



Appeal Decision

Site visit made on 1 February 2022

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 February 2022

Appeal Ref: APP/N2739/W/21/3285512

Yard to the rear of 20-22 Millgate, Selby YO8 3JZ

- 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 Gavin Wright against the decision of Selby District Council.
 - The application Ref 2021/0236/FUL, dated 24 February 2021, was refused by notice dated 29 July 2021.
 - The development proposed is 2 no. two bedroom semi-detached dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken account of the National Planning Policy Framework 2021 (the Framework) in my decision. Whilst specific paragraph numbers have changed, nevertheless the substantive elements of the new Framework have not, insofar as they relate to the substance of this appeal.
3. I appreciate a similar scheme at the site was approved in 2013¹. However, that decision was taken at a different point in time, and with reference to different national policy and guidance than now applies. There are also fresh representations before me from neighbours. Moreover, that previous scheme has now lapsed, and I have furthermore assessed the scheme before me on its merits (there being little information before me regarding the circumstances which led to the previous permission). The appellant has submitted an updated Built Heritage Statement as part of the appeal documentation.

Main Issues

4. The main issues are:
 - the effect of the proposed development on the character and appearance of the area including the Millgate Conservation Area and the setting of a nearby listed building;
 - the effect of the proposed development on the living conditions of residents of 20 and 22 Millgate with regard to outlook and light, and whether acceptable living conditions for future occupiers of the proposed dwellings would be provided in terms of outlook and outdoor amenity space;
 - whether the appeal site is an appropriate location for the proposed development with reference to its vulnerability to flooding; and

¹ Application reference 2013/0499/FUL

- the effect of the proposed development on highway safety with regard to parking.

Reasons

Character and Appearance Including Heritage Assets

5. The appeal site is an area of land to the rear of 20 and 22 Millgate and close to Selby town centre. The site fronts onto New Millgate to the south east. To the north east is a waste water pumping station. The proposed development would comprise a pair of semi-detached two storey dwellings that would front on to New Millgate. The site is within the Millgate Conservation Area (the Conservation Area).

Listed Building

6. Grade II listed 20 and 22 Millgate (list entry no. 1132548) comprises a pair of three storey townhouses constructed in the mid nineteenth century. The principal elevation fronts onto Millgate and forms part of an attractive frontage with the other properties to the north. The significance of the listed building as it relates to the proposed development is derived from its historical associations with the area's development as a nineteenth century suburb, the visual relationship with the other buildings to the north, and the evidence it provides of the architectural style and building techniques of the time.

Conservation Area

7. The Millgate area developed as a suburb to house labourers and low-skilled workers from the early nineteenth century onwards extending out along an arterial route from the centre of Selby. The historic character survives most strongly in Lower Millgate, where its terraces of mainly two storey former workers' cottages front directly onto the street. Earlier properties are generally built in Selby dark red brick with roofing material being a mix of Welsh slate and clay pantile. Stone is generally restricted to coping detailing and window heads are commonly in brick. The character and appearance of the street form, with terraces fronting on to Millgate, together with the design and materials of the buildings along it, make an important contribution to the significance of the Conservation Area in so far as it relates to the appeal scheme.

Effect of the Proposal on Heritage Assets

8. The visual relationship of the listed building with the other buildings to the north would be preserved when viewed from Millgate. However, the proposed development would be clearly visible in views from the south which take in the gable end of the listed building and views along Millgate. From this location, the proposed dwellings would not appear subservient to the listed building despite being two storeys, and would visually compete with it, thus diminishing its prominence when viewed in this context.
9. The proposed dwellings would close off views of the rear of the listed building. Although noting the reworking of the rear elevation described in the appellant's Built Heritage Statement and the fact that it is not as grand as its frontage, such views nevertheless provide an understanding of the listed building in its wider context. It is commonly the case that the rear elevations of historic buildings are more informal or ad hoc, reflecting alterations to accommodate

changing necessities over time. That does not in itself, take away from the significance of the building.

10. Whilst the site may be described as somewhat untidy, and there are structures associated with the waste water pumping station in views from the rear, these elements do not visually compete with the listed building to a significant degree. The proposed development would reduce the legibility of the listed building in its wider context and so would diminish the ability to understand its architectural and historical context. Consequently, the proposed development would cause harm to the significance of the listed building.
11. The historic grain of the Conservation Area is generally characterised by the terraces fronting onto Millgate, although there are examples of older buildings sitting on narrow lanes leading off Millgate. The location of the proposed dwellings would depart from this prevailing grain. However, the linearity of the built form along Millgate would still be discernible when in the Conservation Area. Although the proposed dwellings would be visible in certain views, in particular when approaching the Conservation Area from the south, such views already include the dwellings located to the rear of the buildings fronting on to Millgate.
12. In terms of scale, proportions, materials and how the proposed dwellings would sit within the site, the proposal would integrate acceptably with those characteristics of the Conservation Area as a whole. However, the proposal would impede visibility, legibility and undermine an appreciation of the relationship of the listed building to its surroundings (which speaks to its history in the present). Thus, the proposed development would result in harm to the setting and significance of the listed building, thereby entailing some, albeit more dilute, harm to the historic integrity of the Conservation Area and therefore its significance as a designated heritage asset.

Balance and Conclusion on Heritage Assets

13. In terms of the Framework, I assess the harm to the listed building and Conservation Area as less than substantial. That is as only part of the setting of the listed building would be affected, a smaller part still of the Conservation Area, and in light of certain moderating factors related to the design and siting of the scheme as set out above. Even so, Framework paragraph 199 directs me to give 'great weight' to the conservation of such assets; less than substantial harm does not equate to a less than substantial planning consideration. Accordingly, Framework paragraph 200 sets out how any harm should require 'clear and convincing justification'. Paragraph 202 of the Framework further advises that the harm should be weighed against the public benefits of the proposal.
14. I accept that the proposal would make use of a vacant and somewhat untidy brownfield site. It would also contribute (numerically) to housing supply, in a location that is close to services and facilities. There would also be employment benefits during construction and occupation, for example in the latter instance via new residents bringing trade to the area. That the proposal is car-free may also encourage future occupants to adopt more sustainable modes of transport. Those implications may be considered positive public benefits, however the weight that I can ascribe them in terms of two new homes is inevitably limited. They do not represent 'clear and convincing justification' for harm to or loss of significance of the designated heritage assets, as required by paragraph 200 of

the Framework, as such benefits may be true of any development however harmful.

15. Accordingly, the proposed development would conflict with the relevant parts of Policies SP18 and SP19 of the Selby District Core Strategy Local Plan adopted 2013 (the CS), which seek to conserve those historic assets which contribute most to the distinct character of the District and positively contribute to an area's heritage amongst other matters. Although these policies do not require a weighing of the harm against public benefits, they nevertheless seek to conserve heritage assets, which is consistent with the aims of the Framework. The proposed development would also conflict with the advice in the Framework, the most relevant aims of which are summarised above.
16. For the same reasons as set out above, the proposal would also conflict with Policy ENV1 (1) and (4) of the Selby District Local Plan, adopted 2005 (the Local Plan), parts a), b) and g) of CS Policy SP19 and paragraph 130 of the Framework, which, in summary, seek to ensure that developments take account of local character.
17. The Council has referred to Policy ENV24 of the Local Plan in its first reason for refusal. This policy relates to proposals involving the conversion, alteration, extension or change of use of a listed building. It therefore appears to be aimed at proposals directly affecting listed buildings, including criterion one which references setting, rather than proposals within their setting. Consequently, I do not consider it relevant to the main issue.

Living Conditions

18. There are windows in the rear elevation of 20 and 22 Millgate that would face the south west gable elevation of the proposed development with a separation distance of around 4.5m. There are no details of the internal layout of these neighbouring properties, although the officer report for the previous proposal granted permission at the site in 2013² considered that the main habitable room windows appeared to be on their frontage. My observations are that at least some of the windows to the rear are likely to serve habitable rooms. These properties have a small outdoor amenity area that lies between their rear elevation and boundary wall. The gable elevation of the proposed development would be adjacent to this boundary wall for much of its length with a height of around 4.5m to eaves and a ridge height of around 7m.
19. The proposed development would be located in a relatively high density area. Nevertheless, at two storeys high and given the lack of separation distance, the proposed development would create a dominant feature that would have an overbearing effect on the outlook from the windows in the rear facing elevations and rear amenity areas of nos. 20 and 22. I find therefore that the proposed development would result in harm to the living conditions of occupiers of nos. 20 and 22 due to the effect on outlook.
20. The existing rear boundary wall of nos. 20 and 22 will likely cause some shading to the rear of these properties. The proposed development, due to its height and proximity, would however markedly compound the situation, increasing levels of overshadowing. The proposed development would therefore result in a harmful loss of light to the rear ground and first floor windows and

² Application ref 2013/0499/FUL

outdoor amenity areas. As such, the proposed development would result in harm to the living conditions of occupiers of nos. 20 and 22 due to the loss of light that would result.

21. The appellant highlights that the previous proposal from 2013 was found to be acceptable in terms of the effect on living conditions of neighbouring occupiers.
22. Be that as it may, based on the evidence before me, whilst the previous assessment considered that the 2013 scheme would not result in a significant detrimental impact on the residential amenity of occupiers through overlooking or overshadowing, no reference was made to the effect on outlook. For the reasons given above, my view is that, whilst the proposed development would not result in a harmful degree of overlooking, the proposed development would result in harm to the living conditions of occupiers of 20 and 22 Millgate due to the effect on outlook and light.
23. A very small rear outdoor amenity space would be provided for each of the proposed dwellings. This would be enclosed by a 1.8m fence. I accept that the surrounding area comprises mainly terraced properties with small outdoor areas. However, having regard to the overall size of the accommodation, I am not persuaded that the proposal would provide future occupiers with an adequate or satisfactory form of outdoor amenity space. Given the small size of area and the proximity of the rear boundary fence to the rear elevations, a limited outlook would also be provided when in the outdoor areas and from the rear ground floor windows, adding to concerns about the adequacy of the outdoor amenity space.
24. I appreciate that the appellant has sought to make an efficient use of the site. However, the proposed development would result in harm to the living conditions of occupiers of 20 and 22 Millgate due to the effect on outlook and light. In addition, it would fail to provide acceptable living conditions for future occupiers with regard to outdoor amenity space and outlook. Accordingly, the proposed development would conflict with Policy ENV1 of the Local Plan and paragraph 130 f) of the Framework, which in summary seek to ensure a good standard of amenity for occupiers amongst other matters.

Flood Risk

25. A Flood Risk Assessment (FRA) dated 2013 has been submitted in support of the proposed development. This states that the site is in flood zone 3. However, the Council and the Environment Agency identify the site as being within flood zone 2. The Planning Practice Guidance (PPG) identifies flood zone 2 as having a medium probability of flooding. The PPG defines dwellings as 'more vulnerable' in terms of flood risk, and a sequential test should be applied to proposals for more vulnerable development in flood zone 2.
26. The FRA states that a sequential test would be limited to sites within conservation areas in the immediate vicinity, and that given these are all located within the same flood zone, there would be no other sites within the area which are less prone to flooding and therefore more suitable for development. On this basis, the FRA considers that the sequential test is passed.
27. The Council's 2019 Flood Risk Sequential Test Developer Guidance Note requires the geographical coverage area for the sequential test to be Selby

Town (within and immediately adjacent to the development limits). No explanation has been given as to why the sequential test in the FRA only considered the conservation areas alone. I find no justification for applying the restricted sequential search area used by the appellant. On this basis, the appellant has failed to demonstrate that there are no reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. The sequential test has not therefore been passed.

28. The appellant highlights that no statutory consultees have objected on flood risk grounds. However, it is for the local planning authority and not consultees to consider the extent to which sequential test considerations have been satisfied.
29. The FRA identifies mitigation measures to reduce the residual risk of flooding. The appellant considers that the benefits of the proposal outweigh the flood risk. However, the Framework states that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. As set out above, the appellant's assessment is not sufficient to demonstrate that there are no reasonably available appropriate sites in areas with a lower risk of flooding.
30. For the above reasons, the proposed development would conflict with paragraphs 162 and 163 of the Framework, which seek to steer new development to areas with the lowest risk of flooding, following a sequential risk based approach.

Highway Safety

31. No provision is made for off-street parking. The Parking Standards³ state that a minimum of one vehicle parking space should be provided for a two bedroom dwelling. The appellant highlights guidance within the Parking Standards that a flexible approach should be taken so that each development proposal is assessed on its merit, and a lower parking provision may be appropriate, particularly in more central locations where public transport provision is greater, depending on the circumstances of each case.
32. I observed the parking situation in the vicinity of the site during my visit on a weekday afternoon. Whilst this was only a snapshot in time, there is no evidence to suggest that it was not representative of the general parking situation in the area. On-street parking is a feature of the area. Although there were a number of cars parked on Alma Terrace and further along Millgate, there remained some unused on-street parking capacity.
33. The site is within a very comfortable walking distance of the town centre. The bus and train stations are also within a reasonable walking distance which would give access to public transport options. Occupiers of the proposed development would have transport modes available to them other than the private car and would not necessarily have to rely on a car for day to day requirements.
34. Whilst there is demand for on-street parking within the vicinity of the site, there is little substantive evidence to demonstrate that the existing on-street parking situation has reached saturation point or that highway safety issues have occurred as a result of the current levels of on-street parking.

³ North Yorkshire County Council Highways Parking Standards

Consequently, even if there were to be some increase in traffic arising from the proposed development, this would not exacerbate on-street parking to the extent that there would be an unacceptable impact on highway safety.

35. The proposed development would therefore accord with the parking and highway safety requirements of Policies ENV1 (2), T1 and T2 of the Local Plan, Policy SP19 of the CS and paragraphs 110, 111 and 112 of the Framework.

Other Matters

36. I have explained earlier in this decision how circumstances now differ from those which applied in terms of the previous permission, which is, in any event, lapsed. I note that the appellant also refers to various development plan policies and elements of the Framework which relate to the principle of additional housing development, housing mix, sustainable development and climate change, which they contend would or could be achieved via the scheme. Be that as it may, even were the development proposed acceptable in all other respects, that would be neutral in my determination of the scheme rather than weighing positively in favour of allowing the appeal. Thus, the scheme would conflict with the approach in relevant elements of the development plan, and there are no other material considerations sufficient to justify allowing the scheme.

Conclusion

37. The proposed development would conflict with the development plan taken as a whole as well as the Framework. There are no material considerations worthy of sufficient weight that would indicate a decision other than in accordance with it. Therefore, for the reasons given, I conclude that the appeal should not succeed.

F Wilkinson

INSPECTOR