
Appeal Decision

Site visit made on 21 March 2017

by Andrew McCormack BSc (Hons) MRTPI

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

Decision date: 7 April 2017

Appeal Ref: APP/N4720/D/16/3165622

24 Chandos Avenue, Gledhow, Leeds LS8 1QU

- 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 John Anderson against the decision of Leeds City Council.
 - The application Ref 16/04619/FU, dated 20 July 2017, was refused by notice dated 26 September 2016.
 - The development proposed is erection of two-storey rear extension and side porch.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of two-storey rear extension and side porch in accordance with the terms of the application Ref: 16/04619/FU, dated 20 July 2016, and subject to the conditions set out in the schedule attached to this decision letter.

Main Issue

2. The main issue is the effect of the proposed development on the living conditions of neighbouring occupiers at 22 Chandos Avenue (No 22), with regard to outlook and sunlight.

Reasons

3. The appeal site is a semi-detached dwelling with a gable-fronted design set over three storeys. The property is of brick construction and is rendered at first floor level and above. Properties in the area including the appeal site, have long gardens to the rear. Some nearby properties have extended to the rear in a similar way to that proposed in this appeal.
 4. Policy GP5 of the Leeds Unitary Development Plan Review 2006 (UDP) states that development proposals should resolve detailed planning considerations and avoid problems of loss of amenity amongst other things. Policy P10 of the Leeds Core Strategy 2014 (CS) sets out the key principles for development proposals which include the protection and enhancement of residential amenity and satisfactory sunlight. These principles are supported by Policy HDG2 of the Householder Design Guide Supplementary Planning Document (SPD) which states that proposals should protect the amenity of neighbours and that proposals which harm existing amenity through excessive overshadowing and over-dominance will be strongly resisted.
 5. The Council raises concerns regarding the extent of the proposal at first floor level in terms of limiting the outlook from the neighbouring property and also appearing overly dominant and overbearing to the occupiers of No 22. The
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extension will project significantly beyond and adjacent to the neighbouring dwelling at No 22. This will extend beyond the 45 degree lines of the first floor rear window of No 22 which, I am led to understand, is in use as a study. As a result, the Council argue that the proposal would have an adverse effect on the outlook from that window. Furthermore, the Council has sought to reduce the depth of the proposal and set it back from the boundary to provide some relief to the occupiers of No 22.

6. Whilst I acknowledge that the proposal would extend some distance beyond the original rear elevations of both the appeal property and that of No 22, I note that there is a large Scots Pine tree to the rear of the appeal property. The tree is situated approximately 10 metres from the original rear elevations of Nos 22 and 24. As a result, the canopy of the tree extends across a wide area which screens a significant amount of long distance views from the windows in the rear elevations of those properties. Therefore, I find it likely that much of the existing outlook from the first floor rear window of No 22, whilst verdant and green, is somewhat limited by the screening effect of the tree.
7. I note that there are several developments nearby which comprise similar extensions to the proposal. The planning history relating to these schemes would appear to be complex and varied. Furthermore, I do not have all of the details of each scheme before me. Notwithstanding this, whilst I must determine the proposal before me on its own merits and in its own circumstances, I have had due regard to these other developments in reaching my decision. At my visit, I saw that the rear extension at No 28 Chandos Avenue (No 28) was similar to that which is proposed. Taking account of the impact of that scheme on its neighbouring property, I find that the extension at No 28 would appear to have no substantial effect on the outlook from the first floor rear window of No 26.
8. From all I have seen and read, I find that the proposed development, whilst it would exceed the depth stipulated in the SPD, would have no significant adverse effect on the outlook of neighbouring occupiers from the first floor rear window of No 22. Furthermore, I find that the proposal would meet the SPD requirements relating to proposed extensions which allow for the retention of significant usable private garden space and which do not unreasonably dominate or result in a significant loss of outlook from main windows and garden areas of neighbouring dwellings.
9. I now turn to the matter of sunlight and overshadowing. I have seen little substantive evidence to indicate that the proposal would have any material impact on the amount of sunlight reaching the first floor rear window of No 22. I note that the comments made by the neighbouring occupier at No 22 relate to more technical and engineering matters rather than the effect of the proposal on living conditions. Furthermore, I note that there is no objection from the neighbour on the grounds of the impact on living conditions.
10. From what I have seen, I note that the rear elevations of the appeal property and adjacent properties face northwards. As a result, I find it to be likely that the rear elevation of No 22 would only have limited direct sunlight and this would only occur during the summer months. Furthermore, the presence of the tree at the rear of the appeal property and the extent of its canopy is likely to have some impact on the existing levels of sunlight reaching the rear window and rear elevation of No 22.

11. Therefore, in the absence of any substantive evidence to the contrary and having regard to the above, I find the amount of sunlight currently experienced on the rear elevation of No 22 to be limited. I appreciate that the proposal would extend to a distance of more than 4 metres from the main rear elevation of the appeal property at first floor level. However, due to the orientation of the rear elevations and with no detailed assessment of the impact on sunlight, I find that there would be only limited overshadowing or loss of sunlight affecting the occupiers of No 22. As such, I find that this would not have a be a significant impact on living conditions.

Other considerations

12. The Council argues that a number of the nearby developments were approved before the Council adopted the SPD and were therefore determined within a different planning policy context. I appreciate the Council's point. However, although the proposal before me deviates from the SPD guidance, the other schemes referred to which had planning permission would primarily have been assessed against Policy GP5 of the UDP which was adopted in 2001. Therefore, with the exception of the adoption of the SPD, I find the policy context against which this appeal proposal was assessed to be broadly the same as the policy context in place when the other schemes were permitted.
13. The comments of the neighbouring occupier at No 22 predominantly relate to engineering and building matters of the proposed development rather than to issues of outlook and overshadowing. As such, they do not relate to the main issue of dispute. Whilst I have had due regard to the matters raised, I give only limited weight to them in my determination of the appeal. Furthermore, matters relating to the Party Wall Act and legal assurances sought regarding the proposed work not having an adverse impact on No 22 are not matters for this appeal and should be resolved between the two parties.
14. I note the proximity of the tree in the garden of No 22 to the proposed development, which is the 'pod' element of the scheme in particular. The Council indicates that the proposed 'pod' should have no material impact on the health of the tree and that the open 'pod' would be a light weight design with little foundational support required close to the tree's root protection area. Notwithstanding this, as the proposal crosses the canopy line of the tree, I find a non-mechanical dig requirement would be necessary in order to fully protect the tree. I note that the appellant is willing to undertake such works. Therefore, I am satisfied that a condition to ensure that such measures are undertaken is necessary and reasonable to ensure the protection of the tree.
15. Overall, I find that, the proposal would create a sizeable extension. Whilst the extension would be adjacent to the site boundary and dwelling of No 22, I find that there would be no significant adverse effect on the living conditions of neighbouring occupiers in terms of overshadowing or creating an undue sense of enclosure. Furthermore, I note that the scheme would provide additional accommodation to the appeal property. This would enable the appellant to continue to run their business and remain in their current home. Having considered similar nearby developments to which I have been referred, it is apparent to me that such extensions have not only become a common characteristic of the area but that such proposals have no significant adverse effect on neighbours in terms of outlook and sunlight. Therefore, on balance, I find that the benefits of the proposal outweigh the harm identified.

16. Consequently, I conclude that whilst the proposed development would not fully accord with the guidance set out in the SPD, it would have no significant or material harmful effect on the living conditions of the neighbouring occupiers at No 22 with regard to outlook and sunlight. Therefore, it would comply with Policy GP5 of the UDP, Policy P10 of the CS and the Framework. Amongst other matters, these policies and guidance seek to ensure that development has no significant adverse impact on the living conditions of neighbouring occupiers, including its effect on outlook and sunlight.

Conditions

17. I have had regard to the planning conditions that have been suggested by the Council. Where necessary, and in the interests of conciseness and enforceability, I have altered the suggested conditions to better reflect the relevant parts of the Planning Practice Guidance (PPG).
18. In addition to the standard implementation condition (1), I have imposed conditions specifying the approved plans (2) in order to provide certainty and detailing external surface materials (3) in the interests of character and appearance. A condition relating to the construction methodology of the 'pod' element of the scheme (4) is necessary and reasonable for reasons of character and appearance. In addition, I have imposed a condition removing permitted development rights (5) relating to further windows in the interests of the living conditions of neighbouring occupiers.

Conclusion

19. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be allowed.

Andrew McCormack

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 following approved plans: Drawing No: PL01A – 'Location and Site Plans'; Drawing No: PL02 – 'Existing Floor Plans'; Drawing No: PL03 – 'Existing Front and Rear Elevations'; Drawing No: PL04A – 'Existing Side Elevation'; Drawing No: PL05 – 'Proposed Floor Plans'; Drawing No: PL06B – 'Proposed Elevations' and Drawing No: PL07B – 'Proposed Side Elevation', all dated May 2016.
- 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.
- 4) The development hereby permitted shall not commence until details of the non-mechanical digging methodology relating to the construction of the 'pod' element of the scheme and protection of the nearby Scots Pine tree have been submitted to, and approved in writing by, the local planning authority. Thereafter, the development shall be undertaken in accordance with the approved details.
- 5) 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, other than those expressly authorised by this permission, shall be constructed on the east or west elevation without planning permission being obtained from the local planning authority.

END OF SCHEDULE