
Appeal Decision

Site visit made on 24 October 2016

by Geoff Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 15 November 2016

Appeal Ref: APP/E2734/W/16/3155337

35A York Place, Harrogate, North Yorkshire HG1 5RH

- 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 J Ridings against the decision of Harrogate Borough Council.
 - The application Ref 6.79.13215.FUL, dated 29 February 2016, was refused by notice dated 24 May 2016.
 - The development proposed is demolition of existing 2-bed semi-detached houses and erection of proposed 3-bed detached house.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing 2-bed semi-detached houses and erection of proposed 3-bed detached house at 35A and 35B York Place, Harrogate, North Yorkshire HG1 5RH in accordance with the terms of the application, Ref 6.79.13215.FUL, dated 29 February 2016, subject to the conditions in the attached schedule.

Procedural Matter

2. The address in the heading above is taken from the application form although the Council included that of the second house on the site in their decision notice and in notifying interested persons of the application and appeal. I have used this more comprehensive address in my decision and in so doing do not consider that any parties will have been prejudiced as a result.

Main Issue

3. The main issue raised by this appeal is the effect the proposed development would have on the living conditions of occupiers of neighbouring dwellings with particular reference to any loss of privacy by way of overlooking of their gardens which may result from the south east elevation of the proposed house.

Reasons

4. The appeal site is currently occupied by two semi-detached dwellings whose long, narrow form extends along a lane which runs past 35 York Place, an end terrace house. It is surrounded by the gardens and outdoor spaces of adjoining residential properties. No 35 does not have any significant outdoor space adjacent to its rear. There is a paved outdoor space serving No 34 set between the offshoots of Nos 34 and 35 which leads to a forecourt in front of a detached garage which also provides access to rear of No 33.
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5. A hard surfaced area runs between the side elevations of that garage and the existing buildings on the appeal site. This leads to the long garden of No 34 which runs parallel to the appeal site. Whilst the areas outside the rear of No 34 are not entirely private due to the shared nature of the access, windows in adjoining houses in the terrace and a small window in the side wall of the existing building, they nevertheless have a degree of seclusion from views from other residential properties. The gardens to the rear of adjacent properties on York Place will experience some limited overlooking from neighbouring properties and from properties on East Park Road to the rear although this is mitigated to varying degrees by distance, intervening outbuildings, boundary treatments and trees.
6. The south east gable elevation of the proposed building would be entirely glazed and contained within projecting flank walls and an overhanging roof. The living accommodation on the ground floor would look out onto a new walled garden. A first floor sitting room would have views through the glazed gable elevation although set back from the windows and a second floor bedroom would also open out onto a balcony. Occupiers of the proposed house would have views of the rear of properties on York Place from the sitting room and bedroom.
7. Depending on the vantage point within the proposed building some limited overlooking of the shared access area to the rear of No 34 and the outdoor area between the offshoots would arise along with a more limited area to the rear of No 33. Such views would be interrupted in part by the proposed car port structure and garden walls as well the deep offshoots and outbuildings to the rear of existing properties. These views would, however, be over a significant distance.
8. The first floor windows in the existing pair of dwellings face the walled garden opposite. Whilst a degree of overlooking of this space would arise from the south east elevation of the proposed building the level of intrusion would be considerably reduced compared to the existing arrangement as a result of the proposal being a single dwelling, its orientation and its flank walls which would restrict sideways views to an extent.
9. Gaps between the projecting flank walls and eaves of the proposed building would be at a height which could allow those standing close to them on the balcony to look down into the adjoining gardens and therefore has the potential to be more intrusive. However these gaps could be obscured or closed to ensure no such overlooking could occur, a treatment which could reasonably be controlled by way of a condition.
10. Even allowing for the increased perception of overlooking which may arise from the extent of glazing in the gable, the separation distances between those outdoor areas which could be viewed from within the proposed house would be such that they would significantly reduce any adverse effects and would be sufficient to ensure that material harm to the occupiers of properties and their outdoor areas would be avoided.
11. Consequently the living conditions of neighbouring occupiers would not be materially harmed by way of any loss of privacy to their gardens and as such the proposal would comply with Harrogate District Local Plan, 2001 saved Policy HD20 and Harrogate District Local Development Framework Core Strategy Policy SG4 which seek to respect and protect the privacy and visual,

residential and general amenity of nearby residents and occupiers of adjacent buildings, amongst other criteria. The proposal would also avoid conflict with the National Planning Policy Framework's (the Framework) core planning principle of always seeking a good standard of amenity for all existing and future occupants of land and buildings.

Other Matters

12. As well as the specific issue identified in the Council's refusal reason neighbours have raised concerns about other effects they consider the proposal would have on their living conditions. I note that whilst the Council do not have guidance about minimum separation distances between new and existing dwellings those contained in the House Extensions & Garages Design Guide are analogous. The drawings show the proposed dwelling would be set considerably farther away than the 21m and 15m minimum distances recommended in the guidance for primary and secondary windows. Even accounting for the extra metre in separation distance for each additional metre in height difference recommended by the guidance, the second floor level and balcony would be positioned well beyond the Council's guideline distances.
13. Smaller windows in the north west end elevation would look onto a parking and garden area associated with the proposed dwelling and would not harmfully overlook any garden area of No 36a. Those windows on the first and second floors may look into a small area of the end of No 34's garden and side aspect of No 36a but this would be of a very limited angle due to the narrow width of the windows. Furthermore a mature tree in No 34's garden would interrupt views, even when not in leaf, further reducing the likelihood of any harmful effects arising from windows in the north west elevation.
14. A tall window in the north east side elevation would serve a stairwell which due to its narrow aperture and use of internal space would be unlikely to give rise to harmful overlooking beyond the outbuilding to the front of No 36a. Although the ground floor office window would not have the outbuilding opposite it, this too would be narrow and only have a limited view across the forecourt of No 36a.
15. The height and situation of the existing buildings on the site would already have an effect which encloses the spaces to the rear of No 34 which the appellant's supporting information shows would lead to overshadowing at certain times of the day and year. The shorter but taller proposed building would give rise to a similar effect but on the more expansive and private parts of No 34's garden. This would change the pattern of shadowing of the garden likely to occur during part of the morning in summer months but other areas of garden would remain unaffected or with much reduced enclosure. Therefore whilst the effects would be noticeable, they would be limited.
16. Overall the effects of the proposed dwelling would not lead to the occupiers of neighbouring properties being affected to such an extent as to lead to unacceptable harm to their living conditions nor bring the proposal into conflict with the aforementioned development plan and Framework policies in this respect.
17. Whilst I can appreciate the concern the occupiers of No 34 have with regard the proposal's potential effect on the lilac tree in their garden, there is little reason to disagree with the Council's Arboricultural Section's conclusion that

the tree would not merit protection in terms of the area's character and appearance.

18. The appellant's Bat Scoping Survey Report did not include a bat emergence survey and whilst finding no evidence of bats in the existing building there would remain a reasonable likelihood of them being present. However, anticipating this, the report put forward mitigation in the form of either incorporating bat access tiles into the new roof or a purpose-made bat roost unit into the structure. The Council's Principal Ecologist concluded that any bat roosts in the buildings would be readily capable of being mitigated for and that it would be acceptable to require a bat emergence survey as a planning condition. I agree that, exceptionally, this approach would mitigate against any potential harm to protected species.
19. The site is located within the Harrogate Conservation Area and although the proposal's effect on this heritage asset is not a matter of dispute between the main parties I am required to address this matter. The Conservation Area covers an extensive area including the historic and attractive townscapes of the town centre and surrounding residential areas and open spaces, much of which display the rich architectural heritage associated with the town's C19 expansion and from which it derives much of its character and hence significance.
20. Whilst the form and linear nature of the existing buildings have a neutral effect their appearance and fenestration detract from the area's character and appearance. Their replacement with a high quality contemporary building and outbuilding with associated enclosures would maintain the predominant linear character of plot layouts between York Place and East Park Road and would preserve the Conservation Area's character and appearance. Having paid special attention to the desirability of preserving or enhancing this character and appearance I consider that the significance of the heritage asset would be unharmed by the proposal.

Conditions

21. It is necessary to specify the approved plans as this provides certainty. For the reasons given above it is necessary to require a bat emergence survey and mitigation measure to avoid harm to protected species should they be present. In order to ensure that the Beech tree in the garden of No 34 is not harmed it is necessary to approve a root protection area and ensure that construction works do not encroach on it. It is necessary to require the gaps at the top of the flank walls to be treated to avoid any overlooking to protect neighbours' living conditions. Should any contamination be found during construction it is necessary to have a mechanism to ensure it is appropriately dealt with in the interests of health.
22. It is necessary to approve a sample of the proposed render in order to preserve the character and appearance of the area. In the interests of highway safety and to avoid inconvenience to neighbouring occupiers the parking spaces are required to be provided and retained for that purpose. Exceptionally and for the avoidance of doubt, given its party boundary situation no additional windows should be inserted in the south west elevation to protect neighbours' living conditions.

Conclusion

23. For the above reasons, and having had regard to all other matters raised, the proposal would not unacceptably harm neighbours' living conditions and would comply with the development plan, guidance and the Framework. The appeal is therefore allowed.

Geoff Underwood

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved drawings numbered: 1410/02 existing ground, 1st & roof plans; 1410/03 existing elevations; 1410/04 proposed ground, 1st, 2nd floor plans; 1410/05 proposed elevations; 1410/06 existing and proposed site plans; 1410/07 site plan & section context, and; 1410/08 site plan & section specific.
- 3) No work on site, including any demolition or stripping out of the existing buildings, shall commence until a bat emergence survey has been undertaken at the appropriate time of year (May-September inclusively) and the results, together with appropriate recommendations for mitigation and enhancement, including demolition and construction timing and phasing, have been submitted to and approved in writing by the local planning authority. Works and mitigation measures shall subsequently be implemented strictly in accordance with the approved details and timescales.
- 4)
 - a) No site clearance, preparatory work, demolition, development or storage of materials shall take place until specifications for a root protection area (RPA) and a tree protection scheme have been submitted to and approved in writing by the local planning authority. Subsequently the fencing in the approved scheme shall be implemented in line with the requirements of British Standard BS 5837: 2012 Trees in Relation to Construction – Recommendations (or in an equivalent British Standard if replaced), around the trees or shrubs or planting to be retained, as indicated on the approved plan and for the entire area as specified in accordance with BS 5837:2012. Such fences shall be retained until all development the subject of this permission is completed.
 - b) No operations shall commence on site in connection with the development hereby approved (including any demolition work, soil moving, temporary access construction and/or widening or any operations involving the use of motorised vehicles or construction machinery) until the RPA works required by the approved tree protection scheme are in place.
 - c) No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as

being fenced off or otherwise protected in the approved RPA and tree protection scheme. The level of the land within the fenced areas shall not be altered without the prior written consent of the local planning authority.

- 5) Notwithstanding the approved drawings, the development hereby permitted shall not be first occupied until the gaps between the flank elevations and eaves have been treated to ensure that no overlooking from the balcony or second floor window in the south east end elevation can ensue through those gaps, the details of which shall have been submitted to and approved in writing by the local planning authority beforehand. Thereafter the treatment shall be retained for lifetime of the development.
- 6) No construction above foundation level shall take place until a sample of the type, colour and finish of the render to the walls of the development hereby permitted have been submitted to and approved in writing the local planning authority. Once approved the development shall be carried out in accordance with the approved samples.
- 7) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out shall be submitted to and approved in writing by the local planning authority before the development is first occupied.
- 8) The car parking spaces shown on the approved drawings shall be made available for use prior to the first occupation of the development hereby permitted and thereafter kept available at all times for the parking of motor vehicles by the occupants of the dwelling and their visitors and for no other purpose.
- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows, dormer windows or rooflights other than those expressly authorised by this permission shall be constructed on the south west, side elevation or roof slope.