



Appeal Decision

Site visit made on 3 November 2021

by L Wilson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2021

Appeal Ref: APP/Z4718/W/21/3276517

1 Grimscar Avenue, Birkby, Huddersfield HD2 2TY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Umair Aziz against the decision of Kirklees Metropolitan Council.
 - The application Ref 2021/60/90242/W, dated 4 January 2021, was refused by notice dated 31 March 2021.
 - The development is described as proposed retail unit with flat over.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. This is an outline application with appearance, layout and scale matters to be considered. Access and landscaping are reserved matters for future approval. I will proceed on the basis that details shown on the submitted drawings in respect of matters that are reserved for future approval are for illustrative purposes.

Main Issues

3. The main issues are:
 - Whether or not it has been demonstrated that there are no sequentially preferable sites on which the retail unit could be accommodated and the proposal's effect on the vitality and viability of the Birkby Local Centre;
 - The effect of the proposed development on the character and appearance of the surrounding area, including the setting of the nearby Birkby Conservation Area (CA);
 - The effect of the proposed development on the living conditions of occupiers of 2 Bromley Road, having regard to outlook, 3 Grimscar Avenue, having regard to outlook and light, and 1 Grimscar Avenue, having regard to private amenity space;
 - Whether the proposed development would provide a satisfactory standard of accommodation for its future occupiers, with particular regard to private amenity space; and

- Whether or not it has been demonstrated that the proposal would have an acceptable effect on highway safety, having regard to parking provision.

Reasons

Birkby Local Centre

4. The proposed development includes a retail unit at ground floor level. The appeal site is located in an out-of-centre location, outside of Birkby Local Centre. Consequently, in line with Policy LP13 of the Kirklees Local Plan: Strategy and Policies (2019) (LP), a Sequential Test is required.
5. An occupancy survey for Birkby Local Centre was carried out in September 2020. The survey identified two vacant units which are potentially two sequentially preferable sites in the local centre. The appellant states that these units would be of no financial gains because they own the appeal site, and the proposal seeks to trade off existing demand which would provide a complementary user. In addition, they assert that the units are unsuitable and insufficient in size and scale with no off street parking.
6. As set out in the Planning Practice Guidance, land ownership does not provide a robust justification for a main town centre use to be accommodated in a specific location¹. No robust justification has been provided to demonstrate why the vacant units are unsuitable. They have not explained why the vacant sites are too small or why off-street parking is required in a local centre which is accessible. Furthermore, it has not been demonstrated that there are no other vacant units within the local centre since the survey was carried out. Consequently, in the absence of a Sequential Test, it has not been demonstrated that there are no sequentially preferable sites on which the retail unit could be accommodated. Therefore, it is not possible to determine the proposal's effect on the vitality and viability of the local centre.
7. For the reasons given above, the appellant has failed to demonstrate that there are no suitable sequentially preferable sites on which the proposed development could be located and that the proposal's effect on the vitality and viability of the Local Centre would be acceptable. Accordingly, the scheme would conflict with Policy LP13 of the LP. This policy seeks, amongst other matters, to support the vitality and viability of local centres and requires a Sequential Test for main town centre uses located outside of the defined centre boundaries. It would also conflict with chapter 7 of the National Planning Policy Framework (the 'Framework') regarding the Sequential Test and the desirability of ensuring the vitality of town centres.

Character and appearance

8. The surrounding area is characterised by primarily two storey terraced dwellings and there are also some commercial premises within the vicinity of the site. The appeal site consists of a single-storey garage and hardstanding enclosed by a fence and hedge. The appeal site is adjacent to the CA. Based on the evidence before me, this section of the CA is characterised by primarily two-storey, terraced dwellings constructed of stone with a simple appearance.

¹ Paragraph: 012 Reference ID: 2b-012-20190722

9. The proposed development would introduce a 1.5 storey building. There are bungalows within the wider area, including Norwood Road, but they have extremely limited visual relationship with the appeal site. The appeal site is seen in conjunction with two-storey buildings. The design of the proposed building includes large dormer windows to the front elevation. I observed on my site visit that dormer windows are not a common feature within the local area.
10. The proposed building would sit closer to the road than the neighbouring buildings on this side of Grimscar Avenue which would draw the eye to the development. Consequently, even with a condition relating to materials, as suggested, the scheme would be an incongruous addition due to its height, siting and dormer windows which would not reflect the character of the area. In addition, for the same reasons, it would cause harm on account of the effect on the setting of the CA and would fail to preserve or enhance the character and appearance of the CA.
11. Paragraph 199 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Where there is less than substantial harm, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
12. The harm arising to the CA would be localised and less than substantial, nevertheless it is of considerable importance and weight. This harm should be weighed against the public benefits of the proposal, where appropriate, securing its optimum viable use. I've had regard to the benefits of the proposal, and have considered those highlighted by local residents, including that it would be an opportunity for someone to open a new business, create employment and provide one flat.
13. Based on the evidence submitted, the public benefits would be limited and would not justify or outweigh the harm to the heritage asset that I have identified, as required by the Framework.
14. For the reasons given above, the proposed development would cause harm to the character and appearance of the surrounding area, including the setting of the nearby CA. Consequently, the scheme would conflict with Policies LP24(a) and LP35 of the LP. These policies seek, amongst other matters, to promote good design by ensuring the form, scale, layout and details of all development respects and enhances the character of the area and heritage assets. It would also conflict with chapters 12 and 16 of the Framework which seek to promote good design and ensure developments are sympathetic to local character.

Living conditions- existing occupiers

15. The appeal site is located in close proximity to 2 Bromley Road and 3 Grimscar Avenue. The proposed building would be significantly larger than the existing garage. I understand that the building has designed as 1.5 storey to reduce its impact upon neighbours, and they did not object to the scheme.

16. No 2 has windows to the rear elevation which, although they do not directly face the appeal site, would be in close proximity to the proposed building. In addition, the building would be adjacent to No 2's modest rear garden. The proposed building would be sited directly adjacent to the common boundary shared with No 2 and run alongside the majority of the boundary. Due to the topography of the area, the appeal site and No 2's garden sit lower than No 2.
17. The scheme would have an overbearing impact upon the occupiers of No 2 when viewed from particularly the ground floor window adjacent to the common boundary because of the proposed building's siting and its scale. The outlook from this window would be significantly compromised with the effect that the occupiers would feel hemmed in when looking out of the window. For the same reasons, and having regard to the size of No 2's garden, the development would be an oppressive feature when viewed from No 2's garden.
18. No 3 sits lower than the appeal site and has windows which would face towards the proposed building. An access lane separates the appeal site with No 3. The scheme would also have an overbearing impact upon the occupiers of No 3 when viewed from the windows which face the appeal site because of the building's siting and scale. The outlook from the windows facing the appeal site would be compromised. In addition, given the situation of No 3 relative to the appeal proposal and the position of the sun, the scheme would result in an unacceptable loss of light reaching these windows and would significantly overshadow No 3.
19. The proposed development would remove the outdoor space to the side of 1 Grimscar Avenue. On my site visit I observed that this area did not read as a garden. This is because although there was a small amount of planting, the area was dominated by hard landscaping and contained a garage. I also observed that there was an area of amenity space located on Bromley Road and many properties within the local area had small private amenity space areas. Thus, given the existing use of the appeal site, the outdoor space located on Bromley Road and nature of the area, the reduction in outdoor space would not be a reason to withhold planning permission.
20. For these reasons, based on the evidence presented, although the proposed development would provide adequate private amenity space for the occupiers of No 1, it would result in the living conditions of the occupiers of No 2 and No 3 being significantly adversely affected, having regard to outlook and light. Accordingly, it would conflict with Policy LP24(b) of the LP which seeks to promote good design by ensuring proposals provide a high standard of amenity for future and neighbouring occupiers. It would also conflict with chapter 12 of the Framework which seeks to ensure developments create places with a high standard of amenity for existing and future users.

Living conditions- future occupiers

21. The proposed development includes a one-bedroomed flat at first floor level. The intention is that the flat would be occupied by the operator of the proposed retail unit. Whilst there is a small gap to the front and side of the proposed building, based on the evidence presented, the scheme does not include any outdoor private amenity space for future occupiers of the flat.
22. No robust justification has been provided to warrant for the lack of a private garden. Thus, the development would result in poor quality accommodation

and would fail to provide an acceptable standard of amenity for future occupiers of the flat.

23. For these reasons, the proposed development would not provide a satisfactory standard of accommodation for its future occupiers, having regard to private outdoor space. The proposal would therefore conflict with Policy LP24(b) of the LP which seeks to promote good design by ensuring proposals provide a high standard of amenity for future occupiers. It would also conflict with chapter 12 of the Framework which seeks to ensure developments create places with a high standard of amenity for future users.

Parking provision

24. At the time of my site visit, there were no vehicles parked within the appeal site. Nonetheless, it is likely that the appeal site is used for parking given the extent of hardstanding, gates and dropped kerb. I observed that customers of the existing convenience store, at No 1, used both the informal hardstanding to the front of the building to park and the road (Grimscar Avenue). The informal, hardstanding parking area to the front of the existing retail unit and No 1 would be unaltered by the scheme.
25. Whilst the proposed development is in outline form and access is a reserved matter, the application form highlights that there would be no on-site parking. Hence, the proposed retail unit and flat would have no such provision. In addition, the development of the appeal site would result in a reduction in on-site parking for No 1. I noted on my site visit that there are no on-street parking restrictions within the vicinity of the site. The appellant highlights that retail outlets in Birkby do not benefit from off-street parking and the current retail unit operates without complaint and no traffic incidents have been reported locally.
26. Nonetheless, although my site visit was only a snapshot during the day, I observed that Grimscar Avenue was a well-used highway with a relatively steady flow of vehicles. Furthermore, the adjacent roads had limited available parking spaces due to the majority of dwellings not benefiting from off-street parking. There are also bus stops close to the appeal site as well as various junctions including Bromley Road and Grisedale Avenue.
27. The retail unit is intended to provide a service for the local community. However, it would not be possible to control whether customers drive to the retail unit. Some customers may walk to the retail unit and use public transport, however it is likely that the scheme would result in an increase in on-street parking on a well-used highway. Therefore, based on the evidence submitted, it is likely that the scheme would result in vehicles parking on Grimscar Avenue which would increase the likelihood of conflict between highway users due to the nearby junctions, bus stops and frequency of vehicles on Grimscar Avenue.
28. For these reasons, it has not been demonstrated that the proposal would not have an unacceptable impact on highway safety, having regard to parking provision. Consequently, the scheme would conflict with Policies LP21 and LP22 of the LP which seek, amongst other matters, to ensure the safe and efficient flow of traffic within the development and on the surrounding highway network. It would also not comply with chapter 9 of the Framework which states that

development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety.

Conclusion

29. I conclude that the appellant has failed to demonstrate that there are no suitable sequentially preferable sites on which the proposed development could be located and that the proposal's effect on the vitality and viability of the Local Centre would be acceptable. In addition, the proposed development would cause harm to the character and appearance of the surrounding area, including the setting of the nearby CA. Although the scheme would provide adequate private amenity space for the occupiers of No 1, it would result in the living conditions of the occupiers of No 2 and No 3 being significantly adversely affected. The proposed development would also not provide a satisfactory standard of accommodation for its future occupiers and it has not been demonstrated that the proposal would not have an unacceptable impact on highway safety.
30. I acknowledge the benefits of the proposal, including that it would provide a new retail unit and a flat. However, these benefits would be limited due to the scale of the development and do not outweigh the harm identified above.
31. 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