

Appeal Decision

Site visit made on 5 September 2024

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 October 2024

Appeal Ref: APP/U2750/W/24/3344405

Land and existing building east of Hazeldene Fold, Main Street, Minskip, North Yorkshire YO51 9PH

- 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 Forward Investments LLP against the decision of North Yorkshire Council.
 - The application Ref is ZC23/03699/FUL.
 - The development proposed is full planning application for groundworks (retrospective) and use of existing building as a light industrial unit within Use Class E(G)cii) or E(G)ciii), with associated access and parking areas and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

Amended plans

2. The appellant submitted amended plans to the Council during the course of the planning application which proposed the relocation of the car parking area from the east of the site to its central section. Those plans were not accepted by the Council, but they have been provided again with the appeal. In deciding whether amendments can be accepted into the appeal process, the courts have held¹ that there should be both a substantive test and a procedural test applied.
3. Even though there is suggestion on the plans that some vehicles might have been parked in the amended location, the main bank of marked-out car parking spaces were shown to the east of the building. The change to the positioning of the proposed car parking space is a substantial difference, as it brings that area closer to the nearest dwellinghouses. The Noise Impact Assessment (NIA) does not appear to have been updated to reflect this change. There is therefore no technical evidence to demonstrate whether there would be a worse impact on the living conditions of the nearest residential properties, and if so to what degree that would be likely to be.

¹ Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

4. There were a number of representations that raised objections to the proposal, including on the grounds of noise and disturbance. The occupiers of those neighbouring properties have not had the benefit of formal consultation on the amended plans during the planning application process, nor have they had access to an updated NIA to aid in making their own assessment of the comparative affects. Procedurally therefore, there would be unfairness if the amended plans were to be accepted. Accordingly, I shall proceed on the basis of the plans originally submitted which show the parking to the east of the main building (drawing number 722-35 Rev C).

Lawful use of the appeal site

5. The appellant has made extensive submissions with the aim of substantiating their position that the lawful use of the land which comprises the appeal site is for commercial use of some kind, with reference to previous uses as a lawn mower repairs/sales workshop and for the storage, repair, and sale of caravans. Such uses would also make the site previously developed land. However, in determining an appeal made under section 78 of the Town and Country Planning Act 1990 (the Act), my powers do not extend to allow me to make a declaration as to what the lawful use of land is. It is open to the appellant to apply to have the matters determined under sections 191 or 192 of the Act.
6. As neither the planning application nor this appeal offer a forum to determine whether the use(s) of the land have become lawful, the Council has, quite justifiably, chosen not to engage with that aspect of the appellant's submissions. I must take the same approach in my determination of this appeal. Therefore, I have no certainty that the appellant is lawfully able to use the appeal site for the use(s) they have outlined. This also means that I do not ascribe weight to the possibility that they may have a fallback position to do so, as such a fallback may not exist. I shall not therefore consider these matters further in my decision.

Main Issues

7. In essence, the main issue is whether the proposed development would constitute an acceptable form of new employment development in the countryside, when assessed against the criteria set out in Policy EC3 of the Harrogate District Plan 2020 (LP).
8. The specific issues in that regard are:
 - (i) The effect of the proposal on the character and appearance of the area
 - (ii) The effect of the proposal on the living conditions of the occupiers of nearby dwellings, with reference to noise and disturbance
 - (iii) The effect of the proposal on the safe use of the public highway
 - (iv) Whether the building is of permanent and substantial construction, structurally sound and capable of conversion without the need for substantial extension, alteration or reconstruction

9. There is a further reason for refusal. This relates to whether sufficient information has been provided with regard to the groundworks that have already taken place and for which planning permission is sought retrospectively. I shall also address that matter in my decision.

Reasons

Character and appearance

10. The appeal site previously formed part of a farm, with several Nissen huts and a single agricultural style building present upon it. A row of new dwellings has been constructed on the land between the site and Main Street, along which access is taken, this being the road now known as Hazledene Fold. Minskip is predominantly a linear settlement with properties arranged on either side of Main Street with narrow strip fields, locally known as tofts, located to their rear. The appeal site extends considerably beyond the other built development in the area. The topography rises beyond the eastern site boundary, meaning that the site is visible from the surrounding landform, where it would be viewed against the backdrop of the settlement.
11. At present, the site has relatively little in the way of a built form in comparison to its overall size. What does exist is typical of what might be expected to be found on a site used for agricultural purposes and in a rural or semi-rural area. As such, it blends in with its edge of settlement surroundings and is not an intrusive feature, even in its position beyond the main built form of Minskip.
12. The positioning of the proposed car parking to the east of the building would result in a visual encroachment into the countryside through the parking of vehicles in that area. Whilst the appellant refers to the presence of existing hard surfacing on the site and the proposed use of grasscrete surfacing, the area to the east is almost completely covered with vegetation at the present time. There would be a stark change if that area were to be used for parking, and this would not be adequately mitigated by the proposed landscaping, especially as the land further east is elevated meaning that any screening potential would be reduced. Any visual benefits from the additional boundary vegetation would also not outweigh the overall harm that would result.
13. This would result in a significant adverse effect on the character and appearance of the area. Consequently, the proposed development would fail to accord with criteria C, G & I of Policy EC3 along with Policies HP3 and NE4 of the LP, where they seek to protect character and appearance, local distinctiveness and landscape character. There would also be a conflict with the aims of the Harrogate Landscape Character Assessment 2004 and the National Planning Policy Framework (the Framework) in the same regards.

Living conditions

14. The dwellings on Hazeldene Fold are positioned so that they front onto the access road that is shared with the appeal site, with their front windows in close proximity to the road. Therefore, vehicle movements to and from the proposed development would move past these dwellings and would be appreciable from within the dwellings. The access road also runs alongside a garden to a dwelling which fronts directly onto Main Street. The Transport

Statement utilises data from the TRICS database which provides data of surveyed movements from comparable developments elsewhere. On the basis of the use and floorspace, the TA estimates that vehicle movements to and from the site in association with the proposed use would be likely to be in the region of 14 per day, with 7 in each direction.

15. However, whilst the majority of the appeal submission refers to the floor area of the existing building being 150m², the proposed landscape plans state it to be 250m². This higher figure would seem to be consistent with that stated on the plans submitted for a previous planning application, copies of which have been provided and which denote an internal area of 250m². This therefore brings into question as to whether the figures used in the TA are correct, and thus whether the predicted number of vehicle movements is too. There is further uncertainty as to whether the number of traffic movements includes cars, and I note that the inclusion of ten parking spaces suggests that there might be expected to be a number of movements of such vehicles.
16. It is difficult therefore to understand with any certainty as to what the number of movements to and from the site may be. However, I shall proceed on the basis set out in the TA that there would be an anticipated 14 movements during the 11 hours 30 minute time period that the use is intended to operate on weekdays. The proposed hours of use on those days is 7:30am to 7.00pm, with shorter days on Saturdays and no working on Sundays or Bank Holidays. There would as a result not be the movement of vehicles at more sensitive times such as late into the evening or night or in the very early morning. Vehicles would also be restricted in terms of their size owing to the height barrier, meaning that other than perhaps refuse vehicles, there would not be regular movement of larger vehicles.
17. Due to the frequency of movements, the times they could occur and the size of the vehicles involved, I conclude that there would not be harm caused to the living conditions of the occupiers of the dwellings on Hazledene Fold or the adjacent dwelling on Main Street with regard to noise and disturbance from vehicle movements. That is however an assessment on the basis of the number of likely movements set out in the TA. There would therefore be no conflict with criterion C of Policy EC3 where it requires that development would not have a significant adverse affect on the general amenity of the area, nor with the aims of Policy HP4 of the LP where it seeks to protect amenity. There would also be no conflict with the aims of the Framework where it seeks to ensure that developments create places with a high standard of amenity for existing and future users.

Effect on the public highway

18. The primary concern of the Highway Authority (HA) is that large delivery vehicles may travel along Hazledene Fold in an attempt to access the appeal site but then would not be able to do so because of the vehicle height barrier to be installed to prevent such vehicles from entering the site. In such an instance they would be unable to turn to leave in a forward gear, and therefore would have to reverse back down Hazledene Fold and out onto Main Street. Concern is also raised that lower vehicles with trailers might access the appeal site but then not be able to turn within it so to be able to leave in a forward direction.

19. However, because large vehicles would not be able to access the site and therefore would have to leave without delivering or collecting goods, there would be a clear incentive from any operator's point of view to relay this to anyone visiting the site for such a purpose. They would also logically not seek to actively arrange for vehicles that were too high to travel to the site. There would equally be no incentive to allow lower vehicles with trailers to enter the site if they were then not able to turn and leave in a forward gear, as their only alternative would be to reverse back up the narrow internal access which includes a bend and an increase in gradient. Whichever of the floorspaces stated is correct, the building is also not of a substantial size, which too would lessen the likelihood of large vehicles being needed to serve it.
20. There would, therefore, seem to be enough checks and balances in place to ensure that the scenarios envisaged by the HA did not arise often, if at all. The HA resists the placing of signage on the highway that might aid in further preventing oversized vehicles entering Hazledene Fold. It would be preferable that such signs were put in place somewhere as they would add an extra layer of warning and prevention, but even if the appellant was not able to secure such signage I am not persuaded that there would be an unacceptable impact on the surrounding highway network.
21. The matter of how bin collections would take place is less clear given that refuse vehicles would not be able to access the site because of their height. Although the appellant suggest that the bins could be wheeled to the site entrance, there is nothing before me to demonstrate how a vehicle would be able to turn so not to have to reverse down the access road. Whilst the appellant makes reference to the likelihood that a refuse lorry serves the existing dwellings on Hazledene Fold by reversing up the road, this is not confirmed and no details of the frequency of the collections that would be needed for the proposed use have been provided. There is also no clarification provided as to how emergency vehicles such as fire engines would be able to access the site.
22. In conclusion, the proposal would generally accord with criterion B of Policy EC3 where it requires that the local road network can accommodate proposed traffic movements. There would also be no conflict in principle with the Framework where it 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. There does however remain uncertainty as to refuse collection arrangements and how emergency vehicles would be able to access the site.

The building

23. Criterion D of Policy EC3 of the LP requires that a building be of permanent and substantial construction, structurally sound and capable of conversion without the need for substantial extension, alteration or reconstruction. A copy of the Council's local validation requirements for planning applications sets out that a structural survey is required for applications for the change of use and alterations of existing buildings outside of a development limit. Despite no structural survey being provided, the planning application was validated.

24. The appellant contends that it is possible to establish that the building meets criterion D of Policy EC3 by way of a visual inspection, pointing to various aspects of its construction that they consider supports this conclusion. However, I am not qualified in such matters and do not have the benefit of a survey before me undertaken by someone that is. Therefore, I cannot reasonably have any certainty that criterion D of Policy EC3 is met, in particular with respect to whether or not the building is structurally sound.

Extent of the ground works

25. The plans submitted do not show the extent of the ground works that have taken place, and the appellant advises that there is in fact no record of the original levels of the site. However, they direct attention to the area between the Nissen huts and the main building as being the focus of the ground level changes. It would appear that most of the changes to ground levels that have taken place have been undertaken on land that is adjacent to but not within the red line site area.

26. It is visually evident that the ground has been lowered to bring it down to the same level as that of the building. Because of their location centrally within the site and because the building and eastern most part of the site is already at that level, the works that have taken place have caused no harm to the character and appearance of the area. There is nothing substantive before me to suggest that these works have had adverse impacts upon land stability or drainage. Any retaining structures needed would not be likely to be substantial in height or visual impact and could be subject to control by way of a planning condition.

27. For those reasons, the works that have been undertaken do not conflict with the aims of Policies HP3, NE4, NE9 and CC1 of the Local Plan where they seek to protect local distinctiveness, landscape character, prevent unstable land and address matters relating to drainage.

Other Considerations

28. The Council's Economy Officer sets out that there is a severe shortage in the supply of suitable light industrial units across the Harrogate area to support business development and growth. The proximity of the appeal site to the A1 Motorway is also noted in their consultation response. The appellant states that it is expected that the proposal would create 3 full time equivalent jobs. Policy GS5 of the LP seeks to provide a range of quality business sites and premises and to support the rural economy and its diversification. In light in particular of the identified shortage of light industrial units in the area, I give the economic benefits that would arise from the appeal proposal significant weight.

29. The planning application was made before the statutory requirement for biodiversity net gain came into place. Nonetheless, the proposed development would result in a substantial biodiversity net gain of 0.47 Habitat Units (a 154 % gain) and 0.83 Hedgerow Units (a 189 % gain). This is a consideration that carries moderate weight in favour of the proposal.

30. The appellant considers Policy EC1 of the LP, which refers to the protection and enhancement of existing employment areas, to be the primary

development plan policy relevant to the appeal proposal. Notwithstanding that I have set out that the appeal site cannot definitively be considered to be an employment area, what is proposed could not offend the aims of Policy EC1 as there would be no loss of an employment use even if one did exist. In that context and as it seeks only to resist the loss of employment uses, the policy does not offer any support for the proposed development.

Planning Balance and Conclusion

31. The proposed development would not cause harm to highway safety on the proviso that matters relating to refuse collection and emergency vehicle access were resolved. Subject to the floorspace and vehicle movements set out in the TA being accurate, there would be no harm to living conditions from noise and disturbance. Whilst there are no details provided as to the extent of the ground works that have taken place, no identifiable harm has resulted from those works.
32. However, I have found that the proposal would cause a significant adverse effect on the character and appearance of the area and that it has not been demonstrated that the building is structurally sound. The proposal does not therefore comply with all of the criteria set out in Policy EC3 of the LP and consequently also does not accord with Policies GS2 and GS3 of the LP.
33. Balanced against this are the economic benefits that would arise and which would mean that the proposal would meet with the aims of Policy GC5 of the LP. This consideration carries significant weight, and the delivery of a substantial biodiversity net gain is a matter that carries moderate weight. Those considerations do not however collectively or individually outweigh the harm that would be caused to the character and appearance of the area and the failure to fully accord with the criteria of Policy EC3 of the LP.
34. Therefore, the proposal fails to accord with the development plan taken as a whole and the other considerations in this case do not indicate that a determination should be made otherwise than in accordance with the development plan. Accordingly, the appeal should be dismissed.

Graham Wraight

INSPECTOR