
Appeal Decision

Site visit made on 29 September 2020

by Katie McDonald MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 October 2020

Appeal Ref: APP/C2741/W/20/3257045

41 Nunnery Lane, York YO23 1AB

- 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 A Alim against the decision of City of York Council.
 - The application Ref 19/02423/FUL, dated 28 October 2019, was refused by notice dated 4 February 2020.
 - The development proposed is part change of use of ground floor from takeaway to 1 no flat and extension to first floor.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The Council's reasons for refusal refer to policies in the City of York Draft Local Plan 2005 (DLP) and in the Publication Draft City of York Local Plan 2018 (ELP). However, whilst the Council states that it has approved the DLP for development control purposes, and the ELP appears to have been submitted for examination, neither have been formally adopted and they are not determinative in this case. I therefore afford those policies weight only insofar as they are consistent with the National Planning Policy Framework (the Framework).

Main Issue

3. This is the effect of the proposal on the living conditions of:
 - (a) the occupiers of 43 Nunnery Lane with specific regard to privacy; and,
 - (b) the future occupiers of the proposal, with specific regard to privacy, outlook and light.

Reasons

4. Located in the city of York adjacent to the inner ring road, the property is a 2 storey mid-terrace building. It is currently used as a hot food takeaway at ground floor with a first floor flat. The proposal is to change the rear part of the ground floor to a self-contained flat and construct a first floor rear extension to the existing first floor flat. The Council raise no objections to the first floor extension. I agree.

Occupiers of 43 Nunnery Lane

5. The lounge and bedroom windows proposed in the ground floor flat would be inserted in the boundary side wall between 41 and 43 Nunnery Lane. No 43 is a residential unit. The outlook from these windows, or indeed at any location on this elevation, would be directly onto the private outdoor amenity space of No 43. The proposed windows would also face, and be close to, windows serving habitable rooms in the rear offshoot of No 43. Furthermore, despite claims from the appellant about how the rear yard area of No 43 is used, the fact remains that this space is a private yard. Thus, placing windows for a new residential unit in the side boundary wall would result in a significant loss of privacy that would be very harmful to the living conditions of the occupiers of No 43.
6. Another window is proposed in the opposite side elevation that would overlook a garden area serving flats on Swann Street. Because it would serve a bathroom, a condition could be imposed to ensure the window was obscure glazed and non-opening. This would safeguard against loss of privacy for the residents of Swann Street.

Future occupiers

7. Owing to the unacceptable location of the windows overlooking No 43, the future occupiers would also be exposed to similar unacceptable living conditions by way of overlooking. This is because the lounge and bedroom would be afforded no privacy, given the occupiers of No 43 would be able to look directly into these rooms from their private amenity space.
8. Although surmising, this could lead to the installation of window coverings that would remain largely closed, resulting in a very poor outlook for the future occupiers. This would be the same if a condition for obscure glazing were imposed, as it would offer the future residents no outlook. Either way, these circumstances would result in unacceptable living conditions.
9. Therefore, the position of the windows in this side elevation would result in an unacceptable and poor standard of living for the future occupiers.
10. Lastly, the windows serving the bedroom and lounge would rely entirely on light from the neighbouring yard, that is outside the planning unit. This would be an unacceptable situation and access to natural light could not be guaranteed long term.

Conclusion

11. The proposal would have a severely unacceptable effect upon both the living conditions of the neighbouring occupiers of No 43 and the future occupiers of the proposal. The proposal would not be sustainable development and is contrary to paragraph 127 of the Framework, which seeks to ensure a high standard of amenity for existing and future residents.
12. For the reasons set out above, I conclude that the appeal should be dismissed.

Katie McDonald

INSPECTOR