



Appeal Decision

Site visit made on 14 April 2023

by Zoe Raygen DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 April 2023

Appeal Ref: APP/E2734/W/22/3313546

Site of Former North Yorkshire Timber Company Limited, Trinity Lane, RIPON, HG4 2AL

- 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 Red Tree Developments Ltd against the decision of Harrogate Borough Council.
 - The application Ref 21/01466/FULMAJ, dated 6 April 2021, was refused by notice dated 8 September 2022.
 - The development proposed is demolition of existing buildings and erection of thirteen dwellings, realigned access onto Trinity Lane, and associated parking and landscaping.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Red Tree Developments Ltd against Harrogate Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The Council confirms in its statement of case that the appellant's case regarding Vacant Building Credit is valid. Therefore, the proposal to provide a financial contribution towards off site provision of affordable housing is appropriate and would need to be secured by way of a legal agreement.
4. The appellant has submitted a Unilateral Undertaking (UU) which includes a contribution of £52,211 towards the provision of off site affordable housing equating to 0.43 of a dwelling which is the requirement after the allowance for Vacant Building Credit is taken into account. This has been calculated using the formula and methodology contained in the Council's Affordable Housing Supplementary Planning Document 2021 (the SPD). The Council makes no comment on the UU. However, based on the evidence before me I am satisfied that this would appropriately provide affordable housing satisfying the requirements of Policy HS2 of the Harrogate District Local Plan 2014-2035 adopted 2020 (the Local Plan) and the SPD.
5. The Council also agrees that a sum of £27543.82 towards off site open space secured by a legal agreement would address its reason for refusal No 5 bringing the proposal in accordance with Policy T14 of the as well as the Provision of Open Space and Village Halls Supplementary Planning Document 2021.

6. The UU includes the requested contribution towards off site open space. Therefore, both obligations within the UU meet the tests set out in regulation 122 of the CIL and the National Planning Policy Framework (the Framework) and together overcome the Council's reasons for refusal in this respect.
7. In order to overcome the Council's reason for refusal No 2 regarding the size of bedrooms in House Type C the appellant submits revised plans 02013-202_Proposed Plans_House Type C_RevB_A2 and 02013-203-Proposed Development Plans_OF 1F_Plots 1-10_Rev C. These slightly alter the internal arrangement to allow for the enlargement of one of the bedrooms and replaces a double bed with a single bed in another. Given these very minor amendments to the proposal which would not prejudice any parties, I am content to accept the plans and consider the proposal on that basis. The Council confirms that this addresses its reason for refusal in this respect. I see no reason to disagree.
8. In relation to its reason for refusal No 6 regarding biodiversity and ecology the Council accepts that the bat emergence survey submitted with the appeal is acceptable. While the Council notes that six bat boxes seem excessive, this is as recommended in the survey. In any case the matter could adequately be dealt with through the imposition of a condition which both parties are agreeable to. Furthermore, the appellants Biodiversity Net Gain Assessment demonstrates the proposal would lead to an 150.11% net diversity net gain. This is not disputed by the Council. There would therefore be no conflict with Policy NE3 of the Local Plan which seeks to protect and enhance features of ecological interest and provide net gains in biodiversity.

Main Issues

9. In the context of the matters that have been agreed by the parties as described above, the main issues are:
 - The effect of the proposal on ground stability;
 - The effect of the demolition of a non-designated heritage asset on the appeal site on its significance and on the surrounding heritage assets;
 - Whether the proposed houses would preserve or enhance the character or appearance of the Ripon Conservation Area; and
 - The effect of the proposed houses on the setting of Holy Trinity School, 30 & 31 Blossomgate grade II listed buildings, St Wilfred's Church grade II* listed building and St Wilfred's school building (curtilage listed).

Reasons

Ground stability

10. The appeal site is located within Development Guidance Zone C with regard to gypsum related subsidence hazard. These are areas which may be potentially subject to localised subsidence hazard associated with both existing cavities and the on-going dissolution of gypsum deposits in areas affected by groundwater moving towards the Ure Valley.
11. This is confirmed by the appellant's Geotechnical Desk Study which states that in the authors opinion the site is potentially underlain by significant gypsum deposits that might be subject to dissolution, potential cavities and founded

strata which could affect the stability of the proposed development. It goes on to recommend a ground investigation to confirm the depth and condition of the strata so that appropriate mitigation measures can be proposed.

12. Policy NE9 of the Local Plan seeks to ensure that where development is proposed on potentially unstable land the developer demonstrates that appropriate measures can be put in place to ensure that the development can be safely undertaken and that there are no significant risks of instability over the lifetime of the development. With regard to development in Zone C it requires the submission of a ground stability report and declaration form signed by a Competent Person before planning applications for new buildings can be determined. In most cases the report would need to be based on a geotechnical desk study and site appraisal followed up by a programme of ground investigation designed to provide information needed for detailed foundation design, unless adequate information from previous boreholes on the same site is available. Where planning permission is given, this may be conditional upon the implementation of approved foundation or other mitigation measures, designed to minimise the impact of any further subsidence activity.
13. In this instance I have a desk top study and ground declaration form before me but no further intrusive ground investigation work to propose appropriate mitigation measures. While the appellant's Initial Geotechnical Assessment concludes that there are two low amplitude zones of low gravity it is considered unlikely they represent shallow voiding. However, they may result from secondary features relating to voiding at a depth. It is advised therefore that the two zones form targets for intrusive investigations to confirm their origins.
14. It seems to me therefore, that notwithstanding the consultation response of the Building Control officer, the specific requirements of Policy NE9 have not been met in that there is no physical intrusive ground investigation which demonstrates beyond reasonable doubt that the site can be developed as proposed and the specific foundations required to do so. As such I must take a precautionary approach and in the absence of such information I cannot sure that the proposal would ensure ground stability and therefore it would not comply with Policy NE9.

Heritage assets

Significance

15. The Ripon Conservation Area (RCA) covers a large part of the city focusing on the cathedral and the historic core and extending to cover later suburbs. It therefore has varied character and appearance. The area where the appeal site is located within in a Victorian suburb containing a host of terraced properties, semi-detached villas and detached houses. Varying between simple designs to more ornate, some have dormers, but the underlying characteristic is the uniformity of the terraces with many sited at the back edge of the pavement or only set back a small way giving enclosure to the street. The terraces are interspersed with other historic industrial/religious buildings, some listed buildings, and there is a sense of unity and cohesion provided by the predominant red brick building material and the presence of brick/stone walls.
16. The significance of the RCA for the purposes of this appeal is the uniformity of design through terraces and materials, the sense of enclosure and the presence

of historic buildings contributing to an understanding of the evolution of the suburb.

17. There is no dispute that the existing building on the site is a non-designated heritage asset. It comprises a long, originally 24 bayed, double pile range in 2-storeys of brick construction with a cement tiled roof covering. The historical evidence in the appellant's Built Heritage Statement demonstrates that in 1929 it was in the ownership of the Kearsley metal manufacturing company. It has though modern additions, particularly the elevation facing onto Trinity Lane which is a later addition. It presents as a simple red brick industrial building with no particular special features. The significance of the building for the purposes of this appeal is its architectural and local interest as an example of industrial activity in Ripon.
18. 30 and 31 Blossomgate are listed buildings grade II and form a pair of houses from the late eighteenth century with nineteenth century additions. Constructed from red brick with colour washed render and a slate roof. Both retain most of their original materials. I noted that the house on the corner is the birth place of John Richard Walbron a local historian adding local interest to the property. The significance of these buildings for the purpose of this appeal relates to their age and retention of most original materials and design as examples of early domestic architecture as well as local interest.
19. The main block to Holy Trinity School is a grade II listed building constructed in the early nineteenth century of brown brick with a slate roof. It was built as a Church of England National School. Its significance for the purposes of this appeal relate to the age and retention of most original materials and as an example of the evolution of educational architecture.
20. St Wilfred's Church is a grade II* listed building to the north. Given the distance from the appeal site, I concur with the main parties that the proposal would not be harmful to the significance of this building. However, within its grounds immediately adjacent to the appeal building is a pleasant Victorian structure known as St Wilfred's school building now used as a community centre. Given its relationship to the Church, it can be considered as a curtilage listed building. Constructed from red brick with stone detailing and a slate roof with a front bay window. Its significance for the purposes of this appeal relates to its historic and architectural design together with its relationship to the Church and surrounding open space.
21. No known relationship between the appeal site and the listed buildings has been brought to my attention. Due to the physical relationship between the buildings, the appeal building is visible in views of each one along Trinity Lane. In so much as it signifies the relationship between the buildings it gives historical context to each, contributing in a small way to their individual significance, albeit the elevation directly facing Trinity Lane is of later construction.

Effect on significance

22. The proposal would see the demolition of the existing building and the erection of a terrace of 10 properties sited perpendicular to Trinity Lane with a smaller terrace of three properties at the eastern end of the appeal site.

Demolition of existing building

23. As the proposal would result in the demolition of the existing building to enable the erection of the houses the scheme would have an adverse effect on its significance. Given the contribution the building makes to the RCA and the settings of the surrounding listed buildings its total loss would erode the historical context provided by the building causing harm to their significance. However, given that this building is but one part of a much wider conservation area, has no particularly special features and that the building only contributes to the significance of the listed buildings in a minor way then any harm would be at the lower end of less than substantial.

Proposed houses

24. Some of the proposed houses within the terraces may be slightly larger than those in the surrounding area in terms of gable width, however there are a variety of sizes of terraces here. Furthermore, those closest to Trinity Lane are smaller and more in keeping with the existing terraces. Moreover, what is the unifying characteristic is the materials, and uniformity of each terrace which is successfully demonstrated within the appeal proposal. While the detailing is simple, this is not uncommon in the surrounding terraces. As a result, the proposal would successfully integrate into the existing urban form. Furthermore, the gable end presentation to Trinity Lane would not be out of place and together with the 2m high brick wall to Trinity Lane would reinforce the sense of enclosure on the street which is missing at the appeal site apart from the existing building.
25. The boundary to the south-west would be formed by a low brick wall with timber fencing above. While not particularly characteristic of the RCA, it continues an existing fence and does not front onto the main street. As a result, there would be no harm caused to the significance of the listed buildings or the RCA. The immediate setting to the curtilage listed building would change as the building on the appeal site forms part of the boundary between the two. However, this would be replaced with a brick wall and the new terrace set back so that there would be space all around the building, better revealing its architectural significance.
26. While acknowledging that the proposed houses are designed around a cul-de-sac, the result is a street of similar character to those terraces nearby with well designed integrated parking incorporating street trees to soften the impact of the cars. The two additional areas of planting would also provide some green space to support and enhance biodiversity. Energy efficiency measures could, if the proposal were otherwise acceptable, be the subject of conditions.
27. For the reasons above, I conclude that the proposed houses would at least preserve the character and appearance of the RCA and would not be harmful to the setting of surrounding listed buildings.

Heritage balance

28. Paragraph 202 of the Framework states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

29. I have found that there would be less than substantial harm to the designated heritage assets albeit at a minor level, although this still attracts substantial weight and importance in the balance.
30. While the Council is able to demonstrate a healthy 7.3 years of housing land supply that is not a cap on development The proposal would secure thirteen new dwellings in an accessible location of previously developed land delivering a housing mix that is supported by Policy HS1 of the Local Plan. A further important consideration is the contribution that small and medium sites like this can make to meet the housing requirement of the area, and the need to use land effectively to meet the need for homes. The Framework also indicates that decisions should support the development of windfall sites giving great weight to the benefits of using suitable sites within settlements, for homes. I therefore give the new housing significant weight. I give moderate weight to the contribution to affordable housing.
31. The proposal would generate economic activity through the construction phase and future occupiers would contribute to the local economy. I give these benefits modest weight.
32. The proposal would tidy up a site that has been vacant in the RCA for about five years with houses which would not be harmful to the character and appearance of the area, but instead would enhance the characteristic enclosure along the street. I give this enhancement moderate weight in my decision.
33. Turning to the optimum viable use, there are a number of viability assessments before me relating to the conversion of the building to residential use. The appellant has also included an assessment of the potential for the reuse of the building for commercial purposes. The Council raise no issues with the findings that the building would not be suitable for a continued commercial use in this predominantly residential area or that the potential costs for converting the building to office use would outweigh the potential revenue and therefore would be unviable. I see no reason to disagree.
34. The Council do though rely on a Financial Viability Assessment by CPV which disputed the appellants Financial Viability Assessment carried out by Avison Young that a residential conversion was unviable, mainly as CPV considered that the build costs were too high. The Council also commissioned an assessment of the costs of converting the existing building from RCS Construction which concluded that a conversion could be achieved at a cost equivalent to £88 per sq ft, considerably less than that found by Avison Young on behalf of the appellant (£136.36 per sq ft) and CPV for the Council (£104.70 per sq ft). Furthermore, the appellant also commissioned a separate assessment of the costs of the conversion plan by Appleyard and Trew which found them to be broadly in line with those already put forward by Avison Young albeit a little lower but nevertheless using these figures the conversion would still not be viable.
35. The appellants reports are based on a structural survey of the building together with detailed costings of the actual works required. CPV, for the Council, agree that the Appleyard Trew report appears robust and could be relied on to carry out viability testing. However, they reduce the costs as these allow for inflation while the sales values do not. On that basis CPV still conclude that the conversion is viable.

36. I note that the appellant has submitted a planning application to the Council for the conversion of the building to residential use, however he confirms that this is to establish a baseline value for the site. In any case I have to determine the appeal based on the planning merits of the evidence before me.
37. I am mindful that the viability reports and associated information are 1-2 years old and the situation may have changed since that time with regard to both costs and revenues. However, whether it would be viable to convert the building to residential use or not, I am firmly of the view that the benefits I outline above would outweigh the less than substantial harm to the designated heritage assets and the harm to the undesignated heritage asset.
38. There would therefore be no conflict with Policies HP2 and HP3 of the Local Plan or the Framework. These require that development affecting a heritage asset or its setting protect or enhance those features which contribute to its special architectural or historic interest and that development protects, enhances or reinforces local distinctiveness.

Planning Balance and Conclusion

39. The loss of the undesignated heritage asset would be harmful and would cause harm to heritage assets, but this harm would be outweighed by the benefits of the proposal. The proposal is in conflict with Policy NE9 of the Local Plan, and given the implications for stability and safety of future occupiers, this brings it into conflict with the development plan as a whole.
40. The material considerations I describe above are not sufficient to outweigh that conflict in this instance. The appeal is therefore dismissed.

Zoe Raygen

INSPECTOR