



Appeal Decision

Site visit made on 18 December 2024

by L N Hughes BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd February 2025

Appeal Ref: APP/E2001/W/24/3348489

The Red Lion, 57 Middle Street North, Driffield YO25 6SS

- 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 S and N Property Developments Ltd against the decision of East Riding of Yorkshire Council.
 - The application Ref is 23/03127/PLF.
 - The development proposed is the erection of 4 dwellings with associated parking following demolition of existing workshop.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application form describes the proposal as 'the construction of 4 new 2 bedroom town houses with 1 allocated on-site parking space'. The appeal form and the decision notice cite 'the erection of 4 dwellings with associated parking following demolition of existing workshop'. As the latter is more precise relating to the whole scheme, I have used this version for my decision.
3. The application form appears to include an oversight in citing the street name as 'Middle Street', as 'Middle Street North' is cited on the plans and other evidence, and on the decision notice.
4. The East Riding Local Plan Update, comprising a Strategy Document Update (SDU) and Allocations Document Update (ADU), was submitted for examination in 2023. The appointed Planning Inspector issued their final report on 30 December 2024 and found the Update to be sound subject to a number of modifications identified through the examination process. The adoption of the Local Plan Update is intended to be confirmed at the Full Council meeting on 2 April 2025, whereby the extant 2016 Local Plan would be replaced.
5. I invited the main parties to comment on whether this updated position has any relevance to the issues for this appeal. The appellant provided no comments. The Council identified that the SDU Policy H1 introduces relevant new requirements relating to space standards and accessibility standards, but that its justification text specifically identifies that these standards will not be given weight in decision making before the revised Local Plan is fully adopted, to allow time for this to be reflected in local land values. The Council thus advises that no weight can thus be given to Policy H1 at this time. No other Local Plan Update policies were brought to my attention.

6. The Government published a revised version of the National Planning Policy Framework ('the Framework') on 12 December 2024. I have considered this against the December 2023 version before the parties for their appeal evidence, and updated cited paragraph numbers as necessary. Again, I invited comment from the main parties, with no response from the appellant, and confirmation from the Council of there being no changes relevant to this appeal.

Main Issues

7. The main issues are the effect of the proposed development upon the living conditions of the future occupiers:
- with particular regard to the 'agent of change' principle with relation to potential noise and odour from the adjacent site; and
 - with particular regard to the quality of the garden areas.

Reasons

Noise and Odour and the Agent of Change

8. The site forms part of the rear courtyard area of the Red Lion Public House, in the centre of Drifffield. To the east of the appeal site and sharing the same access off Church Lane, the Red Lion building and part of its rear area has extant approval for a change of use and conversion into dwellings¹. Dwellings on Church Lane lie to the north of the appeal site, and to the south and west lies the Richardson Ford Dealership and Service Centre, with the garage and bodyshop buildings being directly adjacent.
9. The Framework paragraph 200 explains the 'agent of change' principle. This is where if the operation of an existing business could have a significant adverse effect on new development in its vicinity, the applicant as the agent of change should be required to provide suitable mitigation before the development has been completed. In this way, decisions should ensure that new development can be integrated effectively with existing businesses and community facilities, so that those existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established.
10. The Ford garage building to the west of Plots 2-4 contains a spray booth and oven for car bodywork, with its ventilation system flues protruding from the roof. This has not been operation for approximately 5 years, but has no planning restrictions to control noise, odour, or hours of operation. The occupier has identified that they cannot guarantee that it will not be used in the future. As such, the agent of change principle is relevant due to the potential for complaints from the future residents on the grounds of proximity to noise and odour/emissions, potentially affecting future commercial operations.
11. Matters weighing against the appeal proposal in this regard are the lack of restrictions of the spraybooth noise level and hours of use, the proximity of the flues, and the very small sizes of the new gardens meaning that residents could not move to an alternative part to escape noise or odour. The appellant's Noise Report was not able to assess the level of actual noise which may occur from the spraybooth due to its lack of current operation. Although the appellant refutes that

¹ 23/00022/PLF Conversion of former public house with letting rooms and owners flat to 4 dwellings with a single storey rear extension to each dwelling, approved 6 April 2023

residents may have to keep windows closed for significant periods of time, this would therefore not be implausible in order to maintain reasonable internal living conditions.

12. I also accept the Council's argument that inevitably, examples of other planning permissions are not in the exact same context, circumstances, or policy context as for this appeal. Indeed, the Council references that two such approvals predate the 'agent of change' principle in the Framework, which would also be the case for the approval permitted within 1.2m of an existing spray booth, and also that the reports for those did not identify whether there was a body shop and/or flue present. The same would apply for the other approval dating from 2004.
13. However, matters in favour of the proposal, are that the spraybooth has not been in use for approximately 5 years, with no clear intention for this to resume. The business owner could not guarantee that it would not resume, but has not objected to the proposal.
14. There are no records of statutory noise/nuisance complaints from the existing dwellings on Church Lane, and while they are further away than the appeal dwellings would be, this is only by a few metres particularly for Nos. 5 and 4. If the spray booth use were so disruptive to cause problems for the new residents, I would expect there likely to have been similar complaints from those existing dwellings. Similarly, I note the appellant's evidence of a lack of identified nuisance complaints from other spraybooth sites in the area which are close or closer to dwellings. While not directly comparable due to different site contexts, they do indicate the potential for these uses to coexist.
15. Heated exhaust fumes from the spraybooth would exit and be dispersed at a level much higher than that of the upper floor windows of the new dwellings. While not inconceivable that the fumes would drop or be blown downwards on occasion, I also cannot see that this would occur all of the time.
16. No commercial garage noise was audible during the Noise Report surveys, with no significant openings in its facade to allow for significant noise transfer. The current noise levels from all sources are generally low, and all internal noise criteria for the new dwellings could be achieved at present with open windows. Furthermore, the proposal would incorporate a mechanical ventilation system in order to mitigate against that noise and odour levels could increase in future. This would retain the ability to open windows for purge ventilation of internal moisture and odour, and for periods when external conditions were acceptable. There would only be a low to negligible risk of overheating due to windows being closed. The exact details of the mechanical ventilation would need to meet the requirements of the Building Regulations.
17. Overall, therefore, while there may be some effect on the new residents were the spray booth to resume operations, I do not find that there would be a 'significant adverse effect' on their internal living conditions. This is with specific regard to the Framework paragraph 200 wording, the historic status of the spraybooth, and the proposed soundproofing and ventilation mitigation measures. As such, the potential impact would be solely on the usage of the new garden areas from an increase in noise and odour. In the overall context I do not find this to be so substantial to warrant a dismissal on the agent of change basis, albeit I do discuss this matter further below with reference to living conditions.

18. As such, the proposal would comply with the East Riding Local Plan Strategy Document (ERLP) Policy ENV1(B.4), in having regard to the amenity of existing properties. I note the Council also refers to the ERLP Policy ENV6, but this is related to management of environmental hazards caused by new development, which is not the case here.

Quality of the Garden Areas

19. The adequacy of garden size and outlook is a matter of planning judgement, and is therefore somewhat subjective. The appellant submits that as the gardens would not be overlooked and would be highly secure, this may therefore be valued by some occupiers more highly than an open outlook. Nonetheless, it is important that acceptable living conditions are achieved for all future occupiers, in line the Framework paragraph 135(f) whereby developments should create places which promote health and well-being, with a high standard of amenity for existing and future users.
20. Plots 2, 3, and 4 would have rear gardens less than 8m long, and which would end in a 5m high wall. The plot 4 garden would also be bounded to one side by a high wall. In combination with the boundary treatment between the plots, this would create a significant and oppressive sense of enclosure and confined outlook. The garden for Plot 1 is also a very constricted shape, which does not indicate practical usability and would also have somewhat poor outlook due to the heights of the surrounding buildings.
21. Furthermore, the appellant's aerial photo of the site shows overshadowing of nearly all of the area which would form the plot 4 garden, and over parts of the other gardens. The shadow angle indicates that the sun is to the south. I can thus infer that the new dwellings on plots 2-4 would cast shadow on their own gardens when the sun were to the east, and the garage building would cast a deeper shadow when the sun were in the west. The garden to plot 1 would similarly be in shadow from its own boundaries and neighbouring buildings. There is no detailed sunlight assessment to prove otherwise. I therefore find it likely that large parts of these gardens would be in shadow for the majority of the day for various periods throughout the year, with plots 1 and 4 particularly badly affected.
22. I have already discussed matters of noise and odour above, but notwithstanding my conclusion on the agent of change principle, there is some potential for the plots 2-4 gardens to be subject to noise and odour from the garage site, were that to increase in future. Their constricted size would not allow for any escape from this.
23. I accept that it is not unusual to find existing properties within town centre locations without outdoor private amenity spaces, that town centre locations are often restricted, and that the proposed dwellings would be within walking distance of a public park. However, in this instance there are a range of negative factors I have identified, and it is the cumulation of these in totality which would result in poor living conditions for the future occupants.
24. I acknowledge the appellant's efforts to demonstrate other examples where the Council has permitted schemes with smaller gardens. The appellant highlights the St Nicholas Primary School site where the inclusion of some small and unconventional forms of private amenity space was accepted. However, the scheme was for 30 dwellings, plus communal open space, and specific reference was made that low boundary walls allowed for an open appearance. It was

therefore a clearly different context to that before me. The scheme permitted 20 years ago would have been under a different policy context. The Red Lion Public House conversion proposal would have very open outlook from the gardens despite their small size. Overall, I am satisfied that the examples submitted are sufficiently different so as not to be determinative.

25. I do, however, concur with the appellant that the relationship between the blank gable wall of plot 4 and the adjacent building is not uncommon for a private passageway to the rear of a dwelling. I find no harm in this regard.
26. Overall, the proposal would result in poor living conditions with reference to the provision of poor garden space. It would thus conflict with the ERLP Policy ENV1(B.4) which supports development where it achieves a high quality of design that has regard to the amenity of proposed properties.

Other Matters

Conservation Area and Listed Buildings

27. The site lies within the Driffield North Conservation Area (CA), and so I have a statutory duty under section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing its character or appearance. Section 16 of the Framework requires great weight to be given to the conservation of designated heritage assets. The ERLP Policy ENV3 takes a very similar approach, in requiring the conservation of the significance, views, setting, character, appearance, and context of heritage assets. The Framework paragraph 135 also requires developments to be sympathetic to local character and history, and to maintain a strong sense of place.
28. The significance of the Driffield North CA arises from the strong urban grain of its historic core. It has maintained a strong traditional, linear, and unpretentious character, with a centre of a larger scale than that found in most other East Riding towns. In its historic commercial core, most properties are at back of pavement-edge, giving a feeling of enclosure to Middle Street, and with smaller and more intensively developed plots. Buildings date from the late 18th century, many of which are significant and characterful.
29. The Red Lion is unlisted but holds a prominent position in the CA. Its rear area and outbuildings do not contribute to this character, appearance, or significance. The proposed dwellings would reflect the form and materials of those nearby and relate to the fabric of the CA, and would not be readily visible from public view. The proposal would conserve or enhance the character and appearance of the CA.
30. I also have a statutory duty under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to consider the impact of the proposal on the special architectural and historic interest of listed buildings and their settings. The significance of the Grade I listed Church of All Saints on Church Lane lies in its medieval origins, and its domination of the CA due to its height, presence, and importance as a historic focal point for the town, as well as its churchyard greenspace. The proposed dwellings would not be visible within any public views of the church, and the Red Lion carpark and existing structures do not positively contribute to the significance of its setting such that the change would not be detrimental to it. The Grade II Listed 22 Middle Street North also lies close to the appeal site, but would also be unaffected due to the Red Lion buildings in between.

Parking

31. The Council raised some concerns regarding cycle parking and electric vehicle charging points, but also noted that had the application be found to be acceptable then this could have potentially been addressed by further dialogue between the parties. As I am dismissing the appeal on other grounds, it is also unnecessary for me to consider this aspect further.

Benefits

32. The Framework seeks to significantly boost the supply of homes, and alongside the housing Policies in the ELRP, provides support for development on windfall sites, previously developed land, and in sustainable locations. The Council's evidence base identifies an undersupply of two bedroom dwellings in Driffield, along with a need to increase the supply of adaptable living accommodation to support an ageing population. The proposal would contribute to this in providing and three 2 bedroom houses, and a 1 bedroom bungalow. The dwellings would therefore in totality be a positive, albeit minor, contribution to the housing supply, although there is no dispute that the Council can demonstrate more than its required 5 year's housing supply. There would also be small-scale economic and social benefits associated with the construction and occupation of the dwellings.

Planning Balance and Conclusion

33. I give moderate weight to the proposal's contribution to the housing supply in this location, and minor weight to its local economic and social benefits. I give significant weight to the harm to living conditions for future occupiers with relation to the quality of the garden provision. I find this harm would not be outweighed by the benefits.
34. The proposal would conflict with to the development plan taken as a whole. With no material considerations indicating otherwise, for the reasons given above I conclude that the appeal is dismissed.

L N Hughes

INSPECTOR