
Appeal Decision

Site visit made on 11 March 2020

by Richard Aston BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 June 2020

Appeal Ref: APP/Z4718/W/19/3238125

41 Storthes Hall Lane, Kirkburton, Huddersfield HD8 0PT

- 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 Ms Diane Burgin against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2019/62/91831/E, dated 3 May 2019, was refused by notice dated 31 July 2019.
 - The development proposed is described as '*the erection of a terrace adjacent to the rear elevation*'.
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. The appellant submitted an additional drawing¹ with the appeal showing an amendment to the proposal in the form of an additional opaque glass panel to be located above the existing boundary fence shared with No. 43 Storthes Hall Lane. Having sought further clarification the appellant requested that the amended drawing be taken into account in my determination of this appeal.
3. However, the appeal was originally submitted under the householder appeal procedures and in the interests of natural justice the appeal was re-started under part 2 of the Regulations². The Council and interested parties were therefore given an opportunity to comment on the amendment and I have had regard to the comments received in my decision. I have determined the appeal on this basis.

Main Issue

4. The main issue is the effect of the proposal on the living conditions of the occupiers of No. 43 Storthes Hall Lane, with particular regard to privacy and outlook.

Reasons

5. At my site visit I observed an existing terrace constructed from timber with a small rope handrail, sited to the rear of the host property outside the existing lounge and at a height significantly above the level of the surrounding patio.

¹ Drawing 4045-SK01 dated 29.09.19 – External Deck Details.

² Part 2 of The Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009 (Statutory Instrument 2009/452) as amended.

The terrace abuts a scalloped timber fence that runs along the boundary with No. 43. That property has a short stepped access from its habitable living accommodation at the rear that leads down to a small patio area and the wider garden. There is nothing before me to indicate that the existing terrace is lawful development.

6. There appears to be an inconsistency on original drawing no. 101 which appears to show 2 types of resultant boundary treatment. If, as per the 'North West Elevation Proposed' the fence is retained at the existing height, and despite a small reduction in the width of the terrace away from the fence, the use of the deck would result in direct and unacceptable overlooking and a loss of privacy to No. 43 due to its close proximity, height and overall extent. However, the 'North East Elevation Proposed' shows a taller boundary treatment but it is not clear to me whether this is the opaque panel now proposed on amended drawing SK01.
7. Whatever the case may be, I acknowledge that an attempt to try and mitigate the loss of privacy from the height and use of the terrace on the occupiers of No. 43 has been made. However, even using an opaque panel the increase in height above the boundary fence would be in such proximity that the eye would be unacceptably drawn to it from the patio area and rear facing habitable living accommodation of that property. Further, and subject to its obscuration level, an opaque panel could allow some light through but it would not adequately mitigate the perception and effects of activity and movement on the terrace, which would still be harmfully evident to its occupiers.
8. In reaching this view I have had regard to the fact that some mutual overlooking between properties could historically have been possible due to the presence of raised steps/platforms at the rear. Nevertheless, no substantive details are before me and to my mind, the effects are not directly comparable given the much greater extent and height of the proposal before me. I also note the appellant accepts the effect on privacy would be more significant as a result of the proposal and this consideration does not therefore alter my view.
9. For these reasons, the proposal would result in significant harm to the living conditions of the occupiers of No. 43 Storthes Hall Lane in terms of loss of privacy and outlook. It would therefore conflict with Policy LP24 of the Kirklees Local Plan 2019, insofar as it requires the design of all proposals to ensure a high standard of amenity for future and neighbouring occupiers.
10. Material considerations, including the National Planning Policy Framework do not indicate that a decision should be taken other than in accordance with the development plan. Having considered all other matters raised I therefore conclude that the appeal should be dismissed.

Richard Aston

INSPECTOR