
Appeal Decision

Site visit made on 20 December 2016

by V Lucas-Gosnold LLB MCD MRTPI

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

Decision date: 5th January 2017

Appeal Ref: APP/M2372/D/16/3155737
322 Preston New Road, Blackburn, BB2 7AQ

- 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 Mrs Farhat Yasmin Hussain against the decision of Blackburn with Darwen Borough Council.
 - The application Ref 10/16/0501, dated 10 May 2016, was refused by notice dated 9 June 2016.
 - The development is "retention of rear extension without roof access".
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The appeal development comprises a rear extension with a paved patio area above it which forms part of a larger roof terrace. The development has already been carried out, with the exception of the proposal to erect a 2m high fence across the rear roof terrace facing towards No. 324 Preston New Road.
 3. The planning history for the appeal dwelling has been brought to my attention, including that permission was originally granted for the construction of the house in 2003 and at that time permitted development rights were removed via a condition due to the restricted nature of the plot size. In April 2015, a retrospective application for an extension to an existing raised garden/balcony area to the rear, the extension of a store room and the insertion of a window to a utility room was refused by the Council.
 4. A subsequent appeal was dismissed and an associated enforcement notice was upheld which required the removal of the appeal development within a two month period. The previous Inspector concluded that the location, scale and massing of the extension is disproportionate to the host dwelling causing harm to its character and appearance. The Inspector also concluded that the extension causes severe harm to the living conditions of the occupiers of adjoining properties by reason of overlooking and loss of privacy within their rear gardens.
 5. The differences between this appeal before me and the previous unsuccessful appeal is that the appellant now seeks to reduce the size of the extension and to prevent access to the roof for use as a garden area. The appellant's grounds of appeal state that in order to reduce the size of the extension, it will be moved away from No. 324 and in line with the side wall of the main dwelling.
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6. It is also proposed to erect a screen along the roof terrace. The previous Inspector specifically considered whether the erection of a wall or fence about 1.5-1.8m high would obviate any adverse overlooking effects from the roof terrace. He concluded that such a screen would compound an unsatisfactory arrangement in terms of the effect on the main building and would, moreover, not allay the perception of overlooking caused by the raised platform. I understand that the proposal to prevent access to the roof terrace above the extension was not put before the previous Inspector.

Main Issues

7. I shall now go on to consider the main issues that I have identified, which are:
 - The effect of the development on the character and appearance of the area; and
 - The effect of the development on the living conditions of neighbouring occupants, with particular regard to privacy.

Reasons

Character and appearance

8. No. 322 is a large detached dwelling set back from the highway behind a driveway. It is in a line of detached dwellings, the majority of which are situated in large plots with gaps in between the dwellings allowing views of gardens, trees and open sky in between them. One of the exceptions to this pattern of development is the appeal dwelling itself which has been constructed close to both side boundaries. Notwithstanding this, the character of the area close to the appeal site is spacious and this makes a positive contribution to the visual appearance of the streetscene.
9. The rear extension projects by approximately 4.6m from the rear elevation of No. 322. Whilst that may be judged to be a modest distance when considered in isolation, given the confines of the plot size, it projects right up to the boundary wall along the rear of the appeal site. This gives the plot a very cramped feel, with little space about the building to the rear other than the roof terrace that has been created. As a consequence, the rear extension/roof terrace is seen as disproportionate in scale thereby causing harm to the character and appearance of the appeal dwelling. Whilst the rear of the dwelling may not be visible from public viewpoints along the highway, the pattern of development within an area is created not just by buildings but also the spaces in between them. In this case, the appeal development would add to the lack of space about No. 322 and would be harmful to the spacious character of the wider area as a consequence.
10. I note the reference to re-instating the gap between No. 324 and 322 by bringing the extension in line with the side wall of the main dwelling. However, the previous Inspector concluded that the removal of this separation gap did not result in any impact on the streetscene due to the distance of the extension from the highway. Based on the observations I was able to make during the site visit, I am in agreement with the previous Inspector's assessment.
11. Accordingly, I conclude on this main issue that the development is harmful to the character and appearance of the appeal dwelling itself and the surrounding area. The development therefore conflicts with Policy 11 of the Local Plan Part

2, Site Allocations and Development Management Policies (Adopted 2015) (SADMP) which, among other things, seek to ensure that all new development presents a good standard of design and makes a positive contribution to the local area, taking account of building shapes, plot and block sizes.

Living conditions

12. During the site visit, I was able to observe that from the roof terrace at the rear of No. 322 one is able to see directly into the rear gardens of neighbouring dwellings, in particular No. 324. The views are direct, unimpeded and experienced at close quarters. I am therefore in agreement with the conclusion of the previous Inspector that the current arrangement causes severe harm to the living conditions of the occupiers of adjoining properties by reason of direct overlooking and loss of privacy within their rear gardens.
13. In this appeal, this issue therefore turns on whether a condition requiring the erection of a screen and preventing access to the roof terrace above the extension would overcome this harm. The screens would in effect divide the terrace above the extension from the remaining area which would continue to be used as a roof terrace. Whilst I accept that the erection of screen would prevent direct views from the terrace above the extension, it is proposed to insert a door in the screen for maintenance purposes.
14. The appellant has not specifically defined what these maintenance activities may include. The terrace above the extension has been paved with stones and there will therefore be an ongoing maintenance requirement to keep these clean and the area well-drained of water, for example during periods of heavy rainfall where water may collect on the flat surface which also forms the roof of the extension underneath. I also observed there are several mature trees in close proximity to the terrace, including one right next to it which had shed an extensive amount of fallen leaves onto the terrace itself and the flat roof of the neighbouring garage. It would be necessary to sweep up and remove these on a reasonably regular basis during the autumn and winter months in order to maintain the roof of the extension. Access to this part of the roof terrace would also be likely to be required to maintain the upper part of the main dwelling as there would be limited opportunities to access this part of the dwelling from other locations due to the confines of the site.
15. It seems to me, therefore, that the requirement to use the flat roof for maintenance purposes will be likely to be ongoing throughout the year and on a reasonably regular basis. At such times, users of the roof terrace would be able to observe the full extent of the rear garden of No. 324 and there would be limited opportunities for the occupant of that property to relax or enjoy their garden with a degree of privacy that they might otherwise reasonably expect. If the proposal were to succeed, the appellant could access the roof terrace for maintenance purposes at any time and this would also lead to a harmful perception of overlooking to occur as the occupant of No. 324 would not be able to be certain as to when they may be overlooked but would be aware that this would be an ongoing and realistic possibility. For these reasons, I conclude that proposed screen would not overcome the harm that has been identified and the appeal development is therefore harmful to the living conditions of the occupant at No. 324, with particular regard to privacy.
16. The wall along the shared boundary between No. 322 and No. 49 Beardwood Brow would be a permanent feature and would physically separate the terrace

from the garden area of No. 49. There would be limited overlooking opportunities to occur, even when the roof terrace was being used for maintenance purposes. I therefore consider the effect of the development on the living conditions of the occupants of No. 49, with particular regard to privacy, would be acceptable.

17. Accordingly, I conclude on this issue that the development is harmful to the living conditions of the occupant of No. 324, with particular regard to privacy. The development therefore conflicts with Policy 8 of the SADMP which, among other things, seeks to ensure that development secures a satisfactory level of amenity for surrounding uses, with reference to overlooking, and the relationship between buildings.

Other Matters

18. I note the appellant's comments regarding the reasoning in the previous appeal decision. However, that is not a relevant planning consideration to the appeal before me.
19. The previous Inspector also dealt with the issue of what may have existed prior to the construction of this development, specifically a timber roof terrace with open balustrades. He concluded that the appellant had chosen to demolish the previous structure and that, in accordance with well-established case law, once he had done so he needed planning permission to re-erect it or any other building. On the basis of the evidence before me, I see no reason to take a different view to the previous Inspector.

Conclusion

20. For the reasons given above, I conclude that the appeal should be dismissed.

V Lucas-Gosnold

INSPECTOR