



Appeal Decision

Site visit made on 16 March 2020

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 March 2020

Appeal Ref: APP/C2741/W/19/3242818

Greensleeves, Lords Moor Lane, Strensall, York YO32 5XF

- 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 Craig Hopwood against the decision of City of York Council.
 - The application Ref 19/01912/FUL, dated 4 September 2019, was refused by notice dated 21 November 2019.
 - The development proposed is the erection of a single storey rear extension and retention of existing balcony.
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Decision

1. The appeal is dismissed insofar as it relates to the retention of the balcony. The appeal is allowed insofar as it relates to the erection of a single storey rear extension and planning permission is granted for the erection of a single storey rear extension at Greensleeves, Lords Moor Lane, Strensall, York YO32 5XF in accordance with the terms of the application, Ref 19/01912/FUL, dated 4 September 2019 subject to the following 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 in so far as relevant to that part of the development permitted: Site Location Plan; As Proposed Plans and Elevations Drawing No Hop 101 Rev C; As Proposed Elevations with boundary and planting; Drawing No 102 Rev B; Sections Drawing No Hop 103 Rev C; Plan to show relationship with neighbouring property Drawing No HOP 104 Rev B; and Unilateral Undertaking Plan Drawing No Hop 105 Rev A.
 - 3) The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those used in the existing building.

Procedural Matters

2. There is no development plan for York. The reason for refusal refers to paragraphs within the *National Planning Policy Framework* (the Framework), the *House Extensions and Alterations Draft Supplementary Planning Document* (approved December 2012) (SPD) and Policy D11 of the emerging *City of York Local Plan* (ELP). The ELP is currently going through the examination process, but as I do not know the level of unresolved objection to Policy D11 this limits the weight I can give to the policy, even though the plan is at a relatively

advanced stage of production. In the absence of an adopted Local Plan the SPD is called Draft and it was approved by the Council rather than adopted. It is however a material consideration in determining planning applications.

3. The balcony has already been constructed but the single storey extension has not. I have determined the appeal on this basis.
4. During the appeal process, the appellant noticed a drafting error on some of the plans and submitted revised plans to correct this. The council indicated that they considered that as this solely corrected discrepancies between plans and did not alter the development, it was acceptable for these to be considered. I agree with this conclusion and have determined the appeal on this basis.

Main Issue

5. The main issue in the appeal is the effect of the proposal on the living conditions of the occupiers of Heathfield with particular regard to privacy.

Reasons

6. The appeal property is a detached bungalow. Permission was granted in 2014¹ for significant alterations to the property that included a rear box dormer and Juliette balcony. However, a rear balcony supported on legs was constructed instead of the Juliette balcony. An application to retain the balcony, made in 2016², was refused by the Council and dismissed on appeal³. The current application proposes to retain the balcony and construct a single storey rear extension which is proposed to help to provide screening for the balcony.
7. The appeal property is located at the end of a small row of bungalows, on the edge of the village. To the rear of this row and to the side of Greensleeves is open land. Given these characteristics, the rear gardens of these properties are more private than most.
8. The Council have stated that, due to its scale, mass and position, the proposed single storey extension would not have an adverse impact on the living conditions of the occupiers of Heathfield. Nothing I have seen or read leads to a different conclusion in this regard.
9. Detailed advice on extensions and alterations to dwellings is provided in the SPD. This indicates that balconies and roof gardens will only normally be acceptable where they overlook public or communal areas, or areas of neighbouring gardens that are not typically used for sitting out or already have a low level of privacy. Although it acknowledges that sensitively designed balcony screens can help to retain adequate levels of privacy.
10. The adjacent property has a detached rear garage towards the bottom of the garden. Next to this is an attractive seating area with a water feature. Whilst there is also a paved area adjacent to the house, it appeared from my site visit that this seating area would be a pleasant place to sit and spend time.
11. At present the rear elevation of the dwelling and virtually all of the rear garden of the adjacent bungalow is visible from the balcony. The proposed extension would prevent views of the dwelling itself and the part of the rear garden

¹ Application Reference 14/01573/FUL

² Application Reference 16/02368/FUL

³ Appeal Reference APP/C2741/D/17/3171361

nearest it. However, I noted on my site visit that notwithstanding the distance between them, from the southern end of the balcony the seating area adjacent to the garage can still be clearly observed. These views would be unaffected by the proposed extension. In addition, the balcony itself is also clearly visible from the adjacent garden, which creates a sense of being overlooked. Whilst the appellant has suggested that a condition could require the erection of a privacy screen as well at the end of the balcony, I am not persuaded that this would increase privacy without having an adverse impact on the appearance of the rear of the host property.

12. I note that the distance from the balcony to the boundary and to the seating area are greater than the separation distances set out in the SPD. However, these relate to distances from windows rather than from a balcony. In contrast to a window, or even a Juliette balcony, where people spend only short lengths of time looking out, people can spend lengthy periods of time sitting on a balcony. The presence of chairs and a table on this balcony indicate that it is used in this way. Thus, the opportunity for overlooking from the balcony is significantly greater than from a window.
13. Planting of silver birch trees and other vegetation has taken place along the common boundary to help reduce the ability to overlook the adjacent garden, and further planting of laurels is proposed as part of the appeal scheme. Nevertheless, this planting is likely to take many years to reach the height and level of maturity necessary to screen views of the adjacent garden completely. Moreover, given it is located to the south of Heathfields, it would significantly increase the overshadowing of this property and its garden. In addition, as the vegetation is located on the appeal site, the occupier of the adjacent property has no control over its retention or maintenance and I do not consider it would be possible to control the height and retention of the vegetation in perpetuity by condition, as, in my view, any such condition would not pass the test of reasonableness.
14. The appellant has suggested that he would provide a Unilateral Undertaking to ensure that the extension is built within 6 months of any permission. Despite the fact that Annex N of the *Procedural Guidance - Planning Appeals - England (March 2020)* advises that any form of planning obligation should be submitted with the appeal documentation, a completed undertaking is not currently before me. Nevertheless, even if a Unilateral Undertaking had been submitted, and it was considered that it met the policy test set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010, and the Framework, given I have concluded that the extension would not adequately overcome the harm caused by the balcony, it would not alter the outcome of the appeal.
15. Thus, whilst the proposed extension would reduce the amount of overlooking possible, the balcony would still result in an unacceptable loss of privacy to what was previously a very private garden area. It would also continue to cause the perception of being overlooked for the occupiers of the adjacent dwelling, particularly when using the seating area next to the garage.
16. Overall, whilst I consider that the proposed single storey rear extension would not harm the living conditions of the adjacent occupiers, the retention of the balcony would adversely impact on the living conditions of the occupiers of Heathfield with particular regard to privacy. Accordingly, it would be contrary

to the Framework (paragraph 127) which requires development to create a high standard of amenity for existing and future users. It would also conflict with the guidance in the SPD outlined above. As the rear extension is clearly severable from the retention of the existing balcony, I consider this element can be allowed on its own.

Conclusion and Conditions

17. For the reasons set out above, I conclude the appeal should be allowed in respect of the erection of a single storey rear extension but dismissed in respect of the retention of the balcony. In addition to the standard implementation condition, to provide certainty it is necessary to define the plans with which the scheme should accord. In the interests of the character and appearance of the area a condition is required to control the external appearance of the extension.

Alison Partington

INSPECTOR