

Appeal Decision

Site visit made on 14 June 2017

by Alison Roland BSc DipTP MRTPI

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

Decision date: 28 June 2017

Appeal Ref: APP/N4720/D/17/3174262
2 Green Square, Kippax, Leeds, LS25 7LX.

- 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 Paul Spivey against the decision of Leeds City Council.
 - The application Ref: 16/07720/FU, dated 9 December 2016 was refused by notice dated 3 February 2017.
 - The development proposed is ground floor and two storey rear extension.
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Procedural Matter

1. The Decision Notice refers to the impact of the proposal on No 2 Green Square, whereas it is apparent from the Council's case that they intended to refer to the adjoining dwelling No 3 Green Square. As the appellant addressed both eventualities in the appeal submissions, I am satisfied I can determine the appeal based on the first reason for refusal relating to No 3 without prejudice to any party.

Decision

2. The appeal is dismissed.

Main Issues

3. The main issues in this appeal are the implications of the proposal for (1) the living conditions of occupants of No 3 Green Square with regard to the potential for over dominance, overshadowing and loss of outlook and (2) the implications for trees on the land adjoining the appeal site to the North East.

Reasons

4. The Council's concern in respect of the first main issue is confined to the single storey element of the proposals. This would project around 4.3 metres from the rear elevation, in a position abutting the boundary with No 3 Green Square and would replace a conservatory in a similar position. The appellant maintains that the solid wall along the boundary would afford greater privacy to the occupants of No 3 and I agree. However, the benefit in this regard would be outweighed by the impact of a much taller solid wall with a deeper rearwards projection adjacent to the boundary than the existing conservatory, which is of a more lightweight construction. As this wall would stand close to the rear dining room
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windows of No 3 and immediately abut the rear patio area, I consider it would have an over dominant oppressive effect thereon and would to a lesser extent, constrict the outlook from the dining room.

5. The effect with regard to overshadowing the dining room windows and patio would be confined to the early part of the day, but it would add to the aforementioned harm. I take the appellant's point that the mature trees to the East will also impact on light reaching No 3, but the effect is likely to be more filtered, would be less following leaf fall in winter and not directly comparable to a solid wall immediately abutting the boundary. Whilst the appellant contends that right to light is a civil matter, the extent to which a development might impact on the light to an adjoining property is also capable of being a material planning consideration.
6. For these reasons, I conclude on the first main issue, that the single storey element of the proposals would materially harm the living conditions of occupiers of No 3 Green Square. This would bring it into conflict with Policy GP5 of the Leeds Unitary Development Plan Review (2006) (UDP) and Policy HDG2 of the Leeds Local Development Framework *Householder Design Guide* Supplementary Planning Document (2012), which seek to ensure that development proposals resolve detailed planning considerations, including loss of amenity and avoid excessive over dominance and overshadowing.
7. The Council confirmed in an email to the appeal Case Officer that the reference to Policy BD5 in the first reason for refusal was an error and they intended to refer to Policy BD6. The latter policy relates to the design and materials of extensions, which does not form part of the Council's case. I shall therefore disregard it.
8. In relation to the second main issue, there are a number of trees on the land to the North East of the appeal site including a mature ash tree which is protected by a Tree Preservation Order. The Council put its distance at 11 metres from the site boundary and 13 metres from the extension. There are some much smaller specimens between that tree and the site of the extension, but these are not particularly noteworthy and appear as dense undergrowth to the ash tree.
9. The appellant says that a plan depicting the relationship of the development to the tree was submitted to the Council, but they have confirmed in an email to the appeal Case Officer this was not received. In any event, I am satisfied from my observations at the visit, that the two storey element of the proposals would encroach at worst only very marginally into the outer extremity of the crown of the ash tree, possibly necessitating trimming back some of the smaller peripheral branches.
10. As the tree stands in a naturalised area where there is no obvious sign of any built development or hard standings and is sited some distance from the appeal site boundary, it is unlikely that its roots will extend appreciably into the appeal site, which is also at a slightly higher level relative thereto. This would leave the integrity of the tree intact and it would continue to function as a commanding specimen, visible for some distance from the appeal site. Any pruning back of the smaller trees beneath its canopy would have a negligible impact on the

amenity of the area, as these are scarcely visible beyond the wider site and are not as I have said, particularly noteworthy specimens.

11. I have also given consideration to the longer term interaction between the proposed development and the ash tree. As the tree is a mature specimen, the extent of its crown is unlikely to appreciably increase and as it is offset to one side of the extension facing a blank wall, I consider it unlikely that its proximity thereto would necessitate anything other than routine trimming back of peripheral branches from time to time.
12. For these reasons, I conclude on the second main issue that the proposal would not be likely to materially harm the trees on land adjoining the appeal site. It follows that I find no conflict with Policy GP5 of the UDP insofar as it relates to the aesthetic aspect of amenity, nor Policy LD1 of the same document which seeks to protect existing vegetation including trees, allowing them to be retained in a healthy condition. I also find no conflict with Policy P12 of the Leeds Core Strategy (2014) which seeks to protect landscape character. The proposal would not comply entirely with the advice in Supplementary Planning Guidance *Guideline Distances from Development to Trees* (updated 2011), which requires a tree survey of existing trees on the application site or adjacent land. Nonetheless, using the separation distance for ash trees referred to in the Dimensions Table therein, the distance of 13 metres cited by the Council would fall beyond the recommended distance of 10 metres from the corner of a dwelling or 12 metres from its side.
13. Although I have found in favour of the appeal in relation to the second main issue, this is nonetheless outweighed by my concerns in relation to the first main issue.

Other Matters

14. The occupier of No 3 Green Square refers to bat boxes mounted on the aforementioned ash tree. However, I cannot be sure that these are occupied, nor that the proposal would interfere with them and thus have no reason to believe the proposal would harm any protected species. Concern is also expressed about potential overlooking from the side facing velux window. However, as it would be sited away from the boundary with that property and well above likely finished floor level, any views therefrom would be indirect and insufficient to compromise privacy. I also do not accept that converting the integral garage to living accommodation would harm the appearance of the property and this element has apparently been granted on appeal. Nonetheless, my findings on these matters does not outweigh my conclusions earlier in this decision.

ALISON ROLAND

INSPECTOR