



Appeal Decision

Site visit made on 6 September 2021

by L Wilson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 September 2021

Appeal Ref: APP/E2001/W/21/3277077 23 Church Street, South Cave HU15 2EH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr P Mountifield against the decision of East Riding of Yorkshire Council.
 - The application Ref 20/03655/VAR, dated 3 November 2020, was refused by notice dated 30 March 2021.
 - The application sought planning permission for the change of use from butchers shop to 2 apartments, alterations to front elevation following removal of existing shopfront, replacement of existing roof and installation of 8 roof lights without complying with a condition attached to planning permission Ref 20/01097/VAR, dated 9 June 2020.
 - The condition in dispute is No 4 which states that: The development hereby permitted shall be carried out in accordance with the following approved plans:
2711-2-F - Existing and Proposed Plans, Elevations and Sections - received 26 May 2020
2711-3 - Block Plan - received 24 October 2018
2711-4 - Location Plan - received 24 October 2018
2711-5-A - Front Elevation Detail - received 09 November 2018.
 - The reason given for the condition is: This condition is imposed in accordance with policies ENV1 and ENV3 of the East Riding Local Plan and for the avoidance of doubt and to ensure that the development hereby permitted is carried out in accordance with the approved details in the interests of the character and amenity of the area and the provisions of the development plan.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the application was determined, a revised version of the National Planning Policy Framework (the 'Framework') has been published. The main parties were given the opportunity to comment on any relevant implications for the appeal and have not therefore been prejudiced. The main parties did not have any comments on this matter.

Background and Main Issue

3. Planning permission was originally granted in December 2018 for the change of use from a butcher's shop to two apartments with associated alterations¹. A

¹ Local Planning Authority ref 18/03514/PLF

Section 73 application was then approved which altered the approved drawings². This appeal seeks to vary the plans approved through 20/01097/VAR and to alter the height of the western boundary wall from the approved 2.4 metres to 2m.

4. Although the appellant has only applied to vary condition 4, I note that condition 2 relates to the boundary wall and consequently relevant to this appeal. This condition requires the works to increase the height of the boundary wall to be carried out prior to the first occupation of the apartments. The reason given for this condition is to prevent overlooking and loss of privacy for the neighbouring property.
5. The main issue is whether the condition is reasonable and necessary in order to protect the living conditions of the occupiers of Nos 23 and 25 Church Street, having regard to privacy.

Reasons

6. The main issue relates to the ground floor window in the side elevation of the rear apartment which serves a living and kitchen area. This window does not have obscure glazing. I observed on my site visit that this is the main window to this habitable room. It is also the primary window to this apartment because the other glazing is either obscure glazing, related to the entrance door or rooflights. I also note that the finished floor level of the apartment is slightly above the ground level of the boundary wall.
7. The side elevation of No 25 contains a number of windows and is in close proximity to the apartment's ground floor side window. I understand No 25's side windows serve a number of different rooms including a dining room and kitchen.
8. I acknowledge that the butchers shop had a window in a similar location. Nonetheless, the use of the butcher's shop cannot be compared to the residential use and it has been highlighted by an interested party that the window had obscure glazing.
9. It is clear from the evidence before me that the previous application required the wall to be increased in height to protect the living conditions of the occupiers of No 25 to prevent overlooking and loss of privacy. On my site visit I observed that there are currently views from the window in question and No 25's windows.
10. Reducing the boundary treatment from that originally approved would therefore lead to an unacceptable degree of mutual overlooking and loss of privacy. Moreover, the occupiers of both dwellings would have the perception of being overlooked. This is due to the proximity of the windows, use of both the apartment's and No 25's windows and height of the boundary treatment.
11. Increasing the height of the wall would result in a reduction of light into the apartments. Nonetheless, this was considered acceptable when the original planning application was approved, and I see no reason to disagree.
12. For the reasons given above, the amended boundary treatment would result in the living conditions of the occupiers of Nos 23 and 25 being adversely

² Local Planning Authority ref 20/01097/VAR

affected, with regard to privacy. Consequently, the scheme conflicts with Policy ENV1 of the East Riding Local Plan 2012 – 2029: Strategy Document (2016) which seeks, amongst other matters, to ensure developments achieve a high quality of design through having regard to the amenity of existing properties.

13. It would also conflict with paragraph 130 of the Framework which promotes good design and requires new development to provide a high standard of amenity for existing users.
14. I therefore conclude that the condition is necessary in order to protect the living conditions of the occupiers of Nos 23 and 25 Church Street, having regard to privacy.

Other Matters

15. I understand that the appeal site is located within the South Cave Conservation Area (CA). I am satisfied that the scheme would have a neutral effect upon, and therefore preserve, the character and appearance of the CA and the development would not cause harm to the significance of the designated heritage asset. This is due to the siting of the wall and its proposed height. However, this is a neutral consideration and does not weigh in favour of the appeal.

Conclusion

16. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other material considerations, the appeal is dismissed.

L M Wilson

INSPECTOR