



Appeal Decision

Site visit made on 18 October 2021

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 November 2021

Appeal Ref: APP/N2535/W/21/3274918

17a Union Street, Market Rasen, Lincolnshire LN8 3AA

- 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 Nathan Barnes against the decision of West Lindsey District Council.
 - The application Ref: 142197, dated 18 December 2020, was refused by notice dated 10 February 2021.
 - The application sought planning permission for a planning application for change of use of workshop/store to rear of 17 Union Street into family accommodation without complying with a condition attached to planning permission Ref: 123079, dated 9 December 2008.
 - The condition in dispute is No 4 which states that: *The extension to the dwelling shall be used and occupied in conjunction with the existing dwelling and shall not be used as a separate unit of living accommodation.*
 - The reason given for the condition is: *The extension would constitute a sub-standard unit of living accommodation if separately occupied as a dwelling because it would be in a backland situation without adequate access or frontage to a public highway; there would be insufficient land about the building to provide for a satisfactory standard of private open space; outlook and privacy could not be safeguarded for both residential buildings in accordance with policies STRAT1, RES11 and RES13 of adopted West Lindsey Local Plan First Review 2006.*
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The revised National Planning Policy Framework (revised Framework) has been published since the appeal was submitted. Both main parties have commented on this matter during the course of the appeal. I have considered it in my decision.

Background and Main Issues

3. Planning permission¹ was granted subject to conditions on 9 December 2008 for a change of use of a workshop/store building to the rear of 17 Union Street (No 17) into family accommodation on the appeal site. Condition 4 required that the building in question would be occupied in conjunction with the existing

¹ Council ref: 123079

dwelling and not used as separate living accommodation. The condition was applied in the interests of living conditions matters related to both the building in question and the host dwelling, as well as due to the backland location of the building.

4. The appellant now wishes to remove the condition to enable the building to be occupied as a separate dwelling to No 17. The Council maintain living condition concerns with regard to the standard of accommodation, the amount of useable amenity space for both the proposed dwelling and No 17, and the effect on the privacy of the occupiers of No 17 and the neighbouring property at 19 Union Street (No 19). The Council do not raise particular concerns due to its backland location.
5. As a consequence, the main issues are (i) whether the proposal would provide a suitable living environment for its future occupiers by way of the provision of internal space and private outdoor amenity space; (ii) the effect on the living conditions of the occupiers of Nos 17 and 19 with regard to privacy; and (iii) the effect on the living conditions of the occupiers of No 17 by way of the provision of private outdoor amenity space.

Reasons

Living Conditions – Future Occupiers

6. The appeal property comprises a 2 storey building that lies a short distance to the rear of both Nos 17 and 19. It is accessed to the side of No 17 through a doorway and then a footpath.
7. Internally, there is a single room at ground floor level. This contains living and kitchen areas, as well as the entrance door which directly opens into it and the bottom of the staircase that accesses the first floor level. The appellant has referred to its occupation by a small family, but there would be limited space given the functions that this single room would provide and as it would present a confined arrangement. It would not be conducive to providing reasonable living conditions. The arrangement at the first floor level of 2 bedrooms and a shower/toilet room would raise less of a concern, but this does not overcome the inadequate level of provision and the layout at ground floor level.
8. The development plan does not contain internal space standards and therefore, in accordance with the Written Ministerial Statement of 25 March 2015², the Government's Nationally Described Space Standards³ cannot carry any significant weight. Nevertheless, this does not mean that the effect on the living conditions of the future occupiers is not a relevant matter as it is a planning consideration. For the reasons that I have set out, the ground floor accommodation would not be of a reasonable standard.
9. There is a narrow hardstanding area to the front of the appeal property that would act as its private outdoor amenity space. With its size and configuration, it would have a limited function in this regard, aside from the storage of refuse bins. It is not evident how the future occupiers would derive appreciable beneficial enjoyment from its use. Despite being in a similar location, its proportions would be noticeably more constrained than that associated with the

² Written Ministerial Statement to Parliament, Planning update March 2015

³ Department for Communities and Local Government (2015) Technical housing standards – nationally described space standard.

- neighbouring properties, which I could observe from the first floor of the appeal property.
10. I have been referred to local parks and open spaces, but these are too distant to offer a satisfactory alternative to the convenience of adequate on-site provision. The appellant has also cited instances where approved developments have not provided outdoor amenity space, but with family occupation such adequate provision is an aspect of providing suitable living conditions.
 11. The use of the appeal property through the existing planning permission has a limited bearing because that permission does not permit separate occupation. Living conditions are less of a consideration for the development as permitted because it can only be occupied in association with No 17, not as an independent residential unit.
 12. I conclude that the proposal would not provide a suitable living environment for its future occupiers by way of the provision of internal space and private outdoor amenity space. As such, it would not comply in this regard with Policy LP2 of the Central Lincolnshire Local Plan (2017) (Local Plan) because it would not be appropriate intensification within the existing developed footprint of Market Rasen. I accept that it would not be in conflict with Policy LP26 of the Local Plan in this regard because this policy does not concern itself with the living conditions of the future occupiers, as is relevant to this issue.
 13. The proposal would not, though, comply with paragraph 130 f) of the revised Framework where it is concerned with providing a high standard of amenity for future users.

Existing Living Conditions - Privacy

14. The bedrooms in the appeal property both contain windows that face towards the rear of Nos 17 and 19 at a short distance. The window in the larger bedroom is obscurely glazed. The other smaller bedroom has one clear glazed window. Nos 17 and No 19's own rear private outdoor amenity space areas are located in close proximity to the appeal property, in particular due to the narrow form of the area to the front of the property. There is a markedly close juxtaposition with Nos 17 and 19.
15. The window in the smaller bedroom would overlook the rear in particular of No 19 at close quarters, and face directly towards the rear of the associated house itself. The overlooking of No 17 would be at an angle, but with the proximity, it would still be not insignificant. Hence, there would be an undue adverse impact on the privacy levels of those properties that would arise from the proposal.
16. The appellant considers that it should be acceptable for the window in the smaller bedroom to be obscurely glazed to prevent overlooking. However, as this is the sole window for this bedroom, it would result in this habitable room losing much of its outlook. Whilst the window in the larger bedroom is obscurely glazed, this has the benefit of a second window which is clear glazed and provides at least some outlook, and it does not face towards Nos 17 and 19.
17. Based on the evidence before me, there is no current restriction on the use of the smaller bedroom as such, although it cannot be used as separate

accommodation to No 17. However, if the proposal was to be allowed and a separate and additional household was to occupy the appeal property, the potential for a greater infringement of privacy would likely occur with the proximity. This especially applies to No 17, because the occupation would no longer be in conjunction with it.

18. The appeal site is located on the edge of the town centre and where there is a fairly close relationship between existing properties. However, there is still a need to provide a reasonable level of living conditions and with the limited separation, the proposal would result in an unacceptable level of overlooking.
19. I conclude that the proposal would have an unacceptable effect on the living conditions of the occupiers of Nos 17 and 19 with regard to privacy. It would therefore not comply with Policies LP2 and LP26 in this regard where they are concerned with appropriate intensification and that amenities are not to be unduly harmed, including with regard to overlooking. It would also not accord with paragraph 130 f) of the revised Framework where it is concerned with providing a high standard of amenity for existing users.

Existing Living Conditions – Private Outdoor Amenity Space

20. The remaining private outdoor amenity space that would be left for No 17 would raise less of a concern. Its configuration and proportions at the rear of that property would be so that it would provide an appropriate level of beneficial enjoyment for its occupiers, if it was to be utilised for family accommodation. It would be not dissimilar to others that I could observe on my site visit.
21. In this respect, I conclude that the proposal would comply in this regard with Policies LP2, LP26 and the revised Framework.

Other Matters

22. The site lies within the Market Rasen Conservation Area. It is not easily visible from public vantage points. As the proposal would not involve external alterations to the appeal property, it would preserve or enhance the character or appearance of the conservation area. Similar considerations apply with regard to that the proposal would preserve the setting of the grade II listed buildings at 14, 16 and 18 Union Street. The site is separated from these designated heritage assets by Nos 17 and 19 and the other properties that form a frontage onto Union Street. Such considerations attract neutral weight.
23. The proposal would result in the creation of one additional dwelling on a windfall site within the developed footprint of the town. However, for the purposes of Policy LP2 it would not be appropriate intensification for the reasons that I have already set out. Matters in relation to its contribution to the housing stock and supply would not outweigh the harm that I have identified.

Conclusion

24. I have considered all matters that have been raised, but none would demonstrate that condition 4 is not reasonable and necessary. The removal of the condition as requested by the appellant would not provide suitable living conditions for its future occupiers by way of the provision of internal space and private outdoor amenity space, and it would have an unacceptable effect on the

living conditions of the occupiers of Nos 17 and 19 with regard to privacy. These matters are decisive.

25. As such, condition 4 complies with the tests for planning conditions that are set out in paragraph 56 of the revised Framework and the related advice in the Planning Practice Guidance concerning the application of these tests. It would not comply with the presumption in favour of sustainable development. Accordingly, I conclude that the appeal should be dismissed.

Darren Hendley

INSPECTOR