The Planning Inspectorate

Appeal Decision

Site visit made on 3 January 2024

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th January 2024

Appeal Ref: APP/U2750/W/23/3329568
4 Brickyard Cottages, Moor Lane, Shipton By Beningbrough YO30 1AU

- 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 & Mrs Drinkhill against the decision of North Yorkshire Council.
- The application Ref ZB23/01334/FUL, dated 26 June 2023, was refused by notice dated 25 August 2023.
- The development proposed is demolition of existing dilapidated detached workshop, potting shed and storage shed and construction of a replacement detached domestic garage/workshop.

Decision

1. The appeal is allowed and planning permission is granted for demolition of existing dilapidated detached workshop, potting shed and storage shed and construction of a replacement detached domestic garage/workshop at 4 Brickyard Cottages, Moor Lane, Shipton By Beningbrough YO30 1AU in accordance with the terms of the application, Ref ZB23/01334/FUL, dated 26 June 2023, subject to the following 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:

        i) Block Plan

        ii) Plan numbered 2017/162/P AL(0)04 Revision B

    3) No above ground construction shall take place until details of the materials to be used in the external elevations of the building hereby approved have been submitted to and agreed in writing by the Local Planning Authority. The development shall subsequently be carried out in accordance with the approved details.

    4) The building hereby approved shall not be occupied as a separate independent dwelling and shall remain ancillary to the dwelling of 4 Brickyard Cottages.

    5) The development must not be brought into use until details of the access to the site have been submitted to and approved in writing by the Local Planning Authority. The agreed scheme shall be implemented before the development hereby permitted is brought into use and shall be retained thereafter. The submitted details shall include:

i) The crossing of the highway verge;
ii) A specification that any gates or barriers must not be able to swing over the existing highway;
iii) That the final surfacing of any private access must not contain any loose material that is capable of being drawn on to the existing public highway; and
iv) The provision of visibility splays.

Preliminary Matter

2. The government published a revised National Planning Policy Framework (the Framework) in December 2023. This does not materially change the planning policy context in respect of the main issue and I have determined the appeal with regard to the new Framework.

Main Issue

3. The main issue is the effect of the proposal on the character and appearance of the area, with due regard to development plan policy.

Reasons

4. The property which forms the basis of this appeal has an unusual layout. The host dwelling of 4 Brickyard Cottages is located within a small terrace of dwellings in the countryside, and has a garden to the front with a long garden extending to the rear. The appeal proposal is part of a larger extent of land projecting around the rear and side of the terrace, and which extends along the frontage with Moor Lane.

5. Planning permission for a building of a similar size and design has previously been granted on the land, albeit in a slightly different position and without a new access. However, this permission has lapsed and therefore does not weigh in favour of the proposal as a fallback scheme. Nevertheless, I will return to the matter of this previous permission later.

6. The existing use of the site has been referred to variously by the Council as a 'paddock' or 'detached garden space'. That said, I note that the Council's reason for refusal does not refer to the principle of the use of the site for domestic purposes.

7. It is a matter of dispute between the Council and the appellants as to whether the appeal site is within the curtilage of No 4. I have had regard to the definition of curtilage as given in the Glossary of the Local Plan[1], as well as the history of the site and its use.

8. The Council refers to evidence including a site plan and satellite images from as recently as 2018 which show a distinct boundary between the rear garden of No 4 and the plot of land containing the appeal site, made up either of a means of enclosure or planting. The appellants confirm that there was a fence along the boundary with the rear garden of No 4 in 2008. However, while access may have been provided by a gate this would not negate the distinct separation provided by the fence. Although this fence has been removed, it has not been confirmed when this was done. On my visit, I saw that a

[1] Hambleton Local Plan 2022

residual side boundary to the rear of No 4 was still apparent, including remaining trees, shrubs and low-level landscaping features.

9. Access from the front of No 4 would be via the public highway and is therefore distinctly separate from the appeal site. This does not therefore indicate that the appeal site is within the curtilage of No 4.

10. The appellants refer to the length of time that the land has been used as a garden by themselves and previous residents of No 4. That said, no substantive evidence has been provided to me in respect of the lawful permitted use of the appeal site and the wider area of land. It may also be the case that the appeal site is part of the same planning unit as No 4. However, whilst the use and ownership of land as well as the extent of a planning unit can be appropriate tests of curtilage, in this case they do not outweigh the separate nature of the land having regard to the physical layout of the site and the evidence before me.

11. In conclusion on the matter of curtilage, due to the arrangement of the site and the history of means of enclosure, my overall impression is that the appeal site is not part and parcel of the dwellinghouse of No 4. I therefore conclude that the appeal site is not within the curtilage of No 4.

12. Turning to the matter of character and appearance, when considering the previous planning permission[2] the Officer's report stated that "*The detached domestic outbuilding including garage space is large in comparison to the dwelling, however as it is in a separate location it does appear to be in proportion to that detached garden space and relates satisfactorily to another detached outbuilding in separate ownership. It is therefore considered that the size and siting would not be overbearing*". It was concluded that "…*the proposal will not cause significant harm to… the appearance of the dwelling or the countryside/streetscene*". Although the previous permission has lapsed, the permission is relatively recent and in the interests of consistency it is appropriate to consider if circumstances have changed.

13. The Council highlights that the previous permission was considered under a previous Local Plan[3]. Since then, a new Local Plan has been adopted in 2022, and in particular the Council refers to Policy E1 of the new Local Plan which relates to Design. The latter part of the policy considers 'Residential Extensions and Ancillary Development' and sets out forms of development which will be supported subject to a number of criteria. As well as the criteria of the initial part of Policy E1, this includes criteria l-p which apply to development consisting of:
    - an extension of an existing residential dwelling;
    - a residential annexe; or
    - the provision of ancillary development within the residential curtilage.

14. Taking these points in turn, as a detached building some distance from the host dwelling, the proposal does not relate to an extension of an existing residential dwelling.

[2] 17/02372/FUL
[3] Hambleton Local Development Framework - Development Policies 2008

15. The proposal does not relate to a 'residential annexe' as it does not provide additional living accommodation. I note the reference to 'annexe accommodation' in paragraph 6.23 of the new Local Plan and the associated Glossary, but I do not consider that the proposal falls within the definition of a residential annexe as it provides ancillary uses including a workshop, garaging and a craft room, but does not provide facilities such as a bathroom or kitchen.

16. In respect of the third point, although the proposal could be considered to be 'ancillary development', for the reasons stated previously it is not within the residential curtilage.

17. Therefore, the appeal proposal does not relate to development which should be assessed against criteria l-p of Policy E1. The proposal should therefore only be assessed against the first part of Policy E1, including criteria a-k.

18. The Council refers to criteria b in Policy E1, which requires development to respect and contribute positively to local character, identity and distinctiveness. Other criteria in Policy E1 also include general considerations of context and the relationship with adjacent development.

19. The proposed outbuilding is relatively large, and I am mindful of the Council's reference to the scale of the building and its potential appearance as a separate dwelling. However, the proposed outbuilding would be viewed within the context of a large area of land, and an existing building to the front of the site would provide a significant degree of shielding in views from Moor Lane. Although the proposal would not reflect the design of the nearby terrace, it would be distinctly separate from the terrace and would be set back from the building line. There are also a variety of designs of buildings and layouts in the area, including a nearby detached dwelling in a large plot as well as a large detached outbuilding to the front of the appeal proposal. Within that context, the proposal would not be of an incongruous appearance in views of this countryside area, even allowing for the possibility that the functional link with the host dwelling would not be readily apparent.

20. The proposal would also result in the removal of a number of smaller dilapidated outbuildings, which would be a benefit to the appearance of the area.

21. My consideration of character and appearance reflects that of the Local Planning Authority in respect of the previous planning permission. Although the wording of development plan policy has changed, the consideration of design issues in previous planning policy[4] is not so different from the initial part of Policy E1 of the new Local Plan as to negate the Local Planning Authority's conclusions on the previous proposal.

22. Although the appeal proposal is in a different position to that previously approved, this is not of a degree which significantly alters the consideration of the development on this main issue. The proposal would involve the creation of a new access, which would emphasise the appearance of the proposal as a freestanding building and would involve the loss of an extent of hedgerow. But I do not consider that these effects are such that they warrant the refusal

[4] Policy DP32 General Design

of planning permission in respect of character and appearance, given the context of the site and its planning history.

23. Drawing the above together, I conclude that criteria l-p of Policy E1 of the new Local Plan are not triggered by the appeal proposal. Given the more general consideration of design issues in the initial part of Policy E1, for the reasons set out above I conclude that the proposal would not harm the character and appearance of the area and would therefore not conflict with the relevant design requirements of Policy E1.

Conditions

24. The Council, consultees and appellants have made comments on a number of planning conditions which I have considered against the advice in the Planning Practice Guidance. As a result, I have amended some of the conditions for clarity and accuracy.

25. In addition to the standard 3 year time limitation for commencement, I have imposed a condition requiring the development to be carried out in accordance with the submitted plans in the interests of certainty. A condition regarding details of materials is required in the interests of character and appearance.

26. A condition preventing the occupation of the building as a separate dwelling is appropriate as it has not been demonstrated that such a dwelling would comply with planning policy in respect of the location of residential development.

27. A condition in respect of the access to the site is appropriate in the interests of highway safety.

28. I have had regard to the comments of the Internal Drainage Board, but it has not been demonstrated that the circumstances that trigger the conditions referred to are brought into effect by the appeal proposal.

29. The previous permission included a limitation on the placement of windows in one elevation of the building. However, the appeal proposal is in a different location to the previous permission and, based on what I have seen and read, would not result in undue overlooking given the existing boundary treatments, intervening buildings and the distance between the building and nearby residential property, even allowing for a proposed craft room on the first floor.

Conclusion

30. I conclude that the appeal should be allowed.

David Cross

INSPECTOR