
Appeal Decision

Site visit made on 5 January 2022

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 January 2022

Appeal Ref: APP/B2002/W/21/3281244

Rear of 164 Yarborough Road, Grimsby, North East Lincolnshire DN34 4DN

- 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 Kevin Langley against the decision of North East Lincolnshire Council.
 - The application Ref: DM/0298/21/FUL, dated 16 March 2021, was refused by notice dated 11 June 2021.
 - The development proposed is the demolition of the existing commercial stores and the erection of a two storey dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of the existing commercial stores and the erection of a two storey dwelling at the rear of 164 Yarborough Road, Grimsby, North East Lincolnshire DN34 4DN in accordance with the terms of the application, Ref: DM/0298/21/FUL, dated 16 March 2021, subject to the conditions in the attached schedule.

Procedural Matter

2. The revised National Planning Policy Framework (Framework) was published after the Council made its decision but prior to the appeal being submitted. The main parties have thus had the opportunity to comment on this document during the course of the usual appeal timetable. The Council has made reference to the Framework in its submissions. I have considered it in my decision.

Main Issues

3. The main issues are (i) whether the proposal would provide suitable living conditions for its future occupiers by way of outlook, light and outdoor private amenity space provision; (ii) the effect on the living conditions of the occupiers of neighbouring properties, in particular 164 and 162 Yarborough Road and 22 Elder Road by way of visual impact, outlook and privacy; (iii) the effect on the character and appearance of the area; and (iv) the effect on the amenity value of trees.

Reasons

Living Conditions – Future Occupiers

4. The part of the appeal site where the proposed dwelling would be located comprises single storey outbuildings that are somewhat dilapidated in their appearance. They are used for storage and are separated from 164 Yarborough Road (No 164) by a small, grassed area. This property is used as a fish and chip shop, with a flat above. There is off-street car parking to the front. The appeal site also has a small frontage onto an alleyway to the east, which connects Yarborough Road with Elder Road.
5. Where the proposed dwelling would be located would be fairly confined due to the proportions of the site. The resultant design has sought to restrict the use of windows or utilise higher level windows in order to reduce the potential for overlooking of neighbouring properties. This would have the effect of especially the lounge area of the proposed dwelling having a limited outlook and receiving a modest level of light. The main bedroom would also receive limited outlook and light as it would largely utilise high level windows, albeit a secondary window would be positioned at a more typical level in the access area leading to the main part of this bedroom.
6. Outdoor space provision would comprise of a narrow area that extends around two elevations, as well as an area that would extend up to the frontage with the alleyway. Whilst neither area is of any great size and there is limited detail of how these areas would be laid out, when considered together, the provision would not be unacceptable for a 3 bedroom dwelling, including for family use.
7. Overall, I conclude that the proposal would not provide a suitable living environment for its future occupiers by way of light and outlook, although not outdoor private amenity space provision. As I have found some adverse effect, it cannot be said that a level of harm would not arise. In this regard, the proposal would not comply with Policies 5 and 22 of the Council's North East Lincolnshire Local Plan 2013 to 2032 (2018) (NELLP) in as far as they are concerned with the living environment for future occupiers through suitability and a high standard of sustainable design.

Living Conditions - Existing

8. No 164 would be separated from the proposed dwelling by the grassed area and the proposed narrow outdoor space along this side of the new dwelling. The associated flat has windows that would face towards the dwelling. With the separation that would be provided, this would not amount to an unacceptable level of visual impact or loss of outlook. Undue overlooking would not occur as the facing windows on the proposed dwelling would be largely at a high level.
9. The private outdoor amenity area for 162 Yarborough Road (No 162) abuts the site boundary. Whilst the proposed dwelling would be sited not a great distance off this boundary, this would be towards the far end of this area and away from No 162 itself. The level of visual impact and effect on the outlook from No 162's private outdoor amenity area would not be unacceptable. A first floor window related to the proposed main bedroom would face towards this boundary, but as this would be the secondary window the level of overlooking that would occur would also not be untoward.

10. 22 Elder Road (No 22) lies to the rear of the site. Its side elevation is well set off the shared boundary. In between, there is an enclosed private outdoor amenity area. The proposed dwelling would be sited towards the front of No 22 and so much of the side boundary of this property would not be enclosed by the new dwelling. The level of visual impact and the effect on the outlook from this private outdoor amenity area would not be unacceptable. Where there would be a proposed first floor window facing towards the boundary with No 22, it would be set back and partially screened by a rear projection on the proposed dwelling. Accordingly, the level of overlooking would also not be unacceptable.
11. The Council's submissions have also referred to 24 Elder Road and 160 Yarborough Road. As both these properties are separated from the site by the alleyway and with the proposed dwelling being set back, the living conditions of these occupiers would also be adequately protected.
12. I conclude that the proposal would not have an unacceptable effect on the living conditions of the occupiers of neighbouring properties, in particular Nos 164 and 162 and No 22 by way of visual impact, outlook and privacy. In this regard, it would comply with Policies 5 and 22 where they are concerned with the impact upon neighbouring land uses by reason of visual intrusion, amongst other matters, and a high standard of sustainable design, including context.
13. The Council's Planning Officer report also refers to the proposal being contrary to Policy 17 of the NELLP, although this policy does not appear in the related reason for refusal. As I have found that the proposal would not be unsatisfactory on this issue, it follows that the density would also not be unacceptable in this respect.

Character and Appearance

14. The character of the part of the site where the proposed dwelling would be sited is largely determined by its location to the rear of the properties on Yarborough Road. These contain a variety of extensions, in particular to the rear of the shops, as well as outbuildings. This character is varied and unassuming.
15. There is a clear distinction from the development on Elder Road and beyond, which has a markedly different character because it is a modern housing development which is set out in a planned layout. Yet the character of this part of the site is also different from the more regular arrangement of semi-detached and terraced properties that face Yarborough Road itself, whether as part of this parade of shops or in the broader residential area. This difference in character results from this part of the site being located to the rear.
16. In the context of the rear of the properties on Yarborough Road, the somewhat utilitarian design of the proposed dwelling would not appear out of keeping. It would replace outbuildings which themselves add little to the area. That it would contain large expanses of brickwork, and limited fenestration and architectural features would not result in it being incompatible due to its location at the rear of these properties. Comparisons with the design of the Elder Road development are of limited value due to the difference in character, notwithstanding that No 22 itself presents a large expanse of brickwork towards the site.

17. Nor would the proposed dwelling be seen to dominate the plot because it would be set back from the alleyway. It would be forward of No 22 but it would be considerably less close to the alleyway than the side of No 162. Adequate spacing would also be maintained with both No 162 and No 22. Hence, its positioning would not increase its visual impact so as to detract from the streetscene.
18. With regard to if the design has been constrained by the plot and whether or not the proposal would constitute overdevelopment, what is of more relevance is the underlying issue, namely whether the site can accommodate the proposed dwelling by virtue of the design. In this case, this is adequately achieved given what is proposed, its location and when considering what is on the site at present.
19. I conclude that the proposal would not have an unacceptable effect on the character and appearance of the area. As a result, it would comply in this regard with Policies 5 and 22 where they are concerned with the suitability of development having regard to the size, scale, and density of the proposed development, and a high standard of sustainable design through a consideration of the particular site's context, amongst other considerations.

Trees

20. There are a small number of trees that lie in close proximity to the site boundary. Whilst they provide somewhat of a natural backdrop to the alleyway, they are well set back and so their broader amenity value is of a limited nature. Based on the evidence before me, they are not the subject of a Tree Preservation Order.
21. There is no indication that the trees would have to be removed in order to accommodate the proposal. Where branches may overhang the boundary, they would simply be removed. In relation to the protection of root areas, the appellant has stated that root barriers would be part of the foundation requirements. Tree Protection is a matter which can be addressed satisfactorily through the imposition of a planning condition. This would provide sufficient assurance to prevent damage or loss, so that the proposal can proceed without detriment to the health of the trees.
22. I conclude that the proposal would not have an unacceptable effect on the amenity value of trees. Consequently, it would comply in this regard with Policy 5 in so far as the trees have some value worthy of protection under this policy. It would also comply with Policy 42 of the NELLP where it states that developers should retain and protect trees which offer value for amenity, amongst other considerations.

Planning Balance

23. The proposal would make use of previously developed land to provide an additional dwelling to assist in meeting North Lincolnshire's housing needs. It would also make more efficient use of the site than the current outbuildings. The location is highly accessible as regards local services. The appellant has also set out some measures in relation to energy efficiency. These matters attract moderate weight in favour of the proposal.
24. Set against the benefits would be the harm that would result from the proposal not providing a suitable living environment for its future occupiers, by way of

light and outlook. However, this level of harm would be limited and so would the conflict with Policies 5 and 22 in this regard.

25. The provision of water butts is a neutral matter given that the Council has pointed to limited sewer capacity in the area, and hence they would be needed. The Planning Officer report also refers to the potential loss of parking to the local centre, if the forecourt parking to No 164 is also utilised for the proposal. This loss would be of a minor nature and the proposal is in a location that lends itself to the use of modes of transport other than the car. This matter also attracts neutral weight.
26. Taking these matters together, the benefits that would arise would outweigh the harm. The proposal would also comply with the development plan as a whole. The level of conflict with Policies 5 and 22 would be limited, it would comply with these policies in all other aspects and there would not be a conflict with any other policy that I have been referred to. The proposal would also make a contribution to the delivery of new dwellings under the development plan. I also do not find conflict with the Framework, in overall terms.

Conditions

27. In addition to the timescale for implementation, I have imposed for the purposes of certainty a condition concerning the approved plans that show the proposal. I have also imposed conditions concerning details of the external materials in order to protect the character and appearance of the area, and in relation to the implementation of boundary treatment so that the living conditions are adequately protected.
28. I have imposed a condition regarding surface water drainage works in the interests of providing satisfactory drainage and minimising flood risk. I have also imposed a condition preventing the use of the alleyway by motorised vehicles in the interests of pedestrian safety. In order to protect the amenity value of the trees, a condition which concerns tree protection and working methods is imposed.
29. It is also reasonable and necessary to remove permitted development rights for the future insertion of new windows, in the interests of protecting the privacy of the occupiers of the neighbouring properties. It is not, though, necessary for the removal of such rights to include extensions and other types of householder permitted development. Whilst the site is fairly confined, such a restriction would not be warranted. The Framework states that planning conditions should not be used to restrict such rights unless there is clear justification to do so.
30. I have also not imposed a condition concerning the use of obscure glazing as the effect on the privacy of the occupiers of neighbouring properties would not be dependent on its use to prevent undue overlooking. I have also not imposed a condition in respect of construction matters as this is a modest development and any disruption would be likely for a short time period only. Conditions on these matters would not be reasonable and necessary.
31. Where I have changed the wording of the remaining conditions put forward by the Council, I have done so in the interests of precision and without changing their overall intention.

Conclusion

32. For the reasons set out above and having regard to all matters that have been raised, the appeal should be allowed subject to the conditions.

Darren Hendley

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: Site Location Plan Scale:1250, Dwg. GW/KL/YR/6 Proposed Block Plan Scale 1:500, Dwg. GW/KL/YR/3 Proposed Plans Scale 1:50
- 3) No development of the dwelling hereby permitted shall commence until details of the materials to be used in the construction of the external surfaces of the dwelling have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 4) The boundary treatment of the development hereby permitted shall be constructed as shown on Dwg. GW/KL/YR/3 Proposed Plans Scale 1:50 prior to the occupation of the dwelling hereby permitted and thereafter be maintained.
- 5) No development of the dwelling hereby permitted shall commence until the surface water drainage works for the proposed dwelling shall have been carried out in accordance with details which shall have been previously submitted to and approved in writing by the local planning authority. Thereafter the approved surface water drainage works shall be maintained.
- 6) No motor vehicles shall access the development hereby permitted directly via the pathway between 160 and 162 Yarborough Road or from Elder Road.
- 7) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees and the appropriate working methods in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows/dormer windows other than those expressly authorised by this permission shall be constructed on the elevations of the dwelling hereby permitted.