, loading, off-loading and manoeuvring facilities serving it have all been constructed in accordance with the details shown on approved drawing 17.110.1 Rev C, and the vehicle parking, loading, off-loading and manoeuvring facilities shall thereafter be so retained and not used for any other purpose.
- 5) The development hereby approved shall not be first occupied until the works for the disposal of foul water to package treatment plant and surface water to soakaway have been provided on site.
- 6) In this condition "retained tree" means an existing tree which is to be retained in accordance with approved drawing 17.110.1 Rev C and conforming to British Standard 5837: 2012 (British Standard for Trees in Relation to Design, Demolition and Construction Recommendations, 2012) and in accordance with approved plans and particulars; and paragraphs (a) and (b) below shall have effect until the expiration of 5 years from the date of the occupation of the building for its permitted use.
 - a) No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be pruned other than in accordance with the approved plans and particulars, without the written approval of the local planning authority. Any pruning approved shall be carried out in accordance with British Standard (3998 Tree Work).
 - b) If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size, species and maturity, and shall be planted at such time, as may be specified in writing by the local planning authority.
 - c) The erection of fencing for the protection of any retained tree shall be undertaken in accordance with the British Standard 5837:2012 (British Standard for Trees in Relation to Design, Demolition and Construction Recommendations) before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the local planning authority.

- 7) In the event that contamination is found at any time when carrying out the approved development, that was not previously identified, it must be reported immediately to the local planning authority. An appropriate investigation and risk assessment must be undertaken, and where remediation is necessary, a remediation scheme must be prepared by competent persons and submitted to the local planning authority for approval. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be submitted to and approved in writing by the local planning authority.
- 8) No site clearance, site preparation or construction work shall take place until an Ecological Construction Method Statement (ECMS) and Ecological Enhancement and Management Plan (EEMP) has been submitted to and approved in writing by the local planning authority. The ECMS and EEMP shall be compiled by a suitably qualified ecologist, include a timetable for implementation and a detailed plan. The scheme shall provide full details of all ecological mitigation, enhancement, and management measures along with a programme for the implementation and monitoring for each element of the development. The scheme shall include:
- Details of precautionary Methods of Working (PMW) for works such as demolition or tree or hedgerow removal in relation to potential impacts on species such as bats and breeding birds;
 - Full details of relevant on site working practices to safeguard wildlife during the development process, including action to be taken if protected species are found during construction;
 - Full details and plans of measures to protect water features from run-off, pollution, adverse changes in water quality and flow;
 - Details of a lighting strategy which secures dark corridors for bat foraging and nesting birds on the boundaries of the site;
 - A Wildlife Enhancement Plan which makes provision for one Schwegler bat brick, bat tube, bat access tile or bat box such as a Schwegler 1 FF or 1 FFH bat box and one bird nesting brick box 1 HE or bird nesting boxes such as a Schwegler 17 A swift nest box, 2H robin box or sparrow terrace 1 SP (or direct woodcrete equivalent of the above) within the development. Full details of the type of bat and bird enhancement features, timing of works and a detailed drawing specifying the precise location of the enhancement measures shall be provided.
 - Details of site induction information and tool box talks for all relevant on site working practices. Protocols to demonstrate that the site work force will be briefed about potential ecological issues on the site prior to commencement of construction must be provided.

Upon commencement of development all aspects of the approved Ecological Construction Method Statement and Ecological Enhancement and Management Plan shall be implemented in full, unless otherwise agreed in writing by the local planning authority.

- 9) Notwithstanding the provisions of Class H of Part 7 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), the storage building hereby permitted shall not be extended, nor externally

altered through the further addition of window or door openings above those expressly authorised by this permission.

Schedule Ends