



Appeal Decision

Site visit made on 31 July 2024

by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 August 2024

Appeal Ref: APP/U2750/W/24/3341367

12 Carlton Road, Filey, Scarborough, North Yorkshire YO14 9AW

- 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 John Sawdon against the decision of North Yorkshire Council.
 - The application Ref is ZF23/02064/FL.
 - The development proposed is the demolition of commercial properties (E) and erection of 7 dwellings (C3).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the banner heading above is taken from the Council's decision notice, as it more accurately and concisely describes the proposed development.
3. The appeal site was formerly part of the administrative area of Scarborough Borough Council, which has now become part of North Yorkshire Council. The development plan for the former Council remains in place until such time as it is revoked or replaced. I have determined the appeal on this basis.

Main Issues

4. The main issues in relation to this appeal are the effect of the proposed development upon;
 - The character and appearance of the area;
 - The living conditions of future and existing occupiers, with particular regard to noise and disturbance, outlook, privacy and fear of crime;
 - Highway Safety, with particular regard to the ability to provide a safe and suitable access; and
 - Protected species.

Reasons

Character and Appearance

5. The appeal site comprises a number of commercial buildings that did not appear to be in use at the time of my visit. Although there are some commercial properties nearby, the area is predominantly residential, with dwellings of various ages and styles. Carlton Road is a short cul-de-sac formed primarily of 2-storey red brick terraced dwellings with attractive tile detailing under the eaves. With a narrow footprint, vertically proportioned fenestration and centrally positioned dormer windows within the front facing roof slopes, the

terraced properties have a strong vertical emphasis that provide a pleasant degree of uniformity and harmony to the street scene. The flat development opposite the appeal site has already served to undermine the rhythm of the street scene due to its lower, more squat form.

6. It is proposed to continue the terrace to the western side of Carlton Road through the erection of 2 dwellings, either side of the vehicular access to the site, above which would be a first floor flat. The dwellings have taken some architectural cues from the nearby terrace including ground floor bay windows, vertically proportioned windows and dormers. However, the detailing lacks precise execution. The dormer windows would be of vertical rather than square proportions and excessive brickwork would exist between the eaves and first floor window lintels, along with chunky detailing to the bay windows.
7. It seems to me from my observations and the submitted plans, that the proposed terrace would be flush with the front elevation of the adjacent terrace, rather than the projecting bay windows and canopy roofs¹. Nevertheless, the provision of a wide undercroft would result in a horizontal emphasis to the proposed dwellings. With one dwelling being wider than the other and with a different window pattern to the first floor flat, the building would disrupt the vertical emphasis and rhythm of the street scene as described above. This form, coupled with the imprecise detailing, would present a façade that would not be visually coherent within the established street scene. In failing to respond positively to the local context, the appeal scheme would result in a jarring form of development that would fail to assimilate with its surroundings.
8. A further terrace is proposed to the rear of the appeal site that generally has a simple and pleasing harmony, notwithstanding the shallow roof pitch and artificial position of chimneys. The plans appear to show a ramp to the front doors of the proposed dwellings and it is unclear whether this would be contained by a wall or railing². Even so, this would not amount to private defensible space which would also provide privacy and security.
9. These rear properties would all face directly onto the large swathe of hardstanding that would form the proposed access road, car parking and turning area. I acknowledge that car parking needs to be provided on site and that the Highway Authority has not objected to the scheme on this basis. However, that does not excuse poor design that fails to provide public realm that is attractive. Paragraph 7.16 of the Council's Residential Design Guide Supplementary Planning Document (SPD) is clear that the excessive use of parking areas in front of the principal elevations of buildings should be avoided unless, there is sufficient space to use strong and extensive planting.
10. No apparent space would be available to accommodate soft landscaping. Irrespective of the provision of rear gardens/yards, a harsh, bland and featureless form of development dominated by car parking, would be created within the appeal site. This would be visible from the dwellings to the rear, as well as partially visible from the wide access point onto Carlton Road. Even if I could accept that the scheme would promote the health and well-being of future and existing residents, it would not justify permitting development that fails to be visually attractive.

¹ As shown on drawing numbers 00/05; 00/06; 00/07 and 00/08.

² The annotation suggests up and then level access to the front doors of the 3 terraced properties to the rear of the appeal site as shown on drawing number 00/05.

11. I accept that bins could be stored in the rear garden of the proposed bungalow. However, the bin storage for the proposed first floor flat would be remote from the property and therefore likely to affect its useability. The appellant suggests that the matters of design, landscaping and bin storage could be dealt with by condition. However, to overcome the concerns raised, amendments to the proposed design and layout would be required, that may also result in the need for a reduction in the number of dwellings proposed. I am satisfied that it would not be reasonable or appropriate to do this via a planning condition, as it would effectively result in a different scheme.
12. Drawing these matters together, the proposal would fail to assimilate positively within the street scene and would be dominated by hardstanding and car parking. It has not therefore satisfactorily addressed the concerns of the previous Inspector³. The proposal would be harmful to the character and appearance of the area. Conflict is found with Policy DEC1 of the Scarborough Borough Local Plan (LP) 2017, which requires good design that reflects the local environment and responds to context in terms of amongst other things, scale, form and architectural detailing. Such objectives are shared by section 12 of the National Planning Policy Framework (the Framework), with which conflict is also found.

Living Conditions

Noise and Disturbance

13. The Council advises that the appeal site is located near to railway infrastructure and alongside a commercial garage. Thus, there is the potential for noise and disturbance to be generated which would be harmful to the proposed noise-sensitive development.
14. Paragraph 193 of the Framework requires planning decisions to ensure that new development can be integrated effectively with existing businesses. It goes on to state that existing businesses should not have unreasonable restrictions placed on them, as a result of development permitted after they were established. The agent of change principle places the responsibility for mitigating and managing the impact of change on existing uses i.e. the person responsible for the change, must mitigate the impact of the change⁴.
15. A noise assessment has not been presented to demonstrate how noise and disturbance may affect future occupiers, or how it might be mitigated. Neither has the appellant sought to clarify the extent of the commercial use including hours of operation and potential noise generating activities.
16. However, I am mindful that the garage premises is located in proximity to a number of residential dwellings including the existing flats and terraced dwellings located on Carlton Road. The Council has also advised that no complaints have been received with regard to noise originating from the garage⁵. In these circumstances, an appropriately worded planning condition could secure the provision of a noise assessment and any required mitigation.

Outlook and Privacy

17. As discussed above, the 4 proposed dwellings to the rear of the appeal site would not be provided with any defensible space to the front. The principal

³ Appeal decision APP/H2733/W/22/3312612.

⁴ PPG Paragraph: 009 Reference ID: 30-009-20190722.

⁵ Paragraph 8.16 of the Council's officer report.

elevations would face directly onto the proposed car parking area which would not be softened with landscaping. Whilst open, the outlook would nonetheless be that of a hard surfaced car park, which would not create particularly pleasant or attractive living conditions for the future occupants.

18. Comings and goings within the car park from future occupants, are likely to be more acutely felt due to the lack of separation distance between the habitable rooms in the front of the dwellings and the public space. Although direct overlooking is unlikely, future occupants are nonetheless likely to perceive a lack of privacy to their front rooms.

Crime

19. Paragraph 135f) of the Framework seeks to create places that are safe, where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.
20. The appeal site benefits from a vehicular access off West Road to the north. Alongside it runs a footpath to the rear of the dwellings on the western side of Carlton Road. The appellant advises that no crimes have occurred in this area. However, the separation of the footpath by just a post and rail fence, ensures it is open to wider views along the track. Anyone using it is therefore visible to neighbouring occupants.
21. In lieu of the access track, it is proposed to site a garage and garden area to serve the proposed first floor flat, as well as a garden area for the proposed bungalow. Given the intention to provide private amenity space it is likely the footway would become enclosed by boundary treatments on both sides, creating a tunnel effect. Some surveillance may be possible from No 8 and No 10 Carlton Road. However, due to the depth of the rear yards and presence of a number of single storey outriggers, it is unlikely that the whole of the footpath would be visible from the nearby first floor windows of the majority of dwellings on Carlton Road. It would be relatively easy for someone to lurk in the corridor without being detected, where escape routes are limited.
22. The proposed garden area where the bins would be located, would be a considerable distance from the first floor flat. It is unlikely to feel particularly pleasant or safe for the occupiers of this flat to have to use the footpath to store their rubbish or access their vehicle, particularly at night. Neither is the enclosed footpath likely to be welcoming for the existing occupiers of the dwellings that back onto it, nor would it encourage pupils and parents of the nearby school to use the route. The resultant fear of crime would not provide favourable living conditions for the existing occupants of Carlton Road or the future occupiers of the proposed development.

Conclusion – Living Conditions

23. I have found that the proposed development would be acceptable subject to a condition, with regard to the generation of noise and disturbance of future occupiers. However, a poor level of outlook, a perception of a loss of privacy and a fear of crime would endure for the future occupiers, with the latter also affecting the existing occupiers of Carlton Road. These matters could not be adequately addressed through the imposition of conditions as they would require amendments to the proposed layout. The proposal would conflict with Policies DEC1 and DEC4 of the LP which seek to ensure that future occupants of buildings are provided with a good standard of amenity, objectives shared with Section 12 of the Framework.

Highway Safety

24. The proposed vehicular access to the appeal site would be sited in a similar location to where there is a current roller shutter door into the existing premises. The Council's evidence indicates that the adopted highway does not extend the full length of Carlton Road, stopping short of the existing roller shutter door⁶. The site edged red and therefore the appeal site, does not include the unadopted highway to the east of the proposed access point. Whether the position of the access would remain or not, there is therefore a potential ransom strip between the adopted highway and the appeal site.
25. Notwithstanding the lack of objection to the proposal from the Highway Authority, I have considered whether the works to provide access to the proposed development could be secured by condition. The Planning Practice Guidance is clear that conditions requiring the consent or authorisation of another person or body often fail the tests of reasonableness and enforceability. Moreover, 'Grampian' or negatively worded conditions i.e. prohibiting development authorised by the planning permission until a specified action has taken place, should not be used, 'where there are no prospects at all' of the action being performed within the time-limit imposed by the condition⁷. In the absence of any information regarding ownership arrangements, I am not satisfied that there is any prospect of access to the development being provided legitimately across third party land.
26. For the above reasons, I am not satisfied that access rights have been clearly evidenced. It follows that safe and suitable access to the appeal site has not been demonstrated, such that the proposal would be harmful to highway safety. Conflict is therefore found with Policy DEC1 of the LP, which seeks amongst other things, to ensure that the proposal provides suitable and safe vehicular access. These objectives are shared with Section 9 of the Framework with which conflict is therefore also found.

Protected Species

27. The proposed scheme would result in the demolition of the existing buildings and an open-sided shed which due to their dilapidated condition, may provide habitat for protected species. The Council has raised concerns about the lack of survey information but does not qualify precisely what ecological impacts or species it is concerned about. Reference is made to Policy ENV5 of the LP which seeks to protect and enhance habitats and species of principal importance for the conservation of biodiversity.
28. Bats are protected by law⁸ and their presence is a material consideration when a development proposal is being considered, that would be likely to result in harm to the species or its habitat. Similarly, that is also the case for owls and newts. The fact that ecological evaluation was not required at the validation stage for the planning application does not preclude it from being required to address concerns arising during the determination stage. Even if baseline ecological information was not requested for other applications made in respect of the appeal site, it does not justify allowing harm to protected species.
29. Circular 06/2005⁹ states that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed

⁶ As shown in the plan accompanying the Council's email of the 30 April 2024.

⁷ Paragraph: 009 Reference ID: 21a-009-20140306.

⁸ Conservation of Habitats and Species Regulations (2017) & Wildlife and Countryside Act (1981).

⁹ Biodiversity and Geological Conservation – see footnote 61 of the Framework.

development, is established before planning permission is granted. Otherwise, all relevant material considerations may not have been addressed in the decision-making process. In the absence of any detailed information regarding the current ecological status of the appeal site, I cannot be certain that protected species would not be adversely affected. If impacted, I cannot be certain as to what mitigation, if appropriate, may be required. The circular advises that ecological surveys should only be left to a planning condition in exceptional circumstances, which have not been advanced here.

30. For the above reasons, I cannot be certain that the proposal would not adversely affect protected species. The proposal would therefore conflict with Policy ENV5 of the LP, as set out above. It would also be contrary to paragraph 186 of the Framework which amongst other things, seeks to minimise impacts on sites of biodiversity.

Other Matters

31. The proposal would result in the redevelopment of brownfield land for housing, within the development limits of Filey. The proposed dwellings would make direct and indirect economic contributions during the construction period and through the occupation of the dwellings, which would also be of social benefit. However, the scheme would fail to assimilate positively into the street scene, provide a safe and suitable access and acceptable living conditions for existing and future occupiers. In addition, it has not been demonstrated that the proposal would not adversely affect protected species. The benefits therefore attract limited weight.
32. Full details including the plans, officer report and decision notices of other developments permitted by the Council, said to have been approved without private amenity space, on-site car parking or crime prevention mitigation are not before me. I am therefore unable to conclude that they are comparable.
33. Support does not equate to a lack of harm and I am mindful that there are objections to the proposal. The buildings on the appeal site are neglected, but that does not justify permitting development that I have found to be harmful. It is likely that other forms of development would improve the visual appearance of the appeal site without causing the harm identified.
34. The appellant's evidence indicates that the Council did not make them aware of the need for additional assessment's, such as an ecological survey during the determination process. The reasons for not doing so are not before me. However, concerns regarding the Council's alleged failure to act positively, are a matter for the parties.

Planning Balance and Conclusion

35. The limited social and economic benefits arising from the proposal would be insufficient to outweigh the cumulative harm arising from a development that would adversely affect the character and appearance of the area, the living conditions of future occupiers, highway safety and protected species. The proposal conflicts with the development plan and there are no other considerations to warrant taking a decision otherwise than in accordance with it. The appeal is dismissed.

M Clowes

INSPECTOR