



Appeal Decision

Site visit made on 30 April 2024

by S Dean MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th May 2024

Appeal Ref: APP/Y2003/W/23/3330973

100 High Street, Epworth, Doncaster, DN9 1JS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr and Mrs P Evans against the decision of North Lincolnshire Council.
 - The application Ref is PA/2021/1398.
 - The development proposed is the erection of a replacement dwelling and one new dwelling.
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Decision

1. The appeal is allowed, and planning permission is granted for the erection of a replacement dwelling and one new dwelling at 100 High Street, Epworth, Doncaster, DN9 1JS in accordance with the terms of the application, Ref PA/2021/1398, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by North Lincolnshire Council against Mr and Mrs P Evans. This application is the subject of a separate Decision.

Preliminary Matters

3. During the Council's determination of the appeal application, the proposal was subject to a number of amendments, including a version submitted to, but not consulted upon or ultimately considered by the Council (the revision C drawings). Whilst the appellant has requested that I consider those latest drawings in making my decision, as a result of the change they propose, they are in my view, substantially different to those on which the Council made its decision (the revision B drawings). I am conscious that despite the comments of the Conservation Officer to this appeal, they were not consulted upon.
4. As such, in the interests of fairness, consistent with the relevant legal principles and the content of the Procedural Guide: Planning appeals - England, my decision proceeds on the basis of the drawings on which the Council's decision was made, that is, the revision B drawings.

Main Issues

5. The main issues are the effect of the proposal on
- the character and appearance of the area,
 - the historic environment,
 - the living conditions of the occupiers of 98 and 102 High Street (No 98 and No 102) with specific regard to any overbearing and overshadowing effects; and
 - whether or not the proposal would be safe for future users or construction workers having regard to potential land contamination.

Reasons

Character and appearance

6. The appeal site is a detached house fronting onto the High Street, now extended and rendered, but originally built with Georgian form, proportion and scale. A number of extensions and outbuildings lie to the rear, with a large garden area, courtyard and driveway. It is not listed and is not within a Conservation Area.
7. Around the site, along the High Street there is a very wide variety of building ages, form, style, materials, with a similarly wide-ranging set of relationships to neighbouring properties and the road. There are also examples of infilling, with dwellings in former gaps, to the side and rear of older properties. As such, although there are some dwellings surrounding the site which are of contemporary form and appearance, the overall character and appearance of the site and its surroundings is mixed, and to my mind lacks coherence.
8. Despite that mix, the surroundings to the site are well maintained, pleasant and attractive. Given its condition and facing materials, the appeal site stands out in stark contrast to this wider character and appearance, such that to my mind, the proposal would improve the character and appearance of the area and could do so in a way which is not so markedly different that it would harm it.
9. In this, I do not consider that there has been evidence of, or suggestion that there has been deliberate neglect of, or damage to, the appeal site as a heritage asset such that its deteriorated state should not be taken into account.
10. The Council has specifically cited the group value of the site when considered together with 104 High Street (No 104), noting that they form a line of Georgian buildings in the historic centre of the town. I do not disagree that taken together those properties are potentially an attractive group. However, in my opinion considering those properties as a group does not properly consider the street as it is viewed by the *man in the street* or experienced in-person. Objective views along High Street include the many and varied intervening and nearby buildings, all of which contribute to the character and appearance of the area, which would then in turn be altered by the proposal, and which should all be taken into account when then considering the effect of the proposal.

11. In my opinion, when that broader approach is taken, looking at the surroundings in their entirety, then the proposal does not cause harm and its design and appearance, which has been justified in the evidence is appropriate for the context and surroundings in which it is proposed. I am also satisfied that the siting and design would be suitably high quality.
12. The proposal would not therefore harm the character and appearance of the area, would be sympathetic to it in terms of its siting and design, and would not therefore conflict with saved Policy DS1 of the North Lincolnshire Local Plan, May 2003 (the Local Plan), Policy CS5 of the North Lincolnshire Core Strategy, June 2011 (the Core Strategy) or national policy in the National Design Guide or National Planning Policy Framework (the Framework).

Historic environment

13. As noted above, there are other old buildings along the High Street around the appeal site, and a number of these are listed. Whilst the appellant identifies two, the Council's decision relates only to the effect of the proposal on the setting of No 104, a grade II listed house.
14. Despite the criticism of the evidence by the Council, I am satisfied that the appellant has described the significance of the heritage assets affected by the proposal in detail proportionate to the assets' importance and sufficient to understand the potential impact of the proposal on their significance.
15. The appeal site contributes to the setting of No 104 insofar as it is another broadly contemporary building within the street scene. However, the setting to No 104 is, as I have set out above, also now largely defined by the wide range of other buildings along High Street and now within that setting. On my site visit, I was able to see the views described by the Council's Conservation Officer, in both directions along High Street and from the Pear Tree Close junction, and whilst it was possible to pick out the listed buildings and the appeal site, in those views, I do not consider that the appeal proposal would so fundamentally alter those views sufficient to cause any harm to the significance of No 104 as a heritage asset.
16. Its immediate setting would not change, and its wider setting, the High Street, would simply evolve, continuing the clearly long-established pattern of development over time in a variety of character, appearance, style, form and material, and change to its setting and surroundings over time. This is also picked up in the Council's evidence, noting that historically No 104 would have been read within a more open setting, which became more residential over time.
17. I have had special regard to the desirability of preserving the setting of the listed building, attaching considerable importance and weight to that desirability, and even having done so, do not consider, for the reasons set out above, that the proposal would cause harm to that setting or special architectural or historic interest.

18. I turn now to the effect on the proposal on the existing building as a non-designated heritage asset (NDHA). I agree with the Council that although the appeal site has been much altered, its original design intention, form and scale are still legible. I also do not disagree that it is old, and when taken together with selected other buildings in the area, has some group value. However, I have found above that the loss of the existing building would not harm the character and appearance of the area.
19. In considering the issue of the site as a non-designated heritage asset, I am also mindful there whilst there is evidence before me that indicates that the appeal site has been subject to an objective criteria-based assessment by the Council during their decision-making process and for this appeal, there is nothing to suggest that this took place in advance of the planning application. In considering such matters, the advice within the national Planning Practice Guidance (PPG) states that there are a number of processes through which an NDHA may be identified. Importantly however, regardless of how they are identified, the decision to identify them as an NDHA must be based on sound evidence and accessible, clear, and up to date information on an NDHA must be made available to the public to provide greater clarity and certainty for developers and decision-makers, including information on the criteria used to select them and their location. The PPG also stresses that it is important that all NDHA are clearly identified as such, and from the evidence before me, it appears that this has only happened in response to the appeal proposal, not as part of a formal process.
20. However, even noting that, although the Council criticises it, the appellant has submitted evidence which seeks to justify the loss of the existing building. I agree with the Council that the structural survey on its own does not justify the loss of the existing building. Rather, the structural survey is simply a part of the overall case, which includes the condition of the existing building, effects on the character and appearance of the area, as well as the opportunities presented by the site as a whole, amongst other things.
21. Taking this, together with the status of the building as a NDHA, which does not seem to appear on any evidence-based local list, and the requirement in the Framework for heritage evidence to be proportionate, I am satisfied that the loss of the building has been justified. Further, regardless of the overall level of housing land supply in the area, the replacement of one dwelling on a large plot with two dwellings is a benefit consistent with the overall national approach to housing set out in the Framework.
22. The significance of the existing building as an NDHA would be wholly lost as it would be demolished. However, this can be mitigated somewhat through recording secured by condition, which would allow the advancement of the understanding of the significance of the existing building as an NDHA prior to its loss. In terms of the understanding of the building as a heritage asset, such recording required by condition would advance understanding further than if the building were to be refurbished, as that could take place with no recourse to the planning system or the imposition of further controls.

23. Applying a balanced judgement to the above, whilst the proposal would result in the total loss of the existing dwelling, it is justified and would not harm the character and appearance of the area. Indeed, given the current appearance and condition of the site, I consider that the proposal could represent an improvement to both the character and appearance of the area and the setting of the listed building.
24. I therefore find that the proposal as a whole would not have an unacceptable effect on the historic environment. It would not therefore conflict with saved Policy HE5 of the Local Plan, Policy CS6 of the Core Strategy or national policy in the Framework.

Living conditions

25. The appeal proposal would result in a different outlook and relationship to neighbouring properties for occupiers of both No 98 and No 102.
26. Whilst these relationships and outlook would be different, I do not consider that they would be harmful. Adequate separation distances are retained, and I do not consider that the orientation of the properties and their relationships to each other in light of the proposed window details would give rise to unacceptable overshadowing, overlooking or other harm to residential amenity. Similarly, the scale of each dwelling is appropriate for its relationship to the existing properties closest to it.
27. As such, I am satisfied that the proposal would not harm the living conditions of the occupiers of No 98 and No 102 with specific regard to any overbearing and overshadowing effects. It would not therefore conflict with saved Policy DS1 of the Local Plan, Policy CS5 of the Core Strategy or national policy in the Framework.

Land contamination

28. I accept the comments of the Council that the appellant has provided no evidence to address this reason for refusal. However, the Council has suggested a comprehensive condition which could be imposed in order to ensure that the proposal would be safe for future users or construction workers having regard to potential land contamination.
29. Given that, I am therefore satisfied that subject to the imposition of such a condition, the proposal would not conflict with saved Policy DS1 of the Local Plan, Policy CS18 of the Core Strategy or national policy in the Framework.

Conditions

30. The Council has suggested a number of conditions to be attached, should planning permission be granted. The appellant has confirmed in writing that they have no objection to the terms of the pre-commencement conditions proposed by the Council. It is necessary and reasonable that the information required by these conditions be provided prior to the commencement of development, as these are matters which cannot properly or reasonably be addressed following the commencement of the development.

31. The Council requested the removal of some householder permitted development rights through the imposition of a condition. Both the Framework and the PPG presume against such blanket removals, noting that without clear justification, they will be unlikely to pass the tests of reasonableness or necessity. On the basis of the evidence in the appeal and my observations during my site visit I consider however that such a condition would be reasonable and necessary. Although not required, I also note the lack of objection by the appellant to such a condition. It has therefore been imposed.
32. Having had regard to the requirements of the Framework and the PPG I have imposed standard conditions concerning commencement (1) and compliance with the submitted plans (2). Conditions 3 and 8 are necessary to protect the living conditions of occupiers of neighbouring properties. Condition 4 is necessary to ensure the satisfactory appearance of the completed development. Conditions 5, 6 and 7 are necessary to allow the advancement of the understanding of the significance of the existing building as a non-designated heritage asset. Condition 9 is necessary to ensure that the proposal can be safely accessed, conditions 10 and 11 ensure that appropriate arrangements are made for the drainage of the site. Condition 12 is necessary to ensure that the proposal would be safe for future users or construction workers having regard to potential land contamination. Conditions 13, 14 and 15 are necessary to protect existing trees and hedgerows on the site and to conserve and enhance biodiversity.
33. I am therefore satisfied that the conditions I have imposed meet the tests in, and requirements of both the Framework and the PPG, that they have been kept to a minimum and only imposed where necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise, and reasonable in all other respects.

Conclusion

34. Taking all of the above together, I find that the proposal would not conflict with the development plan, and there are no material considerations which indicate that a decision be taken other than in accordance with it.
35. The appeal should therefore be allowed, and planning permission granted.

S Dean

INSPECTOR

Schedule of 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:
 - Drawing No. CWX1028-03B (Proposed Site Plan);
 - Drawing No. CWX1028-02B (Proposed new dwelling plans and elevations);
 - Drawing No. CWX1028-01B (Proposed replacement dwelling plans and elevations).
3. The development hereby permitted shall be carried out in accordance with details of existing and proposed ground and floor levels in relation to a fixed, off-site, datum point, which have first been submitted to and approved in writing by the local planning authority.
4. No work above DPC level shall be carried out until details of all walling and roofing materials, and details of the proposed windows, doors and door surrounds, proposed to be used have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the details so approved.
5. No demolition whatsoever of No.100 High Street shall take place until the applicant, or their agents or successors in title, has secured the implementation of an archaeological mitigation strategy comprising a Historic Building Record, to be defined in a Written Scheme of Investigation that has been submitted to and approved in writing by the local planning authority. The strategy shall be in accordance with a brief provided by North Lincolnshire Historic Environment Record equivalent to Historic England's Level 2 building survey and shall include details of the following:
 1. Measures and methodologies to ensure the preservation by record of the historic structure, building fabric and fittings .
 2. Report and archive content.
 3. Archive preparation and deposition with recognised repositories including the ADS.
 4. A timetable of works in relation to the proposed development, including sufficient notification and allowance of time to ensure that the recording work is undertaken and completed in accordance with the strategy.
 5. Monitoring arrangements, including the notification in writing to the North Lincolnshire Historic Environment Record Office of the commencement of recording works and the opportunity to monitor such works.
 6. Personnel involved in the implementation of the strategy, including sub-contractors and specialists, their responsibilities and qualifications.
6. The applicant shall notify the planning authority in writing of the intention to commence the historic building recording at least 7 days before commencement. Thereafter, the recording shall be carried out in accordance with the approved details and timings.
7. A historic building report shall be deposited at the North Lincolnshire Historic Environment Record and the archive at the North Lincolnshire Museum within six months of commencement of the recording.

8. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order, with or without modification) no enlargement permitted by classes A, AA, B, E or G, nor any roof window or other opening permitted by Class C, of Part 1 of Schedule 2 of the Order shall be carried out without the prior express permission of the local planning authority.
9. No dwelling on the site shall be occupied until the vehicular access to it and the vehicle parking and turning space serving it have been completed in accordance with the approved plans and, once provided, the vehicle parking and manoeuvring space shall be retained for the lifetime of the development.
10. No development shall take place until a detailed Drainage Strategy is submitted to and approved in writing by the Local Planning Authority. The Drainage Strategy shall outline all sources of flood risk (including surface water, ground water and ordinary watercourse) and proposals to mitigate this and include preliminary drainage layout plans. SuDS should be considered. Full ground investigations must be carried out along with a feasibility assessment for infiltration. Infiltration tests should comprise full scale tests to demonstrate long term effectiveness and suitability. Reference should be made to North Lincolnshire Councils SuDS and Flood Risk Guidance Document. The development shall be carried out in strict accordance with the Drainage Strategy so approved.
11. The development hereby permitted shall not be occupied until a scheme providing an effective method of preventing surface water run-off from hard paved areas within the site onto the highway, and from the highway onto the developed site, has been implemented in accordance with details which have first been submitted to and approved in writing by the Local Planning Authority.

12. Development other than that required to be carried out as part of an approved scheme of remediation must not commence until parts 1 to 4 below have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning authority in writing until part 4 has been complied with in relation to that contamination.

Part 1: Site Characteristics

A Phase 1 desk study shall be carried out to identify and evaluate all potential sources of contamination and the impacts on land and/or controlled waters, relevant to the site. The desk study shall establish a 'conceptual model' of the site and identify all plausible pollutant linkages. Furthermore, the assessment shall set objectives for intrusive site investigation works/Quantitative Risk Assessment (or state if none required). Two full copies of the desk study and a non-technical summary shall be submitted to the Local Planning Authority for approval prior to proceeding to further site investigation.

An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

1. a survey of the extent, scale and nature of contamination;
2. an assessment of the potential risks to: human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, groundwaters and surface waters, ecological systems, archaeological sites and ancient monuments;
3. an appraisal of remedial options, and a proposal of the preferred option(s).

This must be conducted in accordance with Environment Agency's Land Contamination Risk Management (LCRM) guidance July 2023.

Part 2: Submission of Remediation Scheme

A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

Part 3: Implementation of Approved Remediation Scheme

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report (referred to in PPS23 as a validation report) that demonstrates the effectiveness of the remediation carried out must be produced and is subject to the approval in writing of the Local Planning Authority.

Part 4: Reporting of Unexpected Contamination

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of Part 1, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of Part 2, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with Part 3.

13. No development including demolition, site clearance, materials delivery or erection of site buildings, shall start on the site until measures to protect trees/hedgerows on and adjacent to the site have been installed in accordance with details that have been submitted to and approved in writing by the local planning authority.

These measures shall include:

1. Temporary fencing for the protection of all retained trees/hedgerows on and adjacent to the site whose Root Protection Areas (RPA) fall within the site to be erected in accordance with BS 5837(2012) or subsequent revisions (Trees in Relation to Design, Demolition and Construction). Any alternative fencing type or position not strictly in accordance with BS 5837 (2012) shall be agreed in writing by the Local Planning Authority prior to the start of development. The RPA is defined in BS5837(2012).
2. Construction Exclusion Zone (CEZ): The area around trees and hedgerows enclosed on site by protective fencing shall be deemed the CEZ. Excavations of any kind, alterations in soil levels, storage of any materials, soil, equipment, fuel, machinery or plant, site compounds, cabins or other temporary buildings, vehicle parking and delivery areas, fires and any other activities liable to be harmful to trees and hedgerows are prohibited within the CEZ, unless agreed in writing with the Local Planning Authority.

The approved tree protection measures shall remain in place until the completion of development or unless otherwise agreed in writing with the Local Planning Authority.

14. Within 3 months of the commencement of development, the applicant or their successor in title shall submit a biodiversity management plan to the local planning authority for approval in writing. The plan shall include:
- a) An assessment of biodiversity loss based on the habitat and hedgerow baseline within the red line boundary of the submitted Location Plan drawing dated July 2021;
 - b) Details of measures required to provide at least 1% biodiversity net gain in accordance with the Defra Small Sites metric;
 - c) Details of bat boxes and nestboxes to be installed;
 - d) Restrictions on lighting to avoid impacts on bat roosts, bat foraging areas bird nesting sites and sensitive habitats;
 - e) Provision for hedgehogs to pass through any fencing installed between gardens and between areas of grassland;
 - f) Prescriptions for the planting and aftercare of trees and shrubs of high biodiversity value;
 - g) Proposed timings for the above works in relation to the completion of the dwellings.

The Biodiversity Management Plan and Species Protection Plan shall be carried out in accordance with the approved details and timings, and the approved features shall be retained thereafter.

15. The applicant or their successor in title shall submit photographs of the installed bat roosting and bird nesting features to the local planning authority, within two weeks of installation, as evidence of compliance with condition 14, above.

End of Schedule of Conditions