



Appeal Decision

Site visit made on 18 February 2025

by **F Wilkinson BSc (Hons), MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 March 2025

Appeal Ref: APP/U2750/W/24/3353796

Store, Quarry Lane, Harrogate, North Yorkshire HG1 3HR

- 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 David Batchelor of Croft Properties (Harrogate) Ltd against the decision of North Yorkshire Council.
 - The application reference is ZC24/00368/OUT.
 - The development proposed is demolition of existing builders' storage buildings. Erection of two dormer bungalows with parking.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted in outline. The application form and the main parties' evidence identify that details of access from the public highway are sought, with appearance, landscaping, layout, and scale reserved for future consideration. The DMPO¹ defines what each of the reserved matters means. Access means the accessibility to and within the site, for vehicles, cycles and pedestrians in terms of the positioning and treatment of access and circulation routes and how these fit into the surrounding access network. There is some overlap with the definition of layout which includes the way in which routes within the development are provided.
3. It is clear from the application form that approval of access is sought. The appellant's statement highlights that the plan submitted with the application is clearly marked 'Indicative Site Layout' and was submitted simply to demonstrate that an acceptable detailed scheme, to be put forward at the reserved matters stage, is possible. The appellant identifies that at the reserved matters stage, the layout and scale could be altered, if so required, to achieve a scheme that might be preferable. On this basis I have treated the circulation routes within the site and how these fit into the surrounding access network, as shown on the indicative site layout plan, as illustrative only. This is also the case with the layout shown on this plan.
4. Refusal reason four on the Council's decision notice relates to a lack of information to demonstrate that the redevelopment of the site may be undertaken without causing potential harm to bats and/or nesting birds. A bat scoping survey was submitted with the appellant's appeal documents. This determines that the buildings on the appeal site are not being used by bats and that they are of very

¹ Town and Country Planning (Development Management Procedure) (England) Order 2015

low to negligible value to roosting bats. It concludes that demolition of these buildings would have no impact on bats and would not result in a loss or fragmentation of habitat. The Council is satisfied that this survey has addressed refusal reason four. Based on the evidence before me, I have no compelling reason to come to a different conclusion. The protection of nesting birds could be secured by a planning condition. As such, my assessment focuses on the main issues below.

Main Issues

5. The main issues are:

- the effects of the proposal on the living conditions of nearby residents and future occupants with regard to privacy, outlook, and light; and
- whether it has been adequately demonstrated that there is no demand for the employment site.

Reasons

Living Conditions

6. As noted above, the appellant's indicative site layout plan has been submitted to illustrate how the appeal site could be developed. It does not imply that this layout represents the only way that the site could be developed. Nevertheless, it is still necessary to consider whether the proposal could be acceptably accommodated on the appeal site, based on the description of the development proposed, the nature of the site, and the relationship with adjoining properties, as well as any guidance in illustrative plans.
7. Dwellings along North Lodge Avenue, located to the south of the site, back onto Quarry Lane. The rear of the dwellings at nos. 45, 47 and 49 face towards the site. These are two storeys in height, with no. 49 also having a dormer window.
8. The main parties have confirmed that the private section of Quarry Lane as shown on the location plan (PL/01/A) forms the detail of access, as otherwise the appeal site would be isolated from a public highway. In my view therefore, the appellant is not bound by the two driveways shown on the indicative site layout plan. As such, there would be some flexibility in the location and orientation of the two proposed dwellings with respect to their relationship with the properties on North Lodge Avenue.
9. The Council identifies separation distances between windows to ensure acceptable privacy for residents of these three properties on North Lodge Avenue and future occupants of the proposed dwellings. These are based on the guidance in annex D of the Council's 2005 House Extensions and Garages Design Guide. The Council highlights that the layout shown on the indicative site plan would not meet these distances. However, as noted above, this plan does not necessarily represent the only way that the scheme could be progressed.
10. Acceptable separation distances and residents' privacy would be affected by the nature of the rooms in the proposed dwellings that would face towards the properties at 45, 47 and 49 North Lodge Avenue and the orientation of the proposed dwellings. Depending on these matters, the privacy of residents of nos.

45, 47 and 49 and that of future occupiers of the proposed dwellings could be maintained.

11. There are two dwellings located close to the northern boundary of the appeal site at Aldermore and Oakmore. These both sit at a noticeably lower level and so it is their first-floor windows that are level with the appeal site and face directly towards it. The appearance of the proposed dwellings, their scale other than being dormer bungalows, and location within the appeal site are not fixed. Nonetheless, given the appeal site's relationship with these neighbouring properties, the proposed dwellings would inevitably sit at a much higher level. Due to this relationship and the quantum of development proposed, I am not satisfied that the proposal could be accommodated on the appeal site without resulting in a visually dominant and imposing form of development that would materially harm the outlook from the first-floor windows in the rear of Aldermore and Oakmore. This is notwithstanding the relatively tight grain of development in the area.
12. For the same reasons it is likely that the proposal would overshadow these rear windows, markedly reducing the amount of light reaching the accommodation.
13. Given that layout is not fixed, I appreciate that the proposed dwellings could be sited further to the south or orientated differently to that shown on the indicative site layout plan. However, given the height difference between the appeal site and these two neighbouring dwellings and their proximity to the common boundary, I am still not satisfied that the proposal could be accommodated without harming the residents' living conditions in respect of outlook and light. Furthermore, the need to maintain acceptable privacy standards for future occupiers and residents of the properties on North Lodge Avenue would likely influence site layout to an extent.
14. Pulling these points together, I recognise that matters relating to layout, scale, appearance and landscaping are reserved for future consideration. In my view, it is conceivable that a scheme could be designed so that harmful overlooking of the neighbouring properties to the south could be avoided. I therefore conclude that the proposal would be unlikely to have an unacceptable effect on the living conditions of residents of 45, 47 and 49 North Lodge Avenue or future occupiers of the proposed dwellings with regard to privacy.
15. However, there are constraints affecting the appeal site, notably the existing dwellings located close to both its north and south boundaries and its raised height in comparison to the two dwellings to the north. Given this context and based on the submitted evidence and my site visit observations, I cannot conclude that two dormer bungalows could be developed on the appeal site in a way that would not harm the living conditions of residents of Aldermore and Oakmore with regard to outlook and light. Accordingly, I find conflict with the residential amenity requirements of Policy HP4 of the 2020 adopted Harrogate District Local Plan 2014 – 2035 (the Local Plan).

Demand for the Employment Site

16. Policy EC1 of the Local Plan seeks to protect and enhance existing employment areas. The policy states that proposals for the use of employment sites for non-business, general industrial and storage and distribution (as defined by Use Class B1, B2, B8 of the Use Classes Order) uses will be resisted unless there is clear evidence provided to demonstrate that the listed criteria are met. The supporting text to the policy clarifies that it relates to '*business, general industrial, and storage*

and distribution uses, which are currently defined by Use Class B1, B2 and B8 of the Use Classes Order’.

17. The main parties disagree about whether the requirements of Policy EC1 apply to the proposal. The appellant’s view is that the current lawful use of the appeal site is a sui generis builders yard, and as such it does not fall within the use classes specified in the policy. The Council considers that the appeal site is in storage use and as such the requirements of Policy EC1 apply.
18. It is not for me within the context of an appeal under section 78 of the Town and Country Planning Act 1990 (as amended) (the Act) to determine the lawful use of the appeal site. It is open to the appellant to apply for a determination under the provisions of sections 191/192 of the Act. Nonetheless, given the requirements of Policy EC1 and the Council’s first reason for refusal, it is necessary for me to form a view about the application of the policy. My determination of this appeal does not affect the issuing of a determination pursuant to sections 191/192 of the Act.
19. The two decision notices that have been submitted by the Council for a site on North Lodge Avenue describe that site as a builders yard, then storage and offices. However, there is insufficient evidence for me to determine the relevance of this in establishing whether the appeal site is in storage use or not. The Council has also included within its appeal submission a letter² submitted with a previous application on the appeal site. This letter states that the property has been used solely for storage for over five years and that it is solely used for storage of surplus materials. The Council’s economic development team describe the appeal site as B1c light industrial premises in its consultation response.
20. The application form states that the current use of the site is a ‘builders yard – storage’. The appellant highlights the Oxford English Dictionary definition of a builders yard as being a place where building materials and supplies are stored and sold. The appellant confirms that the appeal site is used by a building company for various storage uses. At my visit I observed piles of stone, wooden pallets and what appeared to be metal fencing at the appeal site.
21. I find the appellant’s evidence on this matter to be more compelling. Taking the ordinary meaning of a builders yard, to my mind it could reasonably be concluded that a site used by a building company for the storage of materials and equipment used in building works constitutes a builders yard.
22. There is no dispute between the main parties that a builders yard is a sui generis use that falls outside the scope of Policy EC1. On this basis, I conclude that there would be no conflict with Policy EC1 of the Local Plan.
23. If I am not correct in this position and Policy EC1 applies to the proposed development, its requirements would not be satisfied given the lack of marketing of the appeal site. This would add to the objections to the scheme.

Other Matters

24. As the submitted evidence indicates that the Council cannot demonstrate a five-year supply of deliverable housing sites, footnote 8 of the National Planning Policy Framework (the Framework) is relevant. The presumption in favour of sustainable development at paragraph 11d) of the Framework is therefore engaged.

² Appendix NYC4

25. I have found that the proposal would harm the living conditions of nearby residents. This harm would be significant and long lasting. I therefore attach substantial weight to it, having regard to paragraph 135 of the Framework.
26. The Framework emphasises the importance of delivery of housing. The development would contribute to the supply of housing in an area with an acknowledged housing supply shortfall. It would make use of a somewhat untidy previously developed site within a main settlement. There would also be social and economic benefits such as time-limited construction employment and additional residents supporting local services and facilities. However, the weight that I ascribe these benefits in terms of two new homes is inevitably limited.
27. The appellant identifies that the reserved matters application would demonstrate how a 10% net gain in biodiversity would be delivered, which could be secured by a condition. This would weigh positively for the proposal.
28. The appeal site is located within a predominantly residential area with access along a narrow road. The appellant argues that the site could be used more intensively which could give rise to noise and disturbance for local residents. However, given my concerns about the effect of the proposal on the living conditions of residents of the two properties to the north, I am not persuaded that developing the appeal site for housing would result in a betterment in living conditions for nearby residents.
29. With the above in mind, the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.

Conclusion

30. While there would be some beneficial aspects of the scheme, considered overall it would cause harm which would conflict with the development plan when taken as a whole. There are no other material considerations, including the Framework, that would indicate a decision other than in accordance with the development plan.
31. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

F Wilkinson

INSPECTOR