



Appeal Decision

Site Visit made on 24 August 2021

by Sarah Housden BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th October 2021

Appeal Ref: APP/Z2505/W/21/3271583

Fairview, 22 Horace Street, Boston PE21 8PD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Ian Bunday against the decision of Boston Borough Council.
 - The application Ref B/20/0249, dated 10 July 2020, was refused by notice dated 23 December 2020.
 - The development proposed is 'demolition of a two storey detached outbuilding and a single storey detached double garage and the erection of two mews houses'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The revised National Planning Policy Framework (the Framework) was published on 20 July 2021. Paragraph 218 indicates that its policies are material considerations which should be taken into account in dealing with applications from the day of publication. The principal parties were therefore invited to comment on any implications of the revised Framework for this appeal. I have determined the appeal having regard to the comments received from the appellant and the revised Framework.
3. Planning permission was granted in 2019 for the subdivision of No 22 Horace Street to three dwellings, subject to five conditions (the 2019 permission)¹. The appellant indicates that the appeal proposal is part of a wider scheme, which would include the subdivision of No 22.
4. The 'red line' plan for this appeal partly overlaps with the red line plan for the 2019 permission and includes parking and other provisions for the three units in the event of that permission being implemented. It would have been necessary for the conditions attached to the 2019 permission to be re-visited had this appeal been allowed, but there is nothing in the evidence to suggest that this would not be achievable. The 2019 permission is therefore a material consideration to which I give significant weight in the determination of this appeal and I have considered it in so far as it is relevant to my assessment of the main issue in this case.

Main Issue

5. The main issue in this case is the effect of the proposed development on living conditions, having particular regard to:

¹ Reference B/19/0131

- the existing and future occupiers of No 22 Horace Street (No 22) with particular reference to noise and disturbance and privacy;
- the existing occupiers of Nos 1 – 4 The Laurels (Nos 1 – 4) with particular reference to outlook, noise and disturbance and privacy;
- whether the development would provide satisfactory living conditions for future occupiers of the proposed two dwellings, with particular reference to noise and disturbance and privacy.

Reasons

No 22

6. No 22 is an end of terrace dwelling located at the head of a residential cul-de-sac to the north-west of Boston town centre. To the north and east of the appeal site there are retail and commercial units accessed off Lister Way, including a tyre depot and tool retailer and its car park adjacent to the appeal site.
7. The appeal site comprises the side driveway and outdoor area to the rear and side of No 22 and contains a two storey detached annexe building and a detached corrugated metal garage. At the time of my site visit, the area also contained outdoor furniture, leisure items, a mobile caravan and a parking area.
8. The fenestration and door openings in the side wall of No 22 indicate that its principal elevation originally faced onto its side driveway rather than onto Horace Street. The ground floor door and window openings in this elevation, behind the driveway gate, are enclosed by a glazed lean-to extension. At the time of my site visit, the internal door openings were opened onto the lean-to extension.
9. Notwithstanding the urban location and commercial uses to the north and east, due to the lack of through traffic on Horace Street, levels of background noise at the time of my site visit were low. Due to the siting of the two proposed mews houses, the passage of vehicles and pedestrians from these dwellings would generate noise and disturbance in very close proximity to No 22's side lean-to which would harm the enjoyment of the dwelling and the living conditions that its occupiers could reasonably expect to enjoy.
10. Due to the position of the lean-to extension hard on the driveway, any passing pedestrians and drivers from the two new dwellings would also have direct views into No 22's side lean-to which is used in conjunction with the dwelling, resulting in a significant loss of privacy.
11. There would also be direct views from the front ground and first floor windows in the new dwellings into No 22's outdoor area which would also serve the three units if the 2019 permission is implemented. A condition could be imposed to require details of screening along the common boundary which would prevent overlooking from the ground floor windows in the new dwellings into the outdoor area. However, given the small separation distance, there would still be overlooking from the first floor bedroom windows. Furthermore, due to the proximity of any fence or screen, the outlook from the ground floor windows in the new dwellings would be restricted and oppressive.

12. In the event that the 2019 permission is implemented, there would be a separation distance of 1.6 metres to 2.4 metres between the front elevations of three units in No 22 and the driveway. The occupiers of the two proposed dwellings would generate additional pedestrian and vehicular movements which would be noticeable over and above the level associated with the use of the driveway by the occupiers of the three units. The additional vehicular and pedestrian movements would be in very close proximity to the windows serving the ground floor living areas, resulting in noise and disturbance which would be likely to be harmful to the living conditions that the future occupiers of the three units could reasonably expect.
13. Although the appellant considers that this would be similar to the layout of Horace Street, where vehicles and pedestrians pass in close proximity to the front of the dwellings, the majority of dwellings on Horace Street also have a rear aspect with access to quieter areas away from the road. If the 2019 permission is implemented, units 2 and 3 would have a single aspect onto the driveway and unit 1 would face the driveway and Horace Street. Due to their single room depth, the units as permitted would not have a quieter aspect away from the driveway and the appeal scheme would result in noise and disturbance that would be harmful to the living conditions of the occupiers.
14. Furthermore, due to the proximity of the driveway, drivers and pedestrians associated with the two new dwellings would have direct views into the ground floor windows of the three units which would not afford adequate levels of privacy, particularly as there would be no rear aspect away from the driveway.
15. Overall, I conclude that the appeal scheme would be harmful to the living conditions of the existing and future occupiers of No 22, having regard to noise and disturbance and privacy.

Nos 1 - 4

16. Nos 1 – 4 are in a terraced row accessed off Albert Street. The common boundary with the appeal site consists of a 1.8 metre high fence and vegetation on the appeal site side. The two car parking spaces proposed for the appeal dwellings would be located adjacent to the rear boundaries of Nos 3 and 4 The Laurels. The proposed site layout also includes three parking spaces in the position of the existing annexe which would serve the three dwellings in No 22 in the event of the 2019 permission being implemented.
17. No 22's driveway and vehicle parking and turning movements within its outdoor area will already generate some degree of noise and disturbance to the occupiers of Nos 1 - 4. The boundary fence would remain in situ and there would be a reasonable separation distance between the proposed five parking spaces and Nos 1 - 4. Given this, the additional noise and disturbance generated by vehicles using the parking spaces would be unlikely to cause material harm to the living conditions of the occupiers of Nos 1 – 4 over and above the existing situation.
18. The finished floor levels of the proposed dwellings would be approximately 1 metre above ground level to address flood risk, resulting in a ridge height of 8.5 metres. However, there would be adequate separation distance between Nos 2, 3 and 4 The Laurels and the side wall of the nearest dwelling so that it would not appear unduly overbearing or oppressive when viewed from the rear windows and gardens of these neighbouring dwellings.

19. The raised floor level would enable occupiers of the new dwellings to see over the boundary fence when at the top of the rear steps. However, such views would be transitory and would not cause a significant loss of privacy for the occupiers of Nos 1 – 4. Furthermore, the removal of the two storey annexe building would also result in an improvement to the outlook from the rear garden of No 4 and increased privacy due to the removal of the annexe and its existing first floor gable window. In addition, it would be likely to increase levels of daylight and sunlight to the rear garden of No 4. Overall, I conclude that the proposed development would not cause material harm to the living conditions of the occupiers of Nos 1 – 4.

Future occupiers of the proposed dwellings

20. There would be a separation distance of approximately 1.3 metres between the front of the proposed two dwellings and No 22's existing outdoor area. In the event that the 2019 permission is implemented, the outdoor area would serve the three dwellings in No 22. Irrespective of whether the outdoor area serves No 22 as a single dwelling or, in the future, three units, the ground and first floor windows of the new dwellings would be in very close proximity to it with the potential for noise from residents using the outdoor area to adversely affect the enjoyment of the new dwellings.

21. Given the close proximity of the outdoor area to the ground floor kitchen/living area windows in the new dwellings, there would also be potential for residents using the outdoor area to have close views into those windows. As such, the proposed layout would not provide future occupiers with reasonable levels of privacy within their homes. I have considered that a condition could be imposed to require details of screening along that boundary to prevent views into the ground floor windows, but due to the proximity of any fence or screen, the outlook from those windows would be restricted and oppressive.

22. The provision of outdoor space would be of benefit to the occupiers of No 22 or the three units. However, due to its layout and the position of the two new dwellings in relation to that area, the appeal scheme would fail to provide satisfactory living conditions for the occupiers of the new dwellings.

Conclusion on living conditions

23. Drawing matters together, I conclude that whilst the proposed development would not have a significant adverse effect on the living conditions of the occupiers of Nos 1 – 4, there would be material harm to the living conditions of No 22's existing and future occupiers. The scheme would also fail to provide satisfactory living conditions for future occupiers of the proposed dwellings.

24. For these reasons, the proposal would be contrary to Policies 2 and 3 of the South East Lincolnshire Local Plan (2019) (SELP) which, amongst other things, seek to ensure that proposals do not harm neighbouring land uses by reason of noise and disturbance and seek to safeguard residential amenity. Whilst the Council has referred to Policy 30 in the reasons for refusal, this policy deals with pollution rather than impact on living conditions and is not directly relevant to my assessment of the proposed development.

Other matters

25. The officer report refers to an appeal decision which I determined at Sibsey Road, Boston² as a benchmark for the assessment of the impact of noise and disturbance on existing occupiers. However, each case must be determined on its merits and I have assessed the appeal before me in accordance with the development plan and based on the specific circumstances of the appeal site, the proposed layout and the representations made.

Planning balance and conclusion

26. The proposed development would support the role of Boston as a sub-regional centre, in accordance with SELP Policy 1. It would also make efficient use of a small site and contribute to the supply of two-bedroom units for which there is an identified need. The dwellings would be in a sustainable location, within walking and cycling distance of services and facilities.

27. However, for the reasons outlined above there would be material harm to the living conditions of existing and future occupiers of No 22 and the development would fail to provide a satisfactory living environment for the occupiers of the proposed dwellings, leading to conflict with the development plan, read as a whole. There are no material considerations to justify a decision other than one in accordance with the development plan.

28. For the reasons outlined above and having had regard to all other matters raised, the appeal should be dismissed.

Sarah Housden

INSPECTOR

² Appeal reference APP/Z2505/W/20/3257037