



Appeal Decision

Site visit made on 30 May 2023

by A Hunter LLB (Hons) PG Dip MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 August 2023

Appeal Ref: APP/E2001/W/22/3313572

40 Southfield, Hessle HU13 0EU

- 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 Jenkinson on behalf of 40 Southfield Ltd against the decision of East Riding of Yorkshire Council.
 - The application Ref 22/01069/PLF, dated 6 May 2022, was refused by notice dated 24 October 2022.
 - The development proposed is a new dwelling to land at the rear of 40 Southfield.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council has referred to unauthorised removal of trees from the appeal site and I saw on my site inspection that the appeal site was substantially cleared. The removal of the trees is a matter for the respective parties.
3. I also saw that construction works were taking place at No. 40 Southfield to implement the planning permission granted by the Council for alterations to the property and for its use as 6 no. flats. The appeal has also been determined on this basis.

Main Issues

4. The main issues are the effect of the proposed development:
 - upon the character and appearance of the Hessle (Southfield) Conservation Area (the CA), with particular regard to the proposal's design;
 - upon the living conditions for the intended occupiers of the flats at No. 40 Southfield, with particular regard to any noise and disturbance from the proposed access; and,
 - Whether there would be satisfactory living conditions for the intended occupiers of the proposed dwelling, with particular regard to the size of the outdoor space and the relationship to nearby trees.

Reasons

Character and appearance

5. S72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires when determining proposals in conservation areas that special

attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. At paragraph 197, the National Planning Policy Framework (the Framework), sets out matters which should be considered, including sustaining and enhancing the significance of heritage assets and the desirability of new development making a positive contribution to local character and distinctiveness. Paragraph 199 of the Framework states that, when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.

6. The Hessle Southfield Conservation Area Appraisal dated October 2008 (the CAA) recognises that whilst there is a lack of public open space in the CA, private gardens provide an important airiness, and include wooded backdrops to the many large, spacious and generously set back properties. One of the CA's defining characteristics are its many residential properties that are either 2 or 3 storeys high under pitched and tiled roofs, with chimneys, and some having timber doors and sliding sash windows. Most residential properties in the immediate area have a frontage onto the road and are in relatively large plots with a landscaped setting. The CAA also states that some modern buildings have more recently been developed in the CA, which look out of place against the characteristic and much older properties. It further states that ancillary buildings to the rear of the larger older properties, include coach houses and stables that are of a similar form to the host building.
7. No. 40 Southfield is a substantial 3 storey detached property set back from Southfield within a large plot. The appeal site includes an area of land at the rear of No. 40 together with a narrow access to one side of it, onto Southfield. There is a public right of way (PROW) that runs parallel to that side of the appeal site, which leads between Southfield and Davenport Avenue. The site contains an existing flat roofed brick structure, which is proposed to be demolished, and is bounded by trees and planting on its rear and part of its side boundaries. No. 40 and its rear garden make a positive contribution to the CA.
8. The siting of the proposed dwelling immediately behind No. 40 would be in stark contrast to the strongly defined pattern of frontage residential development in this area. The proposed plot sizes that would mean that both the new dwelling and host property would be substantially smaller than nearby plots and it would harmfully erode the contribution the appeal site and No 40 make to the significance of the CA. Moreover, the proximity of the new dwelling to its boundaries would be inconsistent with those that surround it, and out of character with the low density, and spacious and landscaped character of the area.
9. The single storey design would not reflect the mainly substantial 2 and 3 storey pitched roof frontage properties in this area, or the traditional appearance of ancillary outbuildings to the rear of properties in this part of the CA. Moreover, its flat roof design, contemporary glazing, and external materials would also be inconsistent with the character and appearance of most other buildings in the CA. As a consequence, the proposal would not be locally distinctive, nor would it safeguard or improve the environment, thus there would be no benefit of making an effective use of land as asserted.

10. I also observed that there would be views of the proposed dwelling from the PROW above the existing wall to the side of the appeal site, from where an independent residential use in the rear garden environment would be an alien feature, eroding significantly the spaciousness and airiness of this part of the CA. Whilst the proposed gates and wall would mostly hide views of the proposed dwelling from Southfield, there would be some limited views of the proposal above the wall and when the gates were open. Moreover, the dwelling, car parking area and separate residential use would also be visible from the rear of nearby properties and would be likely to reduce the appreciation nearby occupiers have of the quality of the environment within which they live. These views would be amongst views of other rear gardens and planting in this spacious and airy part of the CA. As a result, the siting of the proposal would represent a discordant feature, contrary to the character and appearance of the CA. Furthermore, the location of the proposed dwelling behind other properties does not in itself justify poor design.
11. I acknowledge that a conversion of a building in the rear garden to an independent dwelling would be likely to result in the curtilage being subdivided, however with a conversion, the building would already exist and be part of the established pattern of the area. This is not the case with the proposal before me, even taking into account that an existing building on the site is to be demolished.
12. I note the approach taken by the Society for the Protection of Ancient Buildings, which has expressed support for new buildings that are in stark contrast to original buildings. However, in the context of the appeal proposal and its surroundings, such advice is not considered to be appropriate in this case, due to the harm identified and my duty under the Act.
13. In view of the above, I conclude that the proposed development would be harmful to and would neither preserve or enhance the character or appearance of the CA, in conflict with the duty in the Act. For the same reasons, the proposals would also conflict with Policies ENV1, ENV2 and ENV3 of the East Riding Local Plan 2012 – 2029, Strategy Document, adopted April 2016 (ELP), which amongst other things, require new development to be high quality and to respect the character and appearance of the area, protect important open spaces in settlements that contribute to their character, and to conserve the elements that contribute to the special significance of conservation areas. I also find the proposal to conflict with paragraphs 130 and 197 of the Framework which amongst other things requires new development to be visually attractive and respect the local built character, and that new development positively contributes to an area's local character and distinctiveness. In addition, the proposal is inconsistent with the objectives of the CAA, which seeks new development to respect the distinctive and spacious pattern of development and to reflect the type, scale and design of properties within the CA.

Living conditions for intended future occupiers of No.40

14. Vehicular and pedestrian access to the new dwelling would be to the side of No. 40, in close proximity to ground floor windows that would serve Flat 1. The plans submitted within the Appellant's Statement show that the side windows of Flat 1 serve a bedroom and bathroom, and a smaller window serves a kitchen/dining/living area. The Flat also has a large front bay windows which is in close proximity to the proposed access. There is also an outdoor amenity

space to serve the Flat adjoining the access which is shown to have a tall fence around it.

15. Given this close relationship, noise and disturbance from vehicles passing so close to the ground floor windows and amenity areas of Flat 1 would be likely to be significant and disruptive to the living conditions of the intended future occupiers of Flat 1, particularly if the windows were open. Such noise and disturbance could occur at any time of the day or night and could well disturb sleep patterns.
16. In terms of the other flats, Flat 3 is located to the rear of the building and its access, window openings, and outdoor amenity space is located further away from the proposed access. The first floor flat directly above Flat 1, based on the evidence before me, would not have openings on its side elevation nearest to the proposed access, and it would be elevated above it. The other flats within No. 40 are much farther away from the proposed access, consequently, the use of the access would be unlikely to result in noise or disturbance to the intended future occupiers of other Flats within No. 40.
17. To conclude, the noise and disturbance from the proposed access would be harmful to the living conditions for the intended future occupiers of Flat 1 within No. 40 Southfield in conflict with Policy ENV1 of the ELP, which amongst other things, requires regard to be had to the amenity of existing properties. I also find the proposal to conflict with paragraph 130 of the Framework which amongst other matters, seeks a high standard of amenity for existing and future users.

Living conditions for intended future occupiers of the new dwelling

18. There are tall trees and planting in neighbouring gardens very close to the boundaries of the appeal site, near to where the proposed dwelling would be sited and where part of its proposed outdoor space would be located.
19. On my site inspection I saw that the trees would not need to be lopped or felled to make way for the proposal. Moreover, the dwelling would be sited away from the party boundary where the trees are located. The separation between the proposed dwelling and the existing trees and planting, along with the intervening outdoor space that would serve the proposed dwelling, would mean that the outlook for occupiers of the proposed development would not be overbearing. Furthermore, due to low height of the proposed building and its relationship to the trees, there would be good levels of light provided to the proposed garden area. As such there would unlikely be future pressure for the removal/works to the trees from intended future occupiers. In any event, if such works were required in the future, it is likely that the Council would have a degree of control over such works given the location of the trees in the CA.
20. I note that mention is made that additional planting should take place to compensate for the lost trees, although I have no evidence before me that such replacement planting could not be implemented on the appeal site or that it would unacceptably reduce the level of available outdoor space and harmfully effect the living conditions for future occupiers of the proposed dwelling.
21. To conclude, the proposal would provide satisfactory living conditions for future occupiers of the new dwelling in terms of the outdoor space proposed and relationship to trees, in accordance with Policy ENV1 of the ELP, which amongst

other things, requires regard to be had to the amenity of proposed properties. I also find the proposal to be consistent with paragraph 130 of the Framework which amongst other things, seeks high standard of amenity for future users.

Other Matters

22. The appellant has raised the presumption in favour of sustainable development, as set out in paragraph 11 of the Framework, in support of their appeal. I note that neither party has stated that the Council does not have a 5-year supply of housing or that the relevant development plan policies are out of date. Furthermore, the development plan policies the proposal conflicts with, as set out above, are consistent with the Framework.
23. Even in the event that there were no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, the Framework is clear that planning permission should not be granted if there are policies in the Framework that protect areas or assets of particular importance which provides a clear reason for refusing the development proposed. Notably, footnote 7 to paragraph 11 refers to designated heritage assets as areas or assets of particular importance. A CA is a designated heritage asset. Given the identified harm to the CA and the conflict with the Framework in this regard, the presumption in favour of sustainable development given by paragraph 11 is not applicable in this case.
24. Notwithstanding that there is an existing flat roofed single storey brick building on the appeal site, this proposal is not a conversion, and the proposed dwelling would occupy a different location to that existing building. Moreover, the demolition of this building, which is of little architectural merit, does not positively contribute to the CA, does not justify the identified harm from the proposed dwelling upon the character and appearance of the CA.
25. I note the comments that the site is within the development limits of the settlement; is well connected and within the Haltemprice growth area; that the scheme is planned as a modern, healthy and accessible dwelling with a green roof; that it is a revised scheme to an earlier refusal; that no contamination issues are anticipated; that the proposal could meet building for life principles; that there are no highway safety objections; and that it could be constructed using sensitive materials. I am also mindful of the various paragraphs within the Framework that provide some support for such new development. However, the Framework needs to be read as a whole, and such matters would be likely expected of any well-designed development. These matters collectively carry limited weight in favour of the scheme and do not outweigh the identified harm and the conflict with the Act, the development plan and the Framework.
26. The appellant has drawn my attention to examples of other buildings behind properties at Nos. 52, 54, 74, and 89 -101 Southfield. No. 74 has two dwellings to its rear side; one is a converted building and the other is a newbuild. I acknowledge that their location is not in keeping with the frontage pattern of surrounding dwellings along Southfield and the design of the new build does not replicate the older properties nearby. I note that there are some similarities with the appeal proposal in terms of their siting and the design approach on the new build. However, the appeal proposal differs as it is not a conversion like one of those properties, and the appeal site is considerably narrower in its size. Moreover, it would also have its access very close to ground floor windows on a

neighbouring flat, close to a PROW which allows public views into the appeal site.

27. I have not been provided with evidence that the outbuilding in the rear garden of No. 54 is used as a separate dwelling. Whilst the outbuilding at No. 52 may have been converted to a dwelling, the Council has confirmed that there is no record of planning permission being granted for either of the outbuildings at Nos. 52 or 54 to be used as separate dwellings. I also note that the outbuilding at No. 52 is two-storey with a pitched roof in a similar style to the host property. In addition, the development of land to the rear of 89-101 Southfield related to 4 no. dwellings on land beyond the rear gardens of the properties on Southfield, unlike the proposed dwelling which would be in the rear garden of No. 40. Consequently, I do not find these examples to be directly comparable to this appeal proposal, and this limits the weight that I can give them in my assessment of this case.

Balance

28. I have found that the proposed development fails to preserve or enhance the character or appearance of the CA. I give this harm considerable importance and weight in the planning balance of this appeal.
29. I find the harm to the CA to constitute less than substantial owing to its effect being localised. Although, this does not equate to a less than substantial planning objection, especially where the statutory tests are not met. Paragraph 202 of the Framework requires public benefits to outweigh such harm. Those benefits in this case would be the provision of an additional house, although as this is one house the overall contribution to the supply of housing in the area would be very small. There would also be economic benefits during the construction phase of the development and a likely, but relatively small, contribution to the wider local economy following occupation of the dwelling. Future occupiers of the proposal could also contribute to the membership of local community groups and places of worship, although the likelihood of this occurring is variable and such a contribution would likely be very small. Against this background, these public benefits are limited and do not outweigh the harm identified above to the significance of the designated heritage asset. Accordingly, there is conflict with the heritage protection policies of the Framework.

Conclusion

30. For the above reasons, the proposal conflicts with the development plan taken as a whole and there are no other considerations, including the Framework that indicate a decision should be made other than in accordance with the development plan. I therefore dismiss the appeal.

A Hunter

INSPECTOR