



Appeal Decision

Site visit made on 28 November 2024

by C Skelly BA (Hons) MSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 JANUARY 2025

Appeal Ref: APP/B2002/W/24/3347151

R/o 92-108 Middlethorpe Road, Cleethorpes, North East Lincolnshire, DN35 9PR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr Jaswinder Dhallai against the decision of North East Lincolnshire Council.
 - The application Ref is DM/1182/23/OUT.
 - The development proposed is erection of five 2 storey dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. I have removed reference to the address in the description of the development in the banner header above, as it is not a description of the development proposed.
3. The appeal is for outline planning permission with all matters reserved. I have determined the appeal on this basis. The appellant has submitted an illustrative block plan indicating a terrace of dwellings along the south-west boundary, with access through the car park down the side of the parade of shops. Although I recognise that this is an indicative layout only, I have had regard to it in my decision.

Main Issues

4. The main issues are:
 - the effect of the proposal on the character and appearance of the area;
 - the effect of the proposal on the living conditions of existing occupiers, with particular reference to privacy, daylight, sunlight and outlook;
 - the effect of the proposal on the living conditions of future occupiers with particular reference to privacy, noise, disturbance, odour and amenity space; and
 - whether or not the proposal makes suitable provision for the safe access and parking of vehicles and operation of the local highway network.

Reasons

Character and appearance

5. The appeal site is an area of rough tarmac located to the rear of a parade of commercial units on Middlethorpe Road, which has a large car park area to the front. There is a mix of uses along the parade including a fish and chip shop and other takeaways. The appeal site is currently utilised for parking and provides rear access to the commercial units and a butcher's shop. Above these premises are flats which are accessed via staircases from the car park area. The main door and a window for each flat faces onto the appeal site.
6. There are a number of air conditioning and extractor units facing onto the appeal site, which also contains trade refuse bins. The site also adjoins Middlethorpe primary school and the gardens of detached houses. In the southern corner there is a gas cabinet, which is accessed through the appeal site. The site is enclosed by vertical timber boarded fences on the south-western and south-eastern boundaries.
7. The wider area is residential with a mix of semi-detached and dormer bungalows. The style and appearance of these dwellings, their layout and spaces in between, provide a uniform appearance to the surrounding area.
8. The indicative drawing no GW/JD/MR/2 shows that the dwellings would be located closest to the boundary with the school, in a terrace formation, with access to the site via the front car park area. The dwellings would face onto a small garden area which would adjoin the primary school. This would mean that their rear elevation would back onto the flats.
9. It is not clear what arrangements would be for parking provision for future residents and where this would be located, however a 10m access strip would be retained for the commercial units. The established residential pattern includes front gardens which face onto the street and gardens to the rear. In comparison the proposed dwellings would be located between two service roads, with a small garden area facing onto the school. This would result in an over-cramped, incongruous appearance compared with the spacious pattern of residential development in the surrounding area.
10. The appeal site is largely visually contained from wider views by the height of the existing buildings. Nevertheless, this does not fully mitigate the harm I have identified with regards to the proposed layout and its effect on the character and appearance of the site would remain.
11. The proposal would therefore harm the character and appearance of the area. It thereby conflicts with policies 5 and 22 of the North East Lincolnshire Local Plan 2013-2032 (2018), which seek amongst other things to provide a high standard of sustainable design including its scale and density.

Living conditions of existing occupiers

Privacy

12. The rear elevations of the proposed dwellings would face towards the flats. Gaps between the proposed dwellings and the flats would be approximately 11m. Although the proposal is in outline only, it can be assumed that there would be windows at both ground floor and first floor levels, which would face

directly onto the flats. The separation distance between the windows of habitable rooms would be insufficient and mean that future occupiers would see into the rooms of existing residents. This would thereby cause unacceptable harm to the living conditions of existing occupiers in relation to privacy.

13. The appellant contends that there would be no overlooking of outside spaces to other surrounding properties. Although this is likely to be the case for the existing houses, depending on the final design, this does not outweigh the harm to privacy to the occupiers of the flats that I have identified above.

Daylight, sunlight and outlook

14. Although the proposals are only indicative, the appellant's statement refers to two storey dwellings. The combination of buildings of this height and the short separation distance to the existing flats would, likely lead to some loss of daylight and sunlight and potentially outlook for the occupiers of the existing flats. It has not, therefore, been demonstrated that the proposal would not unacceptably harm the living conditions of existing occupiers with regard to daylight, sunlight and outlook.

Overall

15. The proposal would cause unacceptable harm to the living conditions of existing occupiers, with particular reference to privacy, daylight, sunlight and outlook. It therefore conflicts with policies 5 and 22 of the LP which seek to ensure that development proposals have regard to the impact on neighbouring land uses by reason of disturbance and visual intrusion.

Living conditions of future occupiers

Privacy

16. As I have already referred to, the separation distance between the windows and habitable rooms of the proposed dwellings and the existing flats would be insufficient. Existing residents would be able to view into the rooms of the new dwellings. This would thereby cause unacceptable harm to the living conditions of future occupiers with regard to privacy.

Noise, disturbance and odour

17. There are a number of air conditioning and extractor fans to the rear of the commercial premises. Given some of the uses include takeaways there are likely to be noise and odours which emanate from these units. During my site visit I observed that some noise was apparent from the extractor and air conditioning units. However, it is likely that noise levels would increase during the evenings when all of the takeaways are operational.
18. The appellant has submitted a statement in connection with noise. This has gathered information about perceived levels of noise when visiting the site over several weeks at different times of the day. This did not include late evenings when the takeaways would be operating nor the use of any noise measurement devices. I note that on several of the visits the extractor fans and air conditioning units were not working. Even where units have been in use no information has been provided on the impact on noise from these units.

19. The proposal would retain a 10m service area for the commercial premises, which would result in a narrow space between the two rows of buildings. It is not unreasonable to assume that this would continue to be used for the storage of refuse and deliveries. The comings and goings to and from the commercial units along with the opening and closing of doors would also give rise to noise. Given that the premises operate as takeaways this activity would be primarily late in the evening, which would increase noise and disturbance to future occupiers.
20. The appellant puts forward that buyers would be aware of the proximity to flats and commercial premises, however this does not justify the provision of new dwellings which would not provide appropriate living conditions.

Amenity space

21. The illustrative block plan indicates that small areas of amenity space would be provided between the proposed dwellings and the south-west boundary. However, these spaces are unlikely to provide appropriate private residential amenity space due to their size. The appellant puts forward that the existing flats do not have any outside space, however this is not a reason to support new housing which would make inadequate provision.

Overall

22. In conclusion, the proposal would cause unacceptable harm to the living conditions of future occupiers with regard to privacy, noise, disturbance, odour and amenity space. It therefore conflicts with policies 5 and 22 of the LP which seek to ensure that development proposals have regard to the impact on neighbouring land uses by reason of noise, air quality and disturbance of visual intrusion.

Highway safety and operation

23. The car park to the front of the commercial units is not formally laid out with car park spaces, nor are there any parts of it where parking is restricted. I note that the area to the front of Middlethorpe Butchers including the access down its side is in separate ownership to the appeal site.
24. The appeal site is used by parents dropping and picking children up from the school, whilst deliveries to the commercial units are able to enter the site through one access and exit via another. The appellant states that there are no rights of way over any part of the appeal site by the commercial premises. However, during my site visit I observed that a number of cars were parked in the area despite the signs on the building which say private parking. This, therefore, suggests that the site is used informally for car parking.
25. The Council's highways team requested a car parking survey, undertaken over the period of a week to demonstrate the impact on car parking. The appellant has submitted details of observations made about parking between 3 May 2024 and 23 May 2024, albeit there are no details about how this assessment was undertaken and it was limited to daytime rather than the evening. The submitted survey information clearly demonstrates that there is regular usage of the site for car parking, which peaks during school drop off and pick up times. Based on this survey the appellant contends that the proposal, in addition to the car parking provision to the front of the shops would be adequate.

26. There is therefore disagreement between the parties about the demand for car parking. However, any increased demand resulting from the displacement of vehicles which had used the site on an informal basis would lead to increased pressure for on-street parking, particularly during school time.
27. There is also some dispute between parties as to whether the site is used by HGVs for the delivery of goods. Refuse bins associated with the business are stored on the appeal site and therefore access is required by refuse waggon. A 10m access road would be provided, which would allow HGV vehicles to reverse between the front car park and the application site to discharge their goods. No details have been submitted to demonstrate that safe turning circles could be provided. This arrangement would lead to the displacement of car park spaces and an additional hazard for road users as drivers wait on the highway whilst HGVs turn around, which would unacceptably interrupt the free flow and efficient movement of traffic in the immediate vicinity.
28. In the absence of detailed information on parking provision and delivery arrangements I conclude that the proposal fails to make suitable provision for the safe access and parking of vehicles and the operation of the local highway network. It is therefore contrary to policy 5 of the LP which seeks to ensure that proposals have regard to access and traffic generation.

Conclusion

29. The proposal would make use of an area of unused land. It would also create five small new dwellings in a location close to local facilities, which would contribute to local housing supply. However, it would harm the character and appearance of the surrounding area, cause harm to the living conditions of existing and future occupiers and cause harm to highway safety and operation. These harms are not outweighed by the benefits I have identified and are sufficient to justify dismissing the appeal.
30. The proposal conflicts with the development plan when read as a whole and the material considerations do not indicate that the appeal should be decided other than in accordance with it.
31. For the reasons given above the appeal should be dismissed.

C Skelly

INSPECTOR