
Appeal Decision

Site visit made on 20 October 2020

by Sarah Housden BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th November 2020

Appeal Ref: APP/C2741/W/20/3256929

White House Mews, Kexby Avenue, York YO10 3HF

- 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 J Martindale against the decision of City of York Council.
 - The application Ref 20/00903/FUL, dated 26 May 2020, was refused by notice dated 21 July 2020.
 - The development proposed is 'erection of 1 No. single storey detached dwellinghouse at land to the south of 1 – 2a White House Mews (resubmission of application 19/02511/FULL).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council refers to the Publication Draft Local Plan (2018) (PDLP) in the reasons for refusal. The PDLP examination is still ongoing and I have no further information to indicate whether or not there are any unresolved objections or requirements for modifications to the policies that are most important for determining the appeal. Having regard to paragraph 48 of the National Planning Policy Framework (the Framework), the PDLP policies therefore have limited weight in the determination of this appeal.
3. The Development Control Local Plan (2005) (DCLP) has not been formally adopted but is a material consideration in this case, together with the provisions of the Framework.
4. The Council has confirmed that the reference to PDLP Policy D11 in the second reason for refusal relating to the impact on living conditions is an error and should have referred to PDLP Policy D1. The appellant has been made aware of this and has had an opportunity to comment on any implications for the appeal.
5. The site address in the banner heading above is taken from the planning application form.

Main Issues

6. The main issues in this case are:

The effect on the character and appearance of the area, having particular regard to the Kexby Avenue street scene; and

The effect of the proposal on the living conditions of the occupiers of Nos 1, 2 and 2a White House Mews (White House Mews) and No 21 Kexby Avenue (No 21).

Reasons

Character and appearance

7. The appeal site is located within a residential area to the south of Hull Road, approximately 1 kilometre to the south-east of the city centre. Development along Kexby Avenue comprises terraced rows of dwellings. The similarity in their layout, design and materials creates a degree of uniformity in the street scene and their position set back from the road behind small gardens contributes to a spacious and established character and appearance.
8. The appeal site is located off a right-angle bend in Kexby Avenue via an access between No 21 and the front garden to the White House. The appeal site comprises the outdoor area and part of the parking/driveway area associated with No 2a White House Mews, one of three units within a converted former farm building immediately to the north of the appeal site.
9. The traditional character and appearance of the White House and White House Mews contrast with the more recent and uniform pattern of development along Kexby Avenue. The appeal site forms part of the open gap which separates the converted building from the surrounding development on Kexby Avenue, which contributes to its separate identity as a former ancillary building to the White House.
10. The proposed new dwelling would be located between White House Mews and the semi-detached dwelling at No 21. Ground levels fall to the north and the new dwelling would be positioned at a higher ground level than White House Mews. Its simple form and single storey height would be in keeping with the form of White House Mews and conditions could be imposed to ensure that appropriate bricks and tiles would be used.
11. However, the new dwelling would fill the majority of the width of the appeal site, leaving minimal separation distance to the retaining wall and timber fence on the common boundary with White House Mews and to the garage and fence on the common boundary with No 21. When viewed from Kexby Avenue, the dwelling would appear cramped within its plot and it would sit awkwardly between No 21 and White House Mews, having a poor relationship with the existing built form. The loss of the space between White House Mews and No 21 would be harmful to the traditional character and identity of White House Mews as a former ancillary building to the White House. It follows that I do not agree with the appellant's assessment that the new dwelling would appear as a subordinate feature to the surrounding development.
12. For these reasons, I conclude that the proposal would be harmful to the distinctive setting of White House Mews and to the spacious character and appearance of the Kexby Avenue street scene. There would be conflict with PDL Policy D1 and DCLP Policy GP1 both of which seek to ensure that proposals do not harm the character and quality of an area and have a layout that is compatible with neighbouring buildings.
13. There would also be conflict with DCLP Policy GP10 which supports the development of existing garden areas only where it would not be detrimental to

the character and amenity of the local environment. The proposal would also fail to accord with the provisions of paragraph 127 of the Framework which indicates that development should add to the overall quality of the area and should be sympathetic to local character and history.

Living conditions

14. The three dwellings within White House Mews have small outdoor areas to the rear. The areas to the rear of Nos 1 and 2 are enclosed by a retaining wall and timber fence approximately 1.8 metres in height along the common boundary with the appeal site and this would be retained. The boundary with No 2a is open.
15. The new dwelling would extend approximately half-way along the rear boundary of No 1, across the full extent of No 2 and across a small part of No 2a's rear boundary. When viewed from the outdoor areas to the rear of all three properties, part of the dwelling's side wall and roof would project above the boundary fence. Due to its higher floor level, height and bulk in close proximity to the common boundary, the new dwelling would appear as an overbearing and oppressive feature when viewed from these outdoor areas, increasing the sense of enclosure and making them much less pleasant to use. The outdoor area to No 2 would be most severely affected in this regard, but Nos 1 and 2a would also be adversely affected.
16. The existing fence to the rear of White House Mews will already create a degree of shadowing over the outdoor areas of Nos 1 and 2. However, due to the combination of its orientation to the south of White House Mews, height and proximity to the fence, the new dwelling would cast additional shadow over the rear outdoor areas of Nos 1 and 2 for a considerable part of the day. No 2a would be less adversely affected, though it would be necessary to provide a new boundary screen to separate it from the outdoor area around the new dwelling which would inevitably cast some shadow over No 2a's outdoor area.
17. No 1 has ground floor patio doors and windows and one first floor window in its rear elevation. The new dwelling would not fully enclose the rear boundary and it is likely that those windows would continue to receive adequate levels of daylight and sunlight. The windows in the rear elevations of Nos 2 and 2a do not serve habitable rooms and therefore there would be no material harm to living conditions arising from reduced levels of daylight and sunlight reaching those rooms.
18. The new dwelling would be located to the north of No 21, would not cast additional shadow over No 21's rear garden and given its single storey height, there would be no reduction in the levels of daylight reaching the first floor landing window in the side gable of No 21. It would, however, appear as a prominent and overbearing feature when viewed from No 21's rear garden, increasing the sense of enclosure and making the rear garden much less pleasant to use.
19. For these reasons, I conclude that the proposed dwelling would cause material harm to the living conditions of the occupiers of Nos 1, 2 and 2a White House Mews and No 21. There would be conflict with PDL Policy D1 which seeks to ensure high quality design and with DCLP Policy GP1 in so far as it seeks to ensure that adjoining residents are not unduly affected by overshadowing or overbearing structures.

Other matters

20. Based on the evidence before me, the appeal site is contiguous with and used in conjunction with the outdoor area immediately to the rear of No 2a. I have therefore assessed the weight to be given to the appellant's 'fallback' position that an outbuilding could be erected within the curtilage of No 2a without the need for a separate planning permission because it would be permitted development under Class E of the General Permitted Development (England) Order 1995.
21. However, development under Class E is permitted subject to certain restrictions including the total area within the curtilage that can be covered by any such building together with the height of the building where it would be within 2 metres of the curtilage boundary. In the absence of any further details of the location and dimensions of the building that the appellant proposes under Class E, I cannot be certain that the impact of the fallback position would be comparable with the circumstances of the appeal scheme before me. For these reasons, I attach very limited weight to the fallback position in the determination of this appeal.
22. I note that the appeal scheme has incorporated a number of revisions to respond to the reasons for refusal of a previous planning application, but I have assessed the proposal based on the circumstances of the site and the details of the proposal before me.
23. Local residents have raised a number of concerns including in relation to highway safety. The officer report concludes that previous concerns about the adverse impact of the proposal on the safety of the access to White House Mews have not been addressed. However, in the absence of any evidence from the Highway Authority and as I am dismissing the appeal for other reasons, I make no further comments on this matter.

Planning Balance and Conclusion

24. The appellant has referred me to a recent Secretary of State decision¹ in support of the point that the Council cannot demonstrate a five-year supply of land for housing. The conclusion in that appeal decision was arrived at based on specific evidence presented to the Inquiry and the circumstances of that case and I have no further information before me in relation to housing land supply matters.
25. The weight against the proposal arising from the conflict with PDLP Policy D1 and DCLP Policies GP1 and GP10 is diminished by the limited weight that can be attributed to those policies in the determination of this appeal. There are no up-to-date adopted development plan policies in place. In these circumstances, the appeal should be assessed against the presumption in favour of sustainable development set out at paragraph 11 of the Framework.
26. The appeal site is not within a protected area where the application of policies in the Framework would provide a clear reason for refusing the proposed development. Therefore paragraph 11d(ii) of the Framework applies and indicates that decision takers should grant permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the

¹ Appeal Reference APP/C2741/W/19/3233973

benefits, when assessed against the policies in the Framework taken as a whole.

27. The proposed dwelling would be in a sustainable location, in close proximity to and within walking and cycling distance of local services and facilities, public transport and York University and the Science Park. It would also increase the supply of housing in the area, albeit marginally, and could make an early contribution to supply. The unit would provide a level access dwelling, increasing the mix and choice of housing in the area and would help to support a mixed community.
28. However, there would be conflict with the Framework's requirements for new development to add to the overall quality of the area and ensure a high standard of amenity for existing and future users. Overall, I conclude that the harm to the character and appearance of the area and to the living conditions of adjoining occupiers would significantly and demonstrably outweigh the moderate weight in favour arising from the social and economic benefits of the development. In these circumstances, the presumption in favour of sustainable development does not apply and the proposal would conflict with the Framework, read as a whole.
29. For the reasons outlined above and having regard to all other matters raised, the appeal should be dismissed.

Sarah Housden

INSPECTOR