
Appeal Decision

Site visit made on 10 January 2017

by David Cross BA (Hons), PGDip, MRTPI

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

Decision date: 3 February 2017

Appeal Ref: APP/E2734/W/16/3160457
42 Duchy Road, Harrogate HG1 2ER

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mrs McCabe against the decision of Harrogate Borough Council.
 - The application Ref 6.79.13287.FUL, dated 22 June 2016, was approved on 18 August 2016 and planning permission was granted subject to conditions.
 - The development permitted is erection of rear extension and balcony and conversion of basement to form additional living accommodation.
 - The condition in dispute is No 4 which states that: The ground floor side windows and door of the rear extension hereby permitted shall be obscure glazed to Level 3 or higher of the Pilkington scale of privacy or equivalent and that level of obscure glazing shall be maintained at all times in perpetuity.
 - The reason given for the conditions is: In the interests of residential amenity.
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Decision

1. The appeal is allowed and the planning permission Ref 6.79.13287.FUL for erection of rear extension and balcony and conversion of basement to form additional living accommodation at 42 Duchy Road, Harrogate HG1 2ER granted on 18 August 2016 by Harrogate Borough Council, is varied by deleting condition 4.

Main Issue

2. The main issue is whether the condition is reasonable or necessary in the interests of the living conditions of the residents of 42 and 44 Duchy Road with particular reference to privacy.

Reasons

3. The appeal site consists of a substantial terraced dwelling. There is an offshoot to the rear of the dwelling which provides store rooms at basement level with a kitchen above. The side of this offshoot faces onto an offshoot to the rear of the neighbouring property of 44 Duchy Road. Due to the topography of the site, the ground floors of both properties are elevated to the rear, so that the side elevations of the offshoots face onto each other over the boundary fence.
 4. There is an existing lean-to extension on the side of the host offshoot which is used as a kitchen. This lean-to contains a large side window which is not obscure glazed and which faces onto the side of the off-shoot of No 44, which contains a door and a small window which also do not have obscure glazing.
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5. The proposal consists of replacing the lean-to with an extension that would complement the existing off-shoot and which would contain two smaller windows and a door on the side elevation. The proposal would maintain the separation distance between the windows of Nos 42 and 44.
6. The submitted plans indicate that the kitchen in the rear offshoot would be replaced by a dining area. The Council state that this will result in the windows to the side being classed as 'principle windows' (or Main Windows) in accordance with the House Extensions and Garages Design Guide Supplementary Planning Document 2005 (SPD). The Council also state that the separation distance between the windows on the offshoots would be 5.7m which would result in overlooking of the neighbouring property.
7. However, I saw on my site visit that the off shoot is part of a room which consists of an open-plan kitchen/dining area and that the proposal will simply facilitate a reconfiguration of this existing room. The plans also show that there is an existing dining room in the host property which would be unaffected by the proposal. In my view, the proposal would not therefore fundamentally alter the nature of activity within the room to the rear.
8. Furthermore, the windows in the side of the proposed extension would be significantly smaller than the existing side window they would replace, which would reduce the degree of overlooking between the properties. It is unclear from the submitted plans as to whether the side door would be glazed. However, even if the door did include glazing it would retain the same separation distance from No 44 as the existing side window and would not unduly increase potential overlooking compared to the existing situation.
9. The proposal would also change the main outlook from the offshoot compared to the existing arrangement, as the side windows and door would be secondary to the patio doors proposed to the rear. This change in the orientation of the main outlook from the offshoot would further ameliorate any overlooking or loss of privacy arising from the proposal.
10. The appellant has referred to a tree located on the site boundary which she states will provide some screening. However, I saw on my site visit that due to the location of the tree it would provide minimal screening between the windows of the properties. The appellant has also offered to install blinds or shutters, although these would not fall within the remit of the planning permission. Notwithstanding these matters, I consider that the proposal would not lead to an undue loss of privacy to the neighbouring property for the reasons stated above.
11. Taking all these points into account I do not consider, on balance, that the potential loss of privacy is sufficient to warrant the condition. I conclude that its removal would not lead to unacceptable living conditions as regards the privacy of occupiers of the host and neighbouring properties and would therefore not conflict with Policies HD20 and H15 of the Harrogate District Local Plan 2001 and Policy SG4(2) of the Harrogate District Core Strategy 2009. The proposal would also not conflict with the National Planning Policy Framework in seeking a good standard of amenity for all existing and future occupants of buildings. Whilst the proposal would not comply with the recommended separation distances in the SPD, I consider it would not conflict with the aims of the SPD in ensuring privacy. I note that the appeal site lies within the Harrogate Conservation Area but there is no suggestion from any party that it

would do other than preserve the character and appearance of the area, which is also my view.

12. For the reasons given above I conclude that the appeal should succeed. I will vary the planning permission by deleting the disputed condition.

David Cross

INSPECTOR