



Appeal Decision

Site visit made on 18 December 2023

by C Harding BA (Hons) PGCert PGDip MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 March 2024

Appeal Ref: APP/C2741/W/23/3322492

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 Queens Staith Leisure Ltd against City of York Council.
 - The application Ref 23/00091/FULM, is dated 11 January 2023.
 - The development proposed is described on the application form as "demolish existing buildings and erect a terrace of four 2 bedroom apartments and a rear terrace of four 2 bedroom apartments and two 1 bedroom apartments, associated parking, ancillary buildings for refuse and cycle storage."
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The provided planning application form indicates that the application was made by Smith on behalf of Queens Staith Leisure Ltd. However, the appeal form refers to the appeal being made by Mr Craig Smith on behalf of Moorside Developments Ltd. Clarification was sought in relation to this and the identity of the appellant confirmed as Queens Staith Leisure Ltd. I have therefore proceeded on this basis.
3. In reaching this decision, I have had regard to the revised version of the National Planning Policy Framework ('the Framework'), that was published on 20 December 2023 and I have sought the parties' comments upon it. Accordingly, no party would be prejudiced by me doing so.
4. The Council has made reference to the Publication Draft City of York Local Plan 2018 ('the ELP'). I understand that this is at an advanced stage, but not yet adopted, and that remaining unresolved issues relate to the Green Belt boundary and affordable housing. On the basis of the advice set out at Paragraph 48 of the Framework, I therefore afford those policies that do not relate to unresolved issues moderate weight.
5. During the planning application process an additional drawing "Site Plan S138.01.100E" was provided by the appellant. As this drawing appears to have been subject to consultation, I have taken account of it in reaching my decision.

Main Issues

6. Whilst the Council has not issued a decision, the provided appeal statement indicates a number of areas of concern. These have informed my reasoning in this appeal. Therefore, the main issues are:
- whether the proposal would cause an unacceptable loss of employment land;
 - the effect of the proposal upon the character and appearance of the area, and;
 - whether the proposal would provide suitable living conditions for future occupiers.

Reasons

Employment land

7. The appeal site relates to a currently disused former office building and there is no dispute that the last use of the building was for employment purposes, or that the building has been vacant for over 2 years. Policy EC2 of the ELP states that where a proposal would lead to the loss of buildings which were last used for employment uses, that it is demonstrated the buildings are no longer viable in terms of market attractiveness, business operations, condition, and/or compatibility with adjacent uses.
8. The supporting text to this policy, as amended within the main modifications consultation, states that it is expected that evidence is provided to demonstrate the effective marketing of the site for a reasonable period of time, and in most cases not less than 18 months.
9. It is stated that there has been no interest in the site for employment purposes since the building was last vacated, and that this may be explained by a decline in demand due to changes in working practices, as well as the location of the building in an unconventional location for office occupiers. However, there is no evidence before me which indicates that it has been marketed for employment purposes during this period.
10. I saw on my site visit that the building is in need of some renovation and redecoration due to the length of time that it has been empty, and that it may require some adaptation to become fully accessible. Nevertheless, I have no reason to disagree with the findings of a previous Inspector¹ in 2022 that its condition would not prohibit its future use for employment purposes. There is no suggestion that the reuse of the site for employment purposes would be incompatible with adjacent uses.
11. It has also been put to me that the building could be converted for residential purposes using permitted development rights afforded under the General Permitted Development Order 2005. While such rights do exist, they are not unqualified, and there is no substantive evidence before me to confirm that they would apply to this particular site. Furthermore, I have not been presented with any details of an alternative scheme that could be carried out through the exercising of such rights, or if the likelihood of such a scheme

¹ APP/C2741/W/22/3292602

being implemented would be any greater than theoretical. Accordingly, I afford this factor very modest weight.

12. It is stated that the Council did not raise concern with the proposal on this basis whilst it was considering the planning application and has only done so following the lodging of this appeal. As the Council was unable to determine the planning application, it has only been able to frame its concerns within its statement of case and it has indicated its concerns in relation to this matter. I therefore consider that it warrants consideration as a main issue, and the fact that it may not have been raised at an earlier point, does not weigh against the harm that I have found.
13. As set out above, I consider that although not adopted, that ELP Policy EC2 can be afforded moderate weight in accordance with Paragraph 48 of the Framework. Although the policy was amended following the submission of the planning application, I must determine the appeal on the basis of the planning policy context at the time of my decision.
14. The proposal would lead to the unacceptable loss of employment land. It would therefore be contrary to ELP Policy EC2, the content of which I have set out above.

Character and appearance

15. The building which currently occupies the appeal site incorporates two-storey and single-storey elements, with the former located towards the road frontage of North Moor Road. The single storey element extends rearwards into the site. The surrounding area has a mixed-use character with both commercial and residential buildings. Accordingly, the streetscene is varied, although the majority of buildings are generally set-back from the road and are of no more than two-storeys in height.
16. The proposal would introduce two blocks of living accommodation. The eastern block would contain 4 flats, with the western block containing a further 6. The two blocks would be located towards the front and rear of the site, with the central area largely dedicated to parking and manoeuvring areas.
17. The eastern block would respect the existing building line and would provide a domestic frontage to the site, with shared amenity space addressing North Moor Road and parking to the rear. The Council does not take issue with this arrangement, and I have no reason to disagree.
18. The proposal makes provision for the storage of a single wheeled and three stacked recycling bins in relation to each property. Whilst some of these would be located at the properties, provision for flats 6 – 10 would be provided at a central communal waste storage area. A refuse collection point would be provided at the front of the site, adjacent to the site entrance and it would be expected that occupiers would relocate bins from storage areas to this single collection point on the relevant day.
19. Although the collection point indicates that 10 wheeled bins could be stored in the area and would be specified such that it prevent the need for bin collections to result in excessive drag distances, it would not be sufficiently large enough to accommodate any recycling boxes, should they be collected on the same day. Furthermore, I share the Council's concern that due to the distances involved between the collection point and some of the bin storage areas, that

- wheeled bins may not be retrieved from the collection point as a matter of convenience, and instead would remain stored at this prominent location, would not be screened or otherwise contained within a structure and in doing so would be harmful to the character and appearance of the area.
20. Furthermore, in incorporating 10 flats along with parking for 10 vehicles, cycle parking, areas for refuse storage and collection, the proposal would have an overly cramped atmosphere.
21. The location of Parking Bays 1 and 2 adjacent to the southern boundary of the site means that the main access would narrow to 3.2 metres. This would mean that vehicles entering and leaving the site could not pass if these spaces were occupied. Furthermore, no pedestrian routes around the site are indicated, and it would appear that access to both blocks of flats would be across indicated parking bays. Various cycle parking locations are provided and although detailed specifications could be achieved by means of an appropriately worded planning condition, the storage unit in the north-western corner would be inconveniently located at the farthest point from the overall site access. It is also possible that any use of the larger cycle store on the southern boundary could lead to conflict with vehicles making use of the limited manoeuvring area.
22. When taken together, these examples would contribute to the development having a cramped atmosphere, which despite the inclusion of some external amenity space and a small amount of soft landscaping, would nevertheless be dominated by the accommodation of vehicles and manoeuvring space. Overall, I consider that the layout of the scheme would be functionally comprised as a result of the amount of development proposed.
23. The proposal would therefore harm the character and appearance of the area. It would be contrary to Huntington Neighbourhood Plan ('HNP') Policies H1 and H4. Together, and amongst other factors, these policies state that new residential development should be well-related to Huntington in terms of their location, design and layout, and provide well-defined and legible spaces that are easy to get around.
24. It would also conflict with Paragraph 135 of the Framework which states that as well as being visually attractive, developments should function well and add to the overall quality of the area.
25. The Council has also referred to conflict with NHP Policy H4, however this policy relates to addressing specific housing need. It is therefore not determinative in my consideration of this main issue.

Living conditions

26. It is stated that the proposal would provide more than 260sqm of external amenity space. However, it is unclear from the evidence before me if this includes the smaller areas of soft landscaping adjacent to the main parking area which would be unlikely to be usable for practical amenity purposes. I have not been directed to any locally derived external amenity space standards, and the Nationally Described Space Standards make no reference to external amenity provision.
27. However, even if I were to agree that the quantity of external amenity space the proposal would provide was acceptable, the space provided would be entirely communal and substantial areas of it would be located within close

proximity to living rooms and bedrooms of ground floor flats. The configuration set out on the provided plans would provide users of the space with little opportunity for private recreation or practical activity. The poor quality of this space would not be offset by the amount of space provided, nor the existence of other public facilities located nearby, of which the evidence before me provides little detail.

28. The existing western boundary wall of the site is a substantial block wall. Although not immediately adjacent to this wall, windows serving bedrooms and studies of the ground floor flats of the western block would nevertheless be in close proximity to it. Even if I were to agree that the existing wall would not lead to unreasonable levels of daylight being provided to occupiers of these rooms, its proximity and scale, means that it would lead to little outlook being provided, and would lead to these rooms having an oppressive and enclosed atmosphere.
29. I accept that car parking spaces close to habitable windows is a relatively common arrangement, as are windows of rooms looking out over areas of shared amenity space where a development includes blocks of flats.
30. However, when combined with the low level of outlook that would be afforded to some rooms, I consider that vehicle headlights shining into living rooms at close proximity and the perceived, if not actual, lack of privacy that would result from windows directly overlooking shared amenity space means that cumulatively, the living conditions of occupiers of the western block would be unacceptable.
31. Overall, I conclude that the proposal would fail to provide future occupiers with suitable living conditions. It would therefore conflict with advice within the Framework, which states that planning decisions should ensure safe and healthy living conditions, and highlights the importance of securing well-designed and beautiful, attractive and healthy places.

Other Matters

32. The Council has also raised concern that the proposal would not make appropriate allowance for the provision of off-site open space by means of a planning obligation. As I have dismissed the appeal for other reasons, and the absence of harm in this respect would not weigh in favour of the proposal, I have not pursued this matter further.
33. The concerns of the appellant regarding the manner in which the planning application was considered by the Council fall outside the scope of this decision, which I have reached on the basis of the merits of the scheme.

Planning Balance and Conclusion

34. As the Council cannot demonstrate a five-year supply of deliverable housing sites, I am taken to paragraph 11 (d) of the Framework. This states that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits of the scheme, when assessed against the policies in the Framework taken as a whole.
35. Paragraph 60 of the Framework seeks to significantly boost the supply of housing. Paragraph 124 of the Framework states that substantial weight should be given to the value of using suitable brownfield land within settlements for

homes. In these respects, the provision of ten homes on a previously developed site within an area where the required supply of deliverable housing sites is not being met, are benefits of the proposal to which I afford substantial weight.

36. The appellant has stated that the proposal would also meet a need for starter homes in the area, however I have no evidence of this before me, nor a mechanism to ensure that the homes would be secured as such, and therefore this factor carries little weight in my considerations.
37. I have found that the development would involve the unjustified loss of employment land, would harm the character and appearance of the area, and would fail to provide future occupiers with suitable living conditions and as set out above, would conflict with advice within the Framework in respect of these matters. This harm and conflict with the Framework would be significant and I afford it significant weight. The proposal would also conflict with policies within the HNP, and therefore, the development plan when read as a whole. There would also be conflict with policies within the ELP, however, as this document is not yet adopted, I afford these conflicts less weight.
38. Although I have afforded the benefits of the scheme substantial weight, this does not outweigh the harm which I have identified, which significantly and demonstrably outweighs these benefits. Consequently, the presumption in favour of sustainable development does not apply in this case.
39. For the reasons given above, having considered the approach in the Framework, and all other relevant material considerations, there is no justification in this case for a taking a decision other than in accordance with the development plan. I therefore conclude that the appeal should be dismissed.

C Harding

INSPECTOR