



Appeal Decision

Site visit made on 15 February 2022

by C Coyne BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 MAY 2022

Appeal Ref: APP/G2713/W/21/3283968

Land off Manfield Terrace, Carlton Miniott, North Yorkshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr M McCalmont (Newspan Ltd) against Hambleton District Council.
 - The application Ref 21/01756/FUL, is dated 1 July 2021.
 - The development proposed is demolition of existing garage and erection of new dwelling.
-

Decision

1. The appeal is allowed, and planning permission is granted for demolition of existing garage and erection of new dwelling at Land off Manfield Terrace, Carlton Miniott, North Yorkshire in accordance with the terms of the application, Ref 21/01756/FUL, dated 1 July 2021, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. Hambleton District Council adopted a new Local Plan on 22 February 2022 and the main parties have been provided with an opportunity to comment on this matter. As a result, I am satisfied that neither party has been prejudiced in this regard.
3. The appeal relates to a planning application that was not determined by the Council within the prescribed period. The Council have subsequently issued a statement for the purposes of this appeal highlighting that it would have refused the application for planning permission on five grounds. I have had regard to this statement for the residential development of the site in framing the main issues.

Main Issues

4. In the context of the above, the main issues are:
 - the effect of the proposed development on the character of the area;
 - the effect of the proposed development on the living conditions of neighbouring occupiers having regard to privacy;
 - the effect of the proposed development on the living conditions of neighbouring occupiers having regard to sunlight;
 - the effect of the proposed development on highway safety having regard to parking and the free movement of traffic in the area; and
 - the effect of the proposed development on biodiversity having regard to bats.

Reasons

Character of the area

5. The appeal site is located next to a row of detached ancillary back gardens/amenity areas belonging to the dwellings on De Grey Terrace. Several of these gardens contain small, detached outbuildings with the front portions of some of these garden/amenity areas also being used as parking areas. The one next to the appeal site has a parking area and outbuilding to its front with a more traditional grassed garden area to its rear. The nature of the appeal site and these other adjacent garden/amenity areas gives them a character much like that of a set of suburban allotments.
6. The proposal would replace the existing detached garage building with a 1.5 storey, two bedroomed dwelling with a driveway exiting out onto Sandhutton Lane. The fact that the existing garage would be replaced with a two bedroomed dwelling means that the site would be used more frequently than it is currently given the likely activity of the new occupiers of the proposed dwelling. The proposal would also likely have a least two future occupiers meaning that the comings and goings to and from the site would also be very likely to increase.
7. However, even so, while these rear garden/amenity spaces would be used more often during daylight hours and in spring/summer, they would not be used all of the time. Likewise, given the scale of the proposal it would be unlikely that there would be comings and goings to and from the property all the time. Consequently, given this and the fact that the appeal site is much wider than the other gardens/amenity areas nearby, plus the fact that it is located at the end of this row, I consider that the impact of the proposal on the users of the rear gardens/amenity areas and the character of this part of Sandhutton Lane would be limited.
8. I therefore conclude that the proposed development would not materially harm the character of the area. Accordingly, it would not conflict with the relevant requirements of policy E 1 of the adopted Hambleton Local Plan (HLP).

Living Conditions - Privacy

9. The side elevation of the proposal has one ground floor window and two rooflights that would face in the direction of the back garden/amenity space next to the appeal site. The shared boundary is a small brick wall. However, the ground floor window would serve a bathroom and be obscure glazed with one of the rooflights similarly serving an ensuite bathroom also being obscure glazed.
10. The Council have raised a concern that the adjacent rear garden/amenity area and those nearby would be overlooked. However, the ground floor window and one of the rooflights would have obscure glazing meaning that any potential impact would be adequately mitigated. As for the other rooflight window, given the angle of the roof slope facing towards these gardens/amenity areas, I consider it unlikely that there would be any unacceptable loss of privacy to the users of these areas by overlooking from this obliquely angled fenestration.
11. The proposal would also have a ground floor window serving its living room on its other side elevation and two rooflights on its corresponding roof slope. There is one ground floor and one first floor window on the front elevation of no. 1 Manfield Terrace which would face the appeal site albeit at an angle. However, given the angle of the front elevation of no. 1, its orientation and staggered location in relation to the proposal, as well as the oblique angle of the rooflight windows, I

consider it unlikely that there would be an unacceptable loss of privacy to the occupiers of no. 1 from these windows.

12. I therefore conclude that the proposed development would not materially harm the living conditions of neighbouring occupiers having regard to privacy. As a result, the proposal would not conflict with the relevant requirements of Policy E 2 of the HLP.

Living Conditions - Sunlight

13. The Council have raised a concern that the proposal would overshadow the rear garden/amenity area next to it thereby harming the living conditions of its users. However, even though no shading study/diagrams have been submitted, the proposal would not have a footprint much bigger than the existing garage and it would also not project further backwards than the existing building.
14. In addition, while the proposal would project further forwards, this portion would be at a lower height than the rest of its roofline and would not be as high as the existing garage. It would also be adjacent to the part of the garden/amenity area where the outbuilding and parking area are located. As a result, while the proposal would be a bit higher than the existing garage, it would not be so high as to lead to an unacceptably greater reduction in the amount of sunlight currently reaching the garden/amenity area next to it, particularly the part furthest to the rear.
15. I therefore conclude that the proposed development would not materially harm the living conditions of neighbouring occupiers having regard to sunlight. Consequently, it would not conflict with the relevant requirements of Policy E 2 of the HLP.

Highway Safety

16. The Council and several interested parties have raised concerns in relation to the proposal's impact on highway safety particularly in relation to the proposed vehicular access. They argue that it would not be possible for it to be safely used if vehicles were parked on the street in front of nos. 1 and 2 Manfield Terrace and that this may also lead to congestion and restrict the available space for emergency vehicle access.
17. While I note that the relocation of the vehicular access to a point further along Sandhutton Lane, that would be directly opposite the front of nos. 1 and 2 Manfield Terrace, would potentially make access and egress from the appeal site more difficult than it is now, it would not make it impossible to do so. The proposed vehicular access would also be wider than the existing one. In addition, these cars would not be parked in front of these properties all of the time. Furthermore, it would also be possible for two vehicles to park in front of the property directly opposite the current vehicular access to the appeal site meaning that the free movement of vehicular traffic would be no more impeded than is currently the case. Moreover, the Highway Authority has not objected to the proposal, and I have no substantive evidence before me to lead me to disagree with their assessment. Consequently, I am satisfied that any potential impact the proposal would have in this regard could be adequately mitigated via the imposition of a suitably worded condition such as the one suggested by the highway authority.
18. I therefore conclude that the proposed development would not materially harm highway safety having regard to parking and the free movement of traffic in the area. As a result, it would not conflict with the relevant requirements of Policy CI 2 of the HLP.

Biodiversity

19. The Council and interested parties have raised a concern in relation to the fact that the existing garage building is used by bats. However, I have no substantive evidence before me, such as a bat survey or an objection from the Council's ecologist to support this. As a result, I am satisfied that the imposition of a suitably worded condition requiring the submission and approval of a bat risk assessment and survey report would adequately mitigate any potential impact in this regard.
20. I therefore conclude that the proposed development would not materially harm biodiversity having regard to bats. As a result, it would not conflict with the relevant requirements of Policy E 3 of the HLP.

Conditions

21. I have imposed conditions as set out in the attached schedule in light of the use of planning conditions set out in the National Planning Policy Framework (the Framework) and Planning Practice Guidance (the Guidance). Consequently, in the interests of precision and clarity I have undertaken some minor editing and rationalisation of the conditions as suggested by the Council and the appellant. In addition to the standard implementation condition, I have imposed a necessary condition to define the plans with which the scheme should accord in the interest of precision. I have also imposed necessary conditions specifying that the submission and approval of boundary treatment details and materials samples and also requiring that the proposal be constructed of the approved materials in the interests of the character and appearance of the area.
22. In the interest of the local environment, I have also imposed a reasonable and necessary condition prohibiting any piped discharge of surface water from the development prior to the completion of surface water drainage works in order to minimise any potential flood risk. In the interest of highway safety, I have imposed a necessary condition requiring that on-site parking provision, safe vehicular manoeuvrability and the proposed vehicular access are carried out in accordance with the relevant approved plan.
23. In the interest of minimising risks from contaminated land I have also imposed a condition requiring that an investigation and risk assessment be carried out should any contamination be discovered during the proposal's construction. The Council suggested a condition removing permitted development rights for the proposal. However, bearing in mind the Framework and the Guidance¹ I consider this condition to be neither reasonable nor necessary in this case.
24. I have imposed a condition requiring the window on the eastern side elevation to be obscure glazed and unopenable and I note the appellant's point in relation to this condition, however the submitted plans do not show that the window would face a closed boarded timber fence approximately 1.8 metres in height. As a result, I consider this condition to be reasonable and necessary in the interest of the living conditions of neighbouring occupiers. In the interest of biodiversity, I have also imposed a condition requiring the submission and approval of a bat risk assessment and bat survey of the existing garage building.

Conclusion

25. For the reasons set out above I conclude that the appeal should be allowed.

C Coyne INSPECTOR

¹ Paragraph: 017 Reference ID: 21a-017-20190723.

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: Drawing no. Carlton Miniott PP01.
- 3) No development above foundation level shall take place until details of the materials to be used in the construction of the external surfaces of the development and hard surfaces have been submitted in writing to the Local Planning Authority for approval and samples have been made available on the application site for inspection (and the Local Planning Authority have been advised that the materials are on site) and the materials have been approved in writing by the Local Planning Authority. The development shall be constructed of the approved materials in accordance with the approved method.
- 4) Above ground construction shall not be commenced until details relating to boundary walls, fences, and other means of enclosure for all parts of the development have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.
- 5) There shall be no piped discharge of surface water from the development prior to the completion of surface water drainage works, details of which will have been submitted to and approved by the Local Planning Authority. If discharge to public sewer is proposed, the information shall include, but not be exclusive to:
 - a) evidence to demonstrate that surface water disposal via infiltration or watercourse are not reasonably practical;
 - b) evidence of existing positive drainage to public sewer and the current points of connection; and
 - c) the means of restricting the discharge to public sewer to the existing rate less a minimum 30 % reduction, based on the existing peak discharge rate during a 1 in 1 year storm event, to allow for climate change.
- 6) No part of the development must be brought into use until the access and parking areas have been constructed in accordance with the approved plan Drawing no. Carlton Miniott PP01. Once created these areas must be maintained clear of any obstruction and retained for their intended purpose at all times.
- 7) Prior to development above foundation level commencing, details of the existing ground and floor levels of site and neighbouring buildings and the proposed ground and finished floor levels of the site shall be submitted to and approved in writing by the Local Planning Authority. The levels shall relate to an identified fixed Ordnance Datum. The development shall be constructed in accordance with the approved details and thereafter be retained in the approved form.
- 8) If contamination is found or suspected at any time during development that was not previously identified all works shall cease and the LPA shall be notified in writing immediately. No further works (other than approved remediation measures) shall be undertaken, or the development occupied until an investigation and risk assessment carried out in accordance with CLR11, has been submitted to and approved in writing by the LPA.

Where remediation is necessary a scheme for the remediation of any contamination shall be submitted and approved by the LPA before any further development occurs. The development shall not be occupied until the approved remediation scheme has been implemented and a verification report detailing all works carried out has been submitted to and approved in writing by the local planning authority.

- 9) No development above foundation level shall take place until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. Construction of the permitted development must be undertaken in accordance with the approved plan. The Plan must include, but not be limited to, arrangements for the following in respect of each phase of the works:
- details of any temporary construction access to the site including measures for removal following completion of construction works;
 - wheel washing facilities on site to ensure that mud and debris is not spread onto the adjacent public highway;
 - measures to manage the delivery of materials and plant to the site including routing and timing of deliveries and loading and unloading areas;
 - the parking of contractors' vehicles;
 - areas for storage of plant and materials used in constructing the development clear of the highway;
 - contact details for the responsible person (site manager/office) who can be contacted in the event of any issue;
 - hours of operation which must not exceed Monday - Friday 0800 to 1800, Saturday 0800 to 1300 and no working on Sunday and Public Holidays.
- 10) The ground floor window in the east elevation of the approved building shall at all times be glazed with obscured glass and shall not be capable of opening.
- 11) Prior to the demolition of the existing garage on the site, a bat risk assessment and bat survey of the garage shall be undertaken, and a report prepared and submitted to the Local Planning Authority for their consideration and approval. Thereafter, the recommendations of the report together with any mitigation measures proposed shall be implemented in full within the timeframes set for their implementation.

End of Schedule