



Appeal Decision

Site visit made on 12 July 2022

by C McDonagh BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 August 2022

Appeal Ref: APP/C2741/W/22/3292602

Wilberforce House, 49 North Moor Road, Huntington, York YO32 9QN

- 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 Craig Smith against City of York Council.
 - The application Ref 21/00927/FUL, is dated 12 April 2021.
 - The development proposed is described as 'Demolish existing buildings & erect 8 new dwellings with associated parking, ancillary buildings for refuse & cycles storage'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Section 38(6) of the Planning and Compulsory Purchase Act (2004) requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
3. The Council refers to policies in the City of York Draft Local Plan Incorporating the 4th Set of Changes (2005) (the DLP). However, whilst the Council states that it has approved the DLP for development control purposes, it has not been formally adopted. As such, it does not form part of the development plan. Although they are material considerations insofar as they may be consistent with the National Planning Policy Framework (the Framework), the relevant policies of the DLP are attributed limited weight.
4. The Council also refers to the emerging Publication Draft City of York Local Plan 2018 (the ELP). However, this is not yet adopted, and I am not aware of the extent of any unresolved objections. Having regard to the advice in paragraph 48 of the Framework, I have also given these policies limited weight.

Main Issues

5. Whilst the Council has not issued a decision, the appeal statement submitted recommends refusal of the application based on several matters. These have informed my reasoning in this appeal. Therefore, the main issues are as follows:
 - Whether the proposal would cause an unacceptable loss of employment land
 - The effects of the proposal on biodiversity
 - Whether the proposal incorporates suitable vehicle parking arrangements and bicycle and refuse storage

- The effect of the proposal on the character and appearance of the area
- Whether the proposal would provide suitable living conditions for prospective future occupiers

Reasons

Employment Land

6. The appeal site comprises a former office complex which is described as redundant and was not in use at the time of my site visit. Policies EC2 of the ELP and E3b of the DLP both generally seek to retain employment land unless it can be demonstrated that the existing employment use is not viable, subject to several criteria.
7. The main parties agree that the last use of the building was as offices for a charity which has since moved premises. As such, this last use would have been for employment purposes. I have nothing before me from either party to inform as to the viability of the site in terms of market attractiveness or business operations. The surrounding uses are residential, although the use as an office would not generate any particular concerns that would render its future use in this manner as incompatible in the area.
8. I note that the appellant considers that the building and site overall is in poor condition. I did enter the building on the site visit, and although it had clearly not been in use for some time there was no indication that its condition would prohibit its future use for employment purposes from my observations at the time.
9. The appellant states there was no loss of employment (i.e., in terms of job losses) as the charity that formerly occupied the building simply moved premises. While this may be so, the proposal would result in the loss of a site capable of employment functions in future (i.e., employment land). As such there would be conflict with Policies EC2 of the ELP and E3b of the DLP due to the loss of employment land.

Biodiversity

10. Circular 06/2005¹ states that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. Surveys need to be carried out before planning permission is granted and should only be required where there is a reasonable likelihood of species being present.
11. The application was supplemented by a 'Bat and Breeding Bird Scoping Survey' (MAB Environment and Ecology – December 2021). This advised that all the buildings of the appeal site provide low potential bat roost habitat while vegetation on site provides low suitable bird habitat. Although some mitigation is proposed, the survey concludes that at least one bat activity survey will be required between May – September, to assess the full extent of potential bat activity in the buildings.

¹ Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and Their Impact Within the Planning System

12. I do not have the further survey work before me. Regardless of whether the recommendation was made outside of surveying season, it has not been demonstrated that bats, a protected species, would not be adversely affected in the absence of evidence to the contrary. While it is mentioned by the appellant that green areas are proposed, there is no details of a landscaping proposal in the submitted plans other than some trees indicated on the proposed site plan. These would take a significant amount of time to mature. Accordingly, the proposal would conflict with paragraph 174 of the Framework, which advises development should contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity.

Parking

13. The Proposed Site Plan (Drawing No: S138.01.01 Rev C) demonstrates that allocated parking would be provided largely along the southern boundary of the site, with parking for Plot 7 to the front of that property while plot 1 has a space next to two visitor spaces located between the two blocks of housing. A turning head is shown at the western extent of the site, which demonstrates a standard sized car could turn here with a three-point manoeuvre.
14. Parking for plots 4, 5, 6 and 8 would likely involve vehicles having to reverse part of the way out of their spaces, before using the turning head to exit the site in a forward gear. Cars leaving the spaces for plots 2 and 3 would likely have to move forward within the site and reverse towards the visitor/plot 1 parking area to egress. While this would be inconvenient for those drivers, there is no indication it would be unsafe.
15. However, the parking space for plot 7 is positioned awkwardly in relation to the turning head and there is little remaining space for cars to move between space 7 and those for 4, 5, 6 and 8. Moreover, there is nothing before me to indicate that larger vehicles, such as delivery vans or emergency vehicles would be able to move within the site safely and efficiently. This is a requirement of paragraph 112(d) of the Framework, which advises development should allow for the efficient delivery of goods, and access by service and emergency vehicles.
16. Although the appellant argues two-bed houses generally have small or medium cars, there is no evidential basis for this assertion, and this is not sufficient to demonstrate the site layout would work in practice. The banning or otherwise of larger vehicles under covenants are not a matter for me to consider in a planning appeal. A suitable site layout with regards to vehicular parking and movement has not been demonstrated. The suitability of the parking area for the office has no bearing on its acceptability to serve housing as proposed.
17. Turning to cycle parking, the appellant advises the required spaces can be provided within the sheds shown on the proposed site plan. It is not clear from the plan as to whether sheds would form part of each property (i.e., provided by the developer) or this space is shown to accommodate a shed at a later date if required. However, the Council has agreed to a condition to secure further details on this matter, along with refuse storage arrangements, were the appeal to be successful. I see no reason why this could not be agreed, although as I am dismissing the appeal on other matters, I have not considered this further.

18. To conclude on this main issue, the proposal would not provide the necessary arrangements for parking and manoeuvrability within the site, particularly for larger delivery and emergency vehicles. This would be contrary to paragraph 112 of the Framework as detailed above. The proposal would also be contrary to Policy T1 of the ELP.

Character and Appearance

19. The appeal site comprises an office building formed of a two-storey section facing North Moor Road and a single-storey section to the rear extending west towards Keswick Way. There are dwellings to either side on North Moor Road and an area of green space on the opposite side of the road. The area is of mixed commercial and residential uses, with the majority of buildings of red brick construction and of two-storey height. While there is no consistent pattern of development, buildings are generally set back a consistent distance from North Moor Road while the playing fields opposite the appeal site and use of grass verges along the road provide welcome visual relief to the built form in the area.
20. I note that the Council does not take issue with the external appearance of the dwellings and agree that they would respect the building line of North Moor Road. Given my observations on the local area, I see no reason to disagree.
21. However, the most recently submitted proposed site plan (Drawing No: S138.01.01 Rev C) shows a central collection point for waste bins located within a section removed from the front garden of plot 3 facing North Moor Road in a highly visible location. The National Design Guide (NDG) advises *(waste bins) are accessible and well-integrated into the design of streets, spaces and buildings, to minimise visual impact, unsightliness and avoid clutter*. Given the limited space available within the site layout, for which I have expressed concern regarding other matters, the bins are proposed to be stored in the central point on collection days. However, I share the concern of the Council that due to the distance from some dwellings, such as those towards the western end of the site, these would likely be kept in this storage area on a longer-term basis for convenience of residents which would be unsightly in views from the road.
22. The NDG goes on to advise that *where refuse bins are required to be on a street frontage or in a location that is visible from a street, they are sited within well-designed refuse stores that are easy for occupants to use*. The proposed storage area has space for eight bins indicated on the proposed site plan. I note the comments of the waste management consultee that a collection vehicle would not be able to access and move within the site. Given the constraints, there would be no other space to locate this area. However, the waste management team advises that the area is not large enough for manoeuvring of bins. The increased size of this area would exacerbate the visual harm to the area from the storage of bins in this location.
23. Moreover, a location to allow the refuse collection vehicle to stop and load safely, legally and to not impede traffic or pedestrians using North Moor Road or the footpath is not indicated on the site plan. Although the Council indicate that a condition could be agreed if the appeal was to be allowed to secure further details prior to construction of the proposal, there is nothing before me to indicate this is achievable without significant amendments to the scheme. As such this would not be reasonable.

24. Furthermore, the site would be cramped with little visual relief in terms of open or green spaces. Although there is a gap between the two blocks of houses, this is occupied by parking spaces. On the proposed site plan, these are indicated to be provided by the small front gardens of plots 4-8, although plot 7 has a car parking space to the front which would reduce this contribution in any event. The prominence of cars, lack of turning space and need for a central bin collection and lack of landscaping all emphasise that the site is overdeveloped.
25. Taking these factors together, the proposal would harm the character and appearance of the area, contrary to paragraph 130 of the Framework. This advises developments will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development and optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space). The proposal would also be contrary to Policies GP1 and GP9 of the DLP and D1 and D2 of the ELP.

Living Conditions

26. The Framework advises in paragraph 187 that planning decisions should ensure that new development can be integrated effectively with existing businesses. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or 'agent of change') should be required to provide suitable mitigation before the development has been completed.
27. A car repair garage is located to the immediate west of the appeal site at the end of Keswick Way to the rear. There is no report before me to inform on likely noise levels which would be experienced for future occupiers of the dwellings or mitigation to alleviate this harm. However, it is likely that this type of business has the potential to generate large amounts of noise during its hours of operation from power tools, hammering, metal work and revving of engines during services or repairs. As such, the proposal would not ensure suitable living conditions in this regard for potential future occupiers of the dwellings proposed.
28. Furthermore, the turning circle indicated on the proposed site plan would mean vehicles would turn towards the front of plot 8, which does not have a front garden, resulting in the occupiers of that property subject to a loss of privacy due to drivers views into their front windows, noise from vehicle engines revving while reversing, and headlights shining directly into the front rooms. Moreover, occupiers of plot 3 would be subject to a bin storage area which would require enlarging from that indicated on the site plan to ensure collection is achievable as I have discussed previously. This would be an unsightly outlook from their front gardens and rooms to the front of their property.
29. The Council also has concerns regarding the impacts of the retail units located to the north of the site from noise and disturbance. However, from my observations these were a suitable distance from the appeal site with other houses located much closer. Owing to their existing uses, it is unclear how these would be unduly noisy or disturbing to future occupiers.
30. Taken together, the proposal would not provide suitable living conditions for prospective future occupiers of the scheme. This would be contrary to the

Framework which advises in paragraph 130 that proposals should ensure a high standard of amenity for existing and future users. The development would also be contrary to Policies GP1 of the DLP and D1 and ENV of the ELP.

Planning Balance

31. I have found that the proposal would involve the loss of employment land, does not provide the necessary information and/or mitigation to ensure protected species would not be harmed, has unsuitable parking and access arrangements, would be harmful to the character and appearance of the area and would not provide suitable living conditions to prospective future occupiers. This harm and subsequent conflict with the Framework taken together would be significant and thus worthy of considerable weight. There is also conflict with the policies of the DLP and ELP, although as neither are adopted these carry less weight.
32. The Framework generally seeks to significantly boost the supply of housing. The proposal would provide eight dwellings on a previously developed site. This is worthy of moderate positive weight, although this would not outweigh the harm I have identified. Although the appellant states there is a need for starter homes in the area, I have no evidence of this before me, nor is there any guarantee that the dwellings would be available only to first time buyers. As such this carries little weight in favour of the scheme.
33. I have had due regard to other considerations in the appellant's appeal statement. I note there was a breakdown in communication between the parties. While this is unfortunate, and the appellant is aggrieved at the length of time the Council took to progress the application, this has no bearing on my decision which must be assessed on its own merits. Although I am informed of similar developments nearby, I have no information on these before me. As such they do not add weight to the scheme.
34. This states the Council has not raised objections to the location of the proposal in principle with regards to the accessibility of public transport, services and facilities. Similarly, there are no issues raised regarding the design of the proposal. However, the absence of harm weighs neither in favour of, nor against, the proposal.

Conclusion

35. The limited benefits of the scheme are outweighed by the harm to highway safety and lack of a safe and suitable access. As such, the adverse impacts of the development would significantly and demonstrably outweigh the benefits of the proposal when assessed against the policies in the Framework as a whole.
36. The presumption in favour of sustainable development does not therefore apply and material considerations do not justify a decision otherwise than in accordance with the development plan considered as a whole. For the reasons identified, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

C McDonagh

INSPECTOR