



Appeal Decision

Site visit made on 29 April 2024

by Philip Lewis BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 May 2024

Appeal Ref: APP/U2750/W/24/3337800

24 Brooklands, Filey, North Yorkshire YO14 9BA

- 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 Jeremy Nuttall, Tribeka Brooklands Limited, against the decision of North Yorkshire Council.
 - The application Ref 23/00392/FL, dated 28 February 2023, was refused by notice dated 17 November 2023.
 - The development proposed was originally described as 'Demolition of existing buildings and erection of 10no new luxury apartments, including off street parking'.
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Decision

1. The appeal is dismissed.

Procedural matter

2. Notwithstanding the description of development set out in the heading above, during the Council's consideration of the application, the proposed scheme was amended and a revised description was agreed by the Council and the appellant. The Council determined the application on the basis of the revised description and plans for the 'demolition of existing buildings and erection of 9 apartments with parking, and so shall I.

Main Issues

3. The Council refused the application for nine reasons. Having regard to those reasons, I consider the main issues for the appeal to be:
 - The effect of the proposal on the character and appearance of the area, including the effect on the Filey Conservation Area;
 - The effect of the proposed development on the living conditions of the occupants of nearby dwellings, with particular reference to privacy and outlook and sense of enclosure;
 - Whether the proposed development makes adequate provision for landscaping and biodiversity;
 - The effect of the proposed development on highway safety; and
 - Whether the proposed development should make provision for affordable housing.

Reasons

Character and appearance

4. The appeal relates to the redevelopment of land on Brooklands, which is situated in a predominately residential area, in the centre of Filey. The appeal site is unremarkable, consisting of a two storey flat roofed residential building, along with a number of curtilage buildings. The appeal proposal includes the demolition of these buildings. The demolition of the existing buildings on the site is not contested by the main parties, and I do not disagree with this. It has been suggested that the curtilage buildings include a structure which was originally a WW2 gas decontamination centre, and that this should be treated as a non-designated heritage asset. There is no convincing evidence of this however and consequently I shall not consider that building as a non-designated heritage asset.
5. To one side and to the rear of the appeal site are two storey dwellings of a modern design. To the front of the appeal site and to the other side is situated the Filey Conservation Area. The significance of the Conservation Area is derived from its development as a Victorian/Edwardian Seaside resort, laid out in a grid layout, with 'Regency' and 'Arts and Crafts' terraces. Immediately opposite the appeal site is a brick-built terrace on Brooklands, which exhibits a strong architectural rhythm from its bold gable features and dormers. I agree with the conclusion of the Council's Conservation Area Appraisal in that the south side of Brooklands is the weakest element of the described 'Identity Area', being largely undeveloped or 20th century buildings of little character.
6. The proposed flats would be contained within a two and a half storey block. Whilst its height would be consistent with nearby buildings, its scale and massing would not be, due to its depth into the site. The building would be positioned significantly forward towards the site frontage than the existing block it would replace, and given its scale and mass, it would appear as being dominant in the street scene, having a square and box like appearance. Therefore, the proposed building would appear as a discordant feature, not in keeping with the domestic scale of other buildings in the area. Consequently, I disagree with the appellant in that the proposed building would not actively improve views up and down Brooklands.
7. The proposed building would have prominent gables which unlike the terrace opposite would not be consistent in size, and each elevation would have significant areas of glazing. Again, appearing discordant with nearby buildings. I am not convinced that the projecting gables would give the impression of individual houses set within a larger façade. The proposed materials, including areas of ashlar stone and grey window frames, would not reflect the prevailing use of traditional materials in the locality, and in particular opposite on Brooklands. Furthermore, the proposed simple architectural detailing is not reflective of the local vernacular and does not constitute good design. I agree with the Council that the lack of an entrance into the building from its street elevation is also not reflective of good design. Whilst the existing residential building on site is unremarkable, I do not find that the building proposed would respond positively to its context, and due to the harm it would cause, would not enhance the area.
8. The Council contends that the appeal scheme would harm the significance of the Filey Conservation Area. In this case, the appeal site at present does not

make a positive contribution to the significance of the adjacent heritage asset. Whilst I find the appeal scheme harmful to the character and appearance of the area, it would not harm the significance of the Conservation Area as an example of a Victorian/Edwardian Seaside resort. Consequently, I do not find less than substantial harm as per paragraph 208 of the National Planning Policy Framework (NPPF), or conflict with Scarborough Local Plan (LP) Policy DEC5 The Historic and Built Environment in this respect.

9. At the junction of Brooklands and South Crescent Road is situated the Grade II listed St. Marys R.C. Church, the significance of which is derived from its architectural interest and craftsmanship, including its interior decoration designed by Fr. Roulin, and its historic interest as a marker of the way that religious communities suppressed by the French government were able to find a new home in England. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires, that when considering whether to grant planning permission for development which affects the setting of a listed building, that special regard be had to the desirability of preserving the building, or its setting, or any features of special architectural or historic interest which it possesses. Given the separation of the Church from the appeal site and the factors from which its significance is derived, I do not consider that the appeal proposal would give rise to harm to its significance.
10. To conclude on this matter, the appeal proposal would cause harm to the character and appearance of the area, contrary to LP Policy DEC1 which sets out principles of good design and the Council's Residential Design Guide SPD, which amongst other things provides guidance about understanding local context. The proposal also conflicts with the design policies of the NPPF which are concerned with achieving well-designed and beautiful places. In particular, NPPF paragraph 135 which includes amongst other things that developments (b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping; and (c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities).

Living conditions

11. The proposed two and a half storey flats would have significant areas of fenestration and 'Juliet' type balconies to each elevation. The submitted plans show that at its closest, the proposed building would be about 16.5 metres from the terrace opposite on Brooklands, 9.4 metres from 25 Brooklands, 15.2 metres from 3 Brooklands Close, and 19 metres from the Presbytery.
12. I saw at my site visit that the neighbouring 25 Brooklands has a number of windows which face towards the appeal site. The proposed building would be situated nearer to Brooklands than that existing, and would extend further back into the site. Given its scale, and relatively close proximity to No 25, the proposed building would have an adverse effect on the outlook from No 25, and give rise to a sense of enclosure. Due to the extent of fenestration proposed and its proximity, it would also have an adverse effect on the privacy of the occupants of No 25.
13. Given the separation distance, scale of building proposed, and the extent of glazing, the proposed development would inevitably give rise to a loss of

privacy to the dwellings immediately opposite on Brooklands, and have an adverse effect on the outlook from those dwellings.

14. Due to the orientation of 3 Brooklands Close in relation to the appeal building, and the lack of fenestration in its end gable, I do not consider that the appeal proposal would have an unacceptable effect on the living conditions of the occupants of that dwelling. Similarly, I do not consider that the proposal would have an unacceptable effect on the living conditions of the occupants of the Presbytery.
15. To conclude on this matter, the appeal proposal would have a harmful effect on the living conditions of the occupants of 25 Brooklands and those dwellings on Brooklands immediately opposite the proposed building, due to loss of privacy, outlook and sense of enclosure. The appeal proposal therefore conflicts with LP Policy DEC4 which is concerned with the protection of amenity and paragraph 135 of the NPPF which amongst other things includes that development create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.

Landscaping and biodiversity

16. The appeal site consists of previously developed land, with the existing block of flats and garages which would be demolished, along with areas of garden. I saw at my site visit that there are several trees within the appeal site, and a number on neighbouring land which overhang the site. LP Policy ENV5: The Natural Environment, includes amongst other things that proposals should respond positively and seek opportunities for the enhancement of species, habitats or other assets thereby resulting in a net gain in biodiversity, including by considering whether any potential adverse impacts on species and habitats can be successfully mitigated. The NPPF in paragraph 180 sets out that planning policies and decisions should contribute to and enhance the natural and local environment by, amongst other things, minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures. LP Policy DEC1 includes as a principle of good design that any associated landscaping scheme has been developed to enhance both the natural and built environment, retaining existing features of interest where possible.
17. Although the proposal provides limited information on the landscaping of the site, the appeal was not accompanied by any assessment of the site in terms of biodiversity and of any potential effects on nearby trees. In the absence of this evidence, I am unable to determine what, if any, effects the appeal scheme would have on biodiversity and the existing trees or whether the proposed development makes adequate provision for landscaping and biodiversity. Consequently, the appeal scheme conflicts with LP Policies ENV5 and DEC1 and the NPPF in this regard.

Highway safety

18. LP Policy DEC1 includes that proposals provide suitable and safe vehicular access and suitable servicing and parking arrangements. The NPPF in paragraph 115 states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

19. The appeal scheme is for 9 dwellings, a net gain of 5 units, with a total of 13 parking spaces being provided. I saw at my site visit that Brooklands is a one-way street with parking to each side. Other than double yellow markings at certain entrances and junctions, parking on Brooklands is unrestricted. At the time of my site visit, Brooklands was busy, but some parking was available. I appreciate that at other times of the day and during the main tourist season, the street may be busier. Whilst I have read the comments that the street suffers congestion, I also note that measures have not been put into place to deal with this, or to address any parking stress, such as permit parking.
20. The appeal site is situated within the town centre, within walking distance of services and facilities and opportunities for public transport. The NYCC Interim Parking Standards 2015 set out minimum parking provision for residential developments. The Parking Standards do not form part of the development plan and I am uncertain as to the status of this document, but nevertheless I have regard to it. Different minimum standards are set out for rural areas and Market Towns in the Parking Standards, with the definition of settlement type being made in the development plan. The appellant asserts that Filey is a market town, referring to its designation within the LP. I note that it is included as one of three principal settlements within the Borough. On the balance of evidence before me, it would be appropriate to apply the lower minimum standards for market towns for this site. Therefore, I conclude that sufficient onsite parking provision would be made within the scheme. In this regard, the scheme would not conflict with LP Policy DEC1, the NPPF or the Parking Standards.
21. The Highway Authority advise that the current site access is protected by double yellow lines which would have to be re-located requiring an amendment to the Traffic Regulation Order which they say must be undertaken at the appellant's cost. The Council refers to the need for an obligation under Section 106 of the Planning Act to secure this. No planning obligation is before me and I have not been provided with evidence to indicate whether such an obligation is necessary having regard to the statutory tests in Regulation 122 of the Community Infrastructure Regulations 2010. However, given that I am dismissing the appeal for other reasons, I shall not consider this further.

Affordable housing

22. LP Policy HC3: Affordable Housing sets out the expectations for the provision of affordable housing in residential development. In Filey, LP Policy HC3 sets the provision of affordable housing on sites of 11 dwellings or more at 15%. The NPPF which post-dates the LP sets out that provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas. As originally submitted, the proposal would have fallen into the major development category given the number of dwellings proposed.
23. During the Council's consideration of the application, the main parties agreed to an amended description of development with the scheme being revised. Before me is a scheme for 9 dwellings which does not fall under the definition of major development. Consequently, in accordance with development plan and national policy there is no requirement for the provision of affordable housing in the appeal scheme.

24. Whilst LP Policy HC3 includes that proposals for housing will not be permitted where the scale of the development (in terms of site area and/ or number of units) is manipulated to fall below the threshold requiring provision of onsite affordable housing, there is no clear evidence before me that any such 'manipulation' has taken place in this case, with the appellant asserting that the scheme was amended to address other concerns of the Local Planning Authority, who I note agreed to it, rather than determining the application at that stage. Therefore, I find no conflict with LP Policy HC3 or the NPPF in this regard.

Other matters

25. I have taken into account that the appeal scheme would bring forward a modest net increase in housing supply through the development of a small-scale site, contribute towards housing mix and meeting need, and the proposed dwellings would be built to high sustainability and efficiency standards. These matters do not however outweigh the conflict with the development plan identified.
26. The appellant has drawn my attention to a previous appeal decision¹ relating to the appeal site. Whilst I appreciate the efforts made to address the shortcomings with the previous scheme, that does not lead me to a different conclusion.

Conclusion

27. For the reasons given and having considered all matters raised, the appeal is dismissed.

Philip Lewis

INSPECTOR

¹ APP/H2733/A/08/2067796