



Appeal Decision

Site Visit made on 1 December 2020 by S Watson BA(Hons) MSc MRTPI

Decision by Zoe Raygen Dip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 January 2021

Appeal Ref: APP/X2410/W/20/3258358 24 Walker Road, Birstall LE4 3BN

- 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 R Patel against the decision of Charnwood Borough Council.
 - The application Ref P/20/0728/2, dated 21 April 2020, was refused by notice dated 1 July 2020.
 - The development proposed is the erection of one dwelling.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr R Patel against Charnwood Borough Council. This application is the subject of a separate decision.

Appeal Procedure

3. The site visit was carried out by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Main Issues

4. I note that permission for a similar dwelling has been granted and is currently extant, although at the time of my visit it had not been constructed. Although similar, the proposal before me includes the addition of a number of extensions and other alterations to the already permitted dwelling. I have not been made aware of any changes to the relevant policies since this permission and, the Council's reason for refusal turns on the proposed rear dormer only. Therefore, I consider the main issues in this case to be the effect of the proposed dormer on:
 - The character and appearance of the host dwelling and local vicinity; and,
 - The living conditions of neighbouring occupiers by way of overlooking.

Reasons

Character and Appearance

5. The appeal site is on the north side of Walker Road within the side garden of No 24. At the time of my visit it appeared that some works had begun on clearing and preparing the site for construction work. The street scene is

characterised by semi-detached houses the roofs of which are primarily simple and light in their form.

6. While the dormer would be at the rear of the property, given the openness to the side of the proposed dwelling, the side of the dormer would be visible from Walker Road where it would form a large boxy feature visible across the parking areas and side garden serving No 24. I find that the box-like nature of the proposed dormer would jar with the smaller form of the surrounding roofs. Furthermore, the dormer would be readily legible from the backs of surrounding properties where it would be prominent due to its height. The size and form of the dormer would be disproportionate with the host dwelling, creating a top-heavy appearance.
7. While the appellant has referred to other examples of dormer windows within the surrounding area these were not visible from my observations on site nor from the highway. Moreover, I am not aware of the circumstances under which the given examples were permitted, and nevertheless all proposals must be considered on their own merit. I therefore give these examples very little weight in the determination of this appeal.
8. In conclusion I find the proposed dwelling, as a result of the rear dormer, to be harmful to the character and appearance of the host dwelling and the local vicinity of the appeal site. As such it would be contrary to Policies EV/1 and H/17 of the *Borough of Charnwood Local Plan (CLP)*, and Policy CS2 of the *Charnwood Local Plan 2011 to 2028: Core Strategy (CS)*. These require that development be of a high standard of design that respects and enhances the local environment. Moreover, the proposal would conflict with the quality character and appearance guidance contained within the *Design Supplementary Planning Document (DSPD)*.

Living Conditions

9. Given the height and large size of the glazed area within the dormer, future occupiers would get a clear view over the surrounding boundary treatments. As such the dormer would allow a greater level of overlooking to, and loss of privacy for, the neighbouring private gardens and properties than appeared typical for the area. Moreover, the perception of overlooking would likely be exacerbated during warmer weather when the windows are likely to be open and future occupiers would be able to sit at the Juliet balcony.
10. In light of the above I consider the proposed rear dormer would cause an unacceptable level of overlooking to nearby gardens and dwellings, harming the living conditions of neighbouring occupiers. I therefore find the proposal to conflict with Policies EV/1 and H/17 of the CLP and CS Policy CS2 that require development to safeguard the amenity of those living nearby, with particular reference to privacy. It would also conflict with the guidance on privacy as contained in the DSPD.

Other Matters

11. The appellant is of the view that that the proposed additions to the approved dwelling would constitute permitted development and that this represents a fallback position sufficient to allow the current proposal to be allowed.
12. In order to be a material consideration, a fallback only has to be more than a merely theoretical prospect. While the likelihood of the fallback occurring may

affect the weight to be attached to it, that does not affect its status as a material planning consideration. Even where the possibility of the fallback position happening is very slight indeed, or merely an outside chance, that is sufficient to make the position a material consideration.

13. However, the appellant has not satisfactorily demonstrated that the proposed additions would be permitted development and it is not my place to assess whether each component would comply with the Town and Country Planning (General Permitted Development) (England) Order. Even if they could be built under permitted development rights, it would not be possible to build them until the dwelling had been substantially completed. There is no particular definition of substantially complete and such matters need to be concluded as a matter of fact and degree taking account of all relevant circumstances. However, in this instance there is currently no dwelling on site. Therefore, it is not substantially completed, and the permitted development extensions could not be built. In light of this, and the lack of substantive evidence that all works are permitted development, I find there to not even be a theoretical possibility that the works could be carried out. As such I give the suggested fallback position very little weight in my determination. In reaching this decision I have been mindful of the judgement¹ brought to my attention by the appellant.
14. The appellant has raised that the construction and subsequent occupation of the new dwelling would result in economic and social benefits, and that considering the current situation with Covid-19, the economic benefits are especially important. However, given the scale of the development I find that any economic benefit by way of employment through the construction of the dwelling, and the subsequent support of local businesses by future occupiers would be very limited. Moreover, given that permission for a dwelling is extant on the site I find that the proposal before me would not result in any meaningful additional economic benefit. As a result, I find this matter does not outweigh the harms identified above.

Recommendation

15. For the reasons given above I recommend that the appeal should be dismissed.

S Watson

APPEAL PLANNING OFFICER

Inspector's Decision

16. I have considered all the submitted evidence and the Appeal Planning Officer's report and concur that the appeal should be dismissed.

Zoe Raygen

INSPECTOR

¹ Mansell v Tonbridge and Malling BC [2017] EWCA Civ 1314