



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: 12 August 2024

Appeal Ref: APP/U2750/W/24/3344245

8 Mitford Street, Filey, North Yorkshire YO14 9DY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr David Hunter [Whitehouse Leisure Ltd] against the decision of North Yorkshire Council.
- The application Ref is ZF23/00727/FLA.
- The application sought planning permission to demolish existing workshop/garages and erection of 3 holiday units and car parking spaces without complying with conditions attached to planning permission Ref 20/02689/FUL, dated 16 February 2021.
- The conditions in dispute are No's 4 and 5 which state that:
No.4 - The three units of accommodation hereby permitted shall not be used for purposes other than holiday letting purposes. For the purpose of this condition 'holiday letting' means letting to the same person, groups of persons or family for period(s) not exceeding a total of 28 days in any one year. The accommodation shall not be used as the sole or main residence of any occupant.
No.5 - Notwithstanding the provisions of the Town & Country Planning (General permitted Development) Order 1995, (or any Order or Statutory Instrument, amending revoking and re-enacting that Order), none of the following developments or alterations shall be carried out without the prior written approval of the Local Planning Authority:
(i) the erection of freestanding curtilage buildings or structures including car ports, garages, sheds, greenhouses, pergolas or raised decks;
(ii) the erection of extensions including dormer windows, conservatories, garages, car ports, porches or pergolas;
(iii) alterations including the installation of replacement or additional windows or doors and the installation of roof windows;
(iv) the erection of walls, fences or other means of enclosure.
- The reasons given for the conditions are:
No.4 - In order to protect residential amenity, in accordance with Local Plan Policy DEC4 as each unit does not have its own private garden space which would be required for permanent dwelling.
No.5 - In view of the limited shared garden space available, to maintain an acceptable level of outdoor space for the future occupiers of the dwelling, to avoid the site being overdeveloped and to protect the amenity of neighbours. Therefore the very special circumstances have been met where the removal of permitted development rights is justified to protect residential amenity in accordance with the requirements of Local Plan Policies DEC1 and DEC4.

Decision

1. The appeal is dismissed.

Background and Main Issue

2. 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.

3. Planning permission was granted in 2021 for the erection of 3 holiday lets and car parking spaces, subject to a condition (No.4) which restricts the dwellings for holiday occupation only¹. The proposal seeks to remove this condition to allow occupation as permanent dwellings. The Council considered the proposal on this basis along with an amendment to the approved plans condition (No 1) of the original approval². Whilst the erection of walls to create segregated areas of amenity space would inevitably affect the approved plans, the planning application form and Council's decision notice clearly indicate that the proposal relates to the variation of condition 5. This instead removes permitted development rights for certain alterations including the erection of means of enclosure. I have therefore determined the appeal on this basis.
4. Policies HC1 and HC2 of the Scarborough Borough Local Plan (LP) 2017 support the development of new housing within settlements such as Filey, where they are compatible with other policies in the Local Plan. The Council whilst acknowledging that tourist related businesses are a key employer within the area, nonetheless advises that there is no planning policy basis to resist the loss of holiday accommodation.
5. At the time of my visit the holiday lets were substantially complete but had not been occupied. They contain all of the attributes of self-contained dwellings suitable for day-to-day living, including kitchens, living spaces, bedrooms and bathrooms. The appeal proposal therefore turns on whether there are material differences between the properties being used for holiday occupancy purposes and their proposed use as unrestricted, permanently occupied dwellings.
6. The main issue in respect of this appeal, is the effect that removing and modifying the disputed conditions would have on the living conditions of future occupiers of the proposed dwellings, with regard to outlook, privacy and the provision of internal and external space.

Reasons

Size of dwellings

7. The Planning Practice Guidance³ advises that where a local planning authority wishes to require an internal space standard for new homes, they should only do so by reference in their Local Plan to the Government's 'Technical Housing Standards – Nationally Described Space Standard' (NDSS) 2015. It is not clear whether the NDSS is referenced in the Council's LP. Therefore, they cannot be ascribed full weight. Nonetheless, they provide a helpful benchmark as to what can be considered as acceptable space standards for new homes.
8. Although the proposed bedrooms would be of an appropriate size, the proposed one and 2 bedroom dwellings would provide approximately 43 and 58 sqm of floorspace, considerably below the minimum standards of 58 and 79 sqm set out in the NDSS⁴.
9. During my visit I viewed the holiday lets internally and I observed that they have been finished to a high standard. Whilst the bedrooms may be of an acceptable size, the holiday lets, particularly No's 2 and 3 are very small,

¹ Planning application reference 20/02689/FL.

² As set out at paragraph 2.3 and section 10 of the officers report.

³ Paragraph: 018 Reference ID: 56-018-20150327.

⁴ As cited by the Council in its officer report.

especially the open plan living area to the first floor. As currently configured, there would be nowhere to house a washing machine within the modest kitchens and there would be only 1 small height restricted built-in cupboard for storage. There would be a general lack of space to accommodate furniture, to work or dry washing in the winter. Cramped living conditions would thus arise from the overall limited size of the proposed dwellings.

Outlook and Privacy

10. Policy DEC4 of the LP specifically deals with the protection of amenity. It states that proposals should not give rise to unacceptable impacts by means of an overbearing impact, overlooking and loss of privacy, amongst other things.
11. All of the proposed dwellings lie within proximity to one another as well as other buildings and residences. Dwelling 3 would be the most severely affected. The flank wall of the adjacent commercial and residential property would be within a few metres of all of the windows serving habitable rooms in the eastern elevation. It would have a dominating presence restricting outlook. Whilst there is a window in the northern elevation at first floor level, it is high level and situated close to the top of the stairs.
12. The main aspect of the bedroom and the living space for dwelling 2 would be that of closely positioned walls to neighbouring buildings, as well as an external staircase and terrace to the adjacent flat. This area contained a table and chairs at the time of my visit, such that users would be afforded a direct view into the living area of dwelling 2 at close quarters, and vice versa.
13. The first-floor open plan living area of Dwelling 1 would have a reasonably open aspect across the proposed amenity areas for Dwellings 1 and 2. However, bedroom 2 on the ground floor area would look onto the wall of dwelling 2 from a distance of a few meters. The erection of fences as proposed⁵ would further curtail the outlook from bedroom 1.
14. There would not be intervisibility between the windows of the dwellings and neighbouring buildings. However, the ground floor bedroom windows of all of the proposed dwellings would directly adjoin the publicly accessible yard. At the very least, the movements of other occupants would be very near to the windows such that there would be little privacy unless blinds were installed, which may further limit the outlook from the dwellings.
15. The proposed dwellings would have severely restricted outlook dominated by the walls of existing buildings and structures, in addition to a loss of privacy. Claustrophobic living conditions would thus be created for the future occupiers.

Outdoor Space

16. Three amenity spaces have been created within and adjacent to the yard, that would be allocated to each of the proposed dwellings⁶. Small in size they would limit the typical domestic activities that could take place in them, such as sitting out, drying washing, gardening, or in the case of the larger dwelling (1), enable children to play.
17. The proposed amenity space for dwelling 1 would be located on the opposite side of the yard, such that it would not be directly accessible from the dwelling it would serve. This is likely to limit its useability which would be to the detriment of the future occupiers.

⁵ As stated in the appellant's appeal statement.

⁶ As shown in the Council's annotated site layout drawing that was unchallenged by the appellant.

18. The proposed outdoor amenity areas for dwellings 1 and 2 are adjacent to the walkway through the yard, which it seems could be used by the public. The current low walls between the areas are insufficient to maintain privacy. The proposal to add fences above, may deal with privacy at ground level. However, the erection of fences would along with the proximity of the neighbouring buildings and the tall retaining wall to the west, create more oppressively enclosed and darker living environments for the future occupiers of these units.
19. Furthermore, even with fences, direct overlooking at close quarters would still be possible from the first floor french doors within the western elevation of dwelling 1, into the outdoor amenity space for dwelling 2. An oblique view from the first-floor window in the rear elevation of the end terrace would also be possible into the outdoor spaces of dwellings 1 and 2. Whilst overlooking is not uncommon in built-up areas, there would be nowhere that the future occupants of units 1 and 2 could obtain privacy in the proposed outdoor spaces.
20. The outdoor amenity space for dwelling 3 would be triangular in shape contained by walls on all sides, except the access point. Windows in neighbouring properties overlook this space which even when obscure glazed, are nonetheless likely to create conditions where the future occupiers would feel uncomfortable using this space. Due to the shape of the area and proximity and height of buildings it is likely to receive limited direct sunlight, as was the case at the time of my visit on a bright summer's day.
21. The proposed amenity spaces would be substandard in size and useability which would be harmful to the living conditions of the future occupiers.

Conclusion on Living Conditions

22. Holidaymakers would generally have lower expectations in relation to living conditions than permanent residents. They occupy holiday lets for relatively short periods and can spend large amounts of time outside of their accommodation, visiting the local area. Their need for space and outlook would typically be lower than that of permanent residents.
23. The limited internal space of the proposed dwellings would be exacerbated by the lack of good quality outdoor space and vice versa. In combination with the poor outlook and privacy that would ensue from the proximity of other buildings and means of enclosure, the proposal would result in a poor standard of accommodation that would be occupied permanently all year around.
24. The proposed removal of condition 4 and variation of condition 5 would cause unacceptable harm to the living conditions of the future occupants with regard to outlook, privacy and space. The proposal would conflict with Policies HC1, HC2 and DEC4 of the LP as set out above. It would also conflict with the Framework which requires new development to have a high standard of amenity for future and existing users.

Other Matters

25. Reference is made to there being numerous public beaches and parks within a convenient walk of the appeal site. Whether or not this is the case, I have not been directed to any policy or guidance to suggest a lack of private garden space can be offset or compensated for, by the presence of existing public open space. It seems to me that public spaces would not enable typical residential activities such as drying washing or socialising privately with friends and family. It would not therefore provide an equivalent compensatory provision.

26. There is no evidence before me that the proposed dwellings would meet the definition of affordable housing as set out in Annex 2 of the Framework. Even if they did, there is no mechanism such as a S106 agreement to secure them as such in perpetuity.
27. The proposal would provide 3 dwellings at the less expensive end of the housing market, in an accessible location where there are a range of facilities. Be that as it may, suitable living conditions should be created for all future occupiers regardless of their budget. It cannot be assumed that occupants at this end of the housing market would not want, or need, an adequately sized home including a useable and private area of outdoor space. Indeed, the Framework is clear that all development is required to be of high quality, that considers the health and well-being of future occupiers⁷. Adding to the range of local housing that would be available to local people, would be of little benefit given that it would do so in a manner, that would adversely affect future occupiers.
28. Notwithstanding the recentness of the original planning permission for the holiday lets, the appellant advises that the holiday accommodation market is saturated. There is however, no substantive evidence that this is the case, particularly in respect of small self-catering holiday lets. Neither have I been provided with the plans, officer reports or decision notices in respect of recent approvals for dwellings within Filey, that it is suggested do not comply with the NDSS and provision of private outdoor space. I cannot therefore determine that they are comparable to the context before me.
29. Even if I could accept the appellant's position on these matters, it would not justify permitting development that I have found would have an adverse effect on the living conditions of future and existing occupiers. The suggested benefits would attract limited weight.
30. Concerns regarding the handling of the planning application during the determination period are a matter for the parties.

Planning Balance and Conclusion

31. The limited benefit of providing small dwellings that would be available to local people would not outweigh the significant harm identified to the living conditions of future and existing occupiers. The development with the conditions removed and varied as proposed would conflict with the development plan. There are no material considerations, either individually or cumulatively, that suggest a decision should be made other than in accordance with it. The appeal is dismissed.

M Clowes

INSPECTOR

⁷ Paragraph 135f of the Framework.