

Appeal Decisions

Site visit made on 12 January 2017

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

Decision date: 1 February 2017

Appeal Ref: APP/N4720/W/16/3150093

Ling Beeches, Ling Lane, Scarcroft, Leeds LS14 3HX

- 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 T Khalid against the decision of Leeds City Council.
 - The application Ref 15/06738/FU, dated 5 November 2015, was refused by notice dated 12 April 2016.
 - The development proposed is double garage, gym, snooker and cinema room.
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Appeal Ref: APP/N4720/C/16/3150538

Ling Beeches, Ling Lane, Scarcroft, Leeds LS14 3HX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Khalid Mahmood Zaman against an enforcement notice issued by Leeds City Council.
 - The enforcement notice was issued on 10 May 2016.
 - The breach of planning control as alleged in the notice is the erection of a detached two storey building with ancillary accommodation above located within the domestic garden land of a dwelling house.
 - The requirements of the notice are Step 1: Demolish entirely the unauthorised building including its foundations, back fill the excavations to form the foundation trenches to the surrounding original ground level and remove from the land all the surplus materials used in the construction of the building, and Step 2: (i) Break up any remaining impermeable hard surface over the area disturbed by compliance with Step 1 above; (ii) Spread a level depth of clean topsoil over that area and allow to settle for 2 weeks; and (iii) Seed the topsoil with lawn grass seed mix according to suppliers recommendations and water as necessary until established.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decisions

Appeal Ref: APP/N4720/W/16/3150093

1. The appeal is allowed and planning permission is granted for double garage, gym, snooker and cinema room at Ling Beeches, Ling Lane, Scarcroft, Leeds in accordance with the terms of the application, Ref 15/06738/FU dated 5 November 2015, subject to the following condition:

1. The development hereby permitted shall be completed in accordance with a plan titled 'Proposed Plans and Elevations', dated 1 November 2015 and revised in February 2016.
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2. The planning appeal has succeeded and planning permission has been granted for the building that is the subject of the enforcement notice. The ground (f) and (g) enforcement appeals do not therefore need to be considered and the enforcement notice is quashed.

Reasons

3. The main issue in the planning appeal is the effect of the building on; first, the amenities of neighbouring residents, particularly those of 5 The Glade; and second, the character and visual amenity of the area.

The first issue – residential amenity

4. Ling Beeches is a dwelling set in a large plot. The appeal building, which has not been completed, is located in the north-east corner of the plot and to the north-east of the dwelling. To the east of the building is 5 The Glade, a two-storey dwelling with west facing windows and a small rear garden. The appeal building has a roof and a first floor and includes two east facing window openings. The appeal building is set higher up than the nearby dwelling and there would be views, despite boundary vegetation and trees, from the two first floor windows of the rear of the house, at a distance of about 20 metres, and into the rear garden.

5. The Appellant has suggested that the first floor windows could be opaque glazed but this would not remove the perception that overlooking is occurring. This factor notwithstanding a drawing submitted before the application was determined indicates that the two east facing first floor windows would be blocked up, and this could be achieved without compromising the intended use of the first floor of the building, and by imposition of a suitable condition on a planning permission that would require the building to be completed in accordance with the drawing. This would alleviate any concerns regarding overlooking of the neighbouring residential property from the first floor windows. Activity around the appeal building, given the boundary vegetation, would not compromise the amenities of neighbouring residents through overlooking or loss of privacy.

6. A significant feature of the residential plot is the many mature trees within it that are the subject of a blanket Tree Preservation Order (TPO). The trees are significantly higher than the appeal building and cast shade over the neighbouring residential properties in afternoon hours when the sun is setting in the west. The appeal building is also shaded by the trees and does not cast any shadow outside those cast by the trees. The appeal building does not therefore result in any loss of sunlight or daylight at the residential properties to the east.

7. The appeal building, if it were to be completed and brought into use, and given the imposition of a condition that would ensure the blocking up of the two first floor east facing window openings, would not adversely affect the amenities of neighbouring residents. The building does not therefore conflict with policy P10 of the Council's Core Strategy (CS) or with saved policies GP5 and BD5 of the Leeds Unitary Development Plan (UDP).

The second issue – the character and visual amenity of the area

8. In support of their case the Council has referred to several court judgements. These judgements all relate to applications for lawful development certificates for ancillary residential buildings that could be constructed under

permitted development rights. In this case, even though the appeal building may fall within these rights, a planning application has been submitted for the retention of the building and this must be judged on its merits.

9. The appeal building is similar in size and bulk to the dwelling but given the size of the plot there is no competition between the two buildings for prominence, and the size of the appeal building is not inappropriate. The building differs in design and form to the dwelling but there is nothing particularly offensive about its design to merit refusal of the appeal. The three dormers on the front of the building are symmetrically positioned, serve to reduce the bulk of the two storey building, and are not dominant or prominent. The functional design of the building is appropriate for its purpose ancillary to the residential use of the dwelling.

10. The works shown on the drawing referred to above include the insertion of glazed panels in two ground floor openings in the west gable wall of the building. This will remove the need to create a ramped drive to this elevation of the building, and a driveway to garage door openings in the front and east gable walls of the building will require only minor reduction of ground levels. The most significant feature of this case is the trees that are on the plot. These and ground vegetation screen the building is views from Ling Lane and there are only glimpses of the building from other directions, such as from the dwellings to the east.

11. The appeal building, taking all the aforementioned factors into account, does not adversely affect the character or visual amenity of the area. The building does not therefore conflict with CS policy P10 or with saved UDP policies GP5 and BD6.

Conditions

12. The Council has suggested eleven conditions "...subject to a S106 Agreement being agreed and signed". Conditions are not subject to a S106 Agreement so it is not clear what the Council is referring to. Furthermore, the suggested conditions are unnecessary, such as a condition imposing a time limit on implementation of the development, and generally unclear and imprecise, such as a condition that simply requires "Supervision of the works by an Arboriculturist". With regard to suggested condition 5 there are no concerns regarding overlooking from ground floor workshop windows and with regard to suggested condition 10 the Council could take enforcement action if the building is used as a separate dwelling.

13. The only condition that is necessary and which satisfies the tests set out in the National Planning Practice Guidance is the condition that has been imposed, for the reasons given in consideration of the main issues above.

Conclusion

14. The appeal building, given the imposition of a condition requiring it to be completed in accordance with a drawing, does not cause any harm to residential amenity or to the character and visual amenity of the area. The planning appeal has thus been allowed and planning permission has been granted for double garage, gym, snooker and cinema room at Ling Beeches, Ling Lane, Scarcroft, Leeds. Consequently, the enforcement notice has been quashed.

John Braithwaite

Inspector