



Appeal Decision

Site visit made on 17 February 2021

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 March 2021

Appeal Ref: APP/C2741/W/20/3263211

75 Balmoral Terrace, York YO23 1HR

- 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 Sara Winlow against the decision of City of York Council.
 - The application Ref 19/02133/FUL, dated 7 October 2019, was refused by notice dated 22 June 2020.
 - The development proposed is two storey rear extension, single storey rear extension, dormer to rear, 1no. rooflight to rear and 2no. rooflights to front following demolition of single storey rear extension.
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Decision

1. The appeal is dismissed insofar as it relates to the dormer to rear. The appeal is allowed insofar as it relates to the two storey rear extension, single storey rear extension, 1no. rooflight to rear and 2no. rooflights to front following demolition of single storey rear extension and planning permission is granted for two storey rear extension, single storey rear extension, 1no. rooflight to rear and 2no. rooflights to front following demolition of single storey rear extension at 75 Balmoral Terrace, York YO23 1HR in accordance with the terms of the application, Ref 19/02133/FUL, dated 7 October 2019 subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing no. 19-0619 D01D, Location plan, existing and proposed block plans; and Drawing no. 19-0619 D03H, Proposed plans and elevations.
 - 3) The materials to be used externally shall match those of the existing building in colour, size, shape and texture.

Preliminary Matter

2. The description of the development provided on the planning application form has been replaced by an amended version on the decision notice and in subsequent appeal documents. I consider that subsequent description to accurately represent the proposal and I have therefore used it within this decision.

Main Issue

3. The main issue is the effect of the proposal on the living conditions of residents of 75A Balmoral Terrace with regards to outlook.

Reasons

4. The appeal site has a tight-knit relationship with the dwelling to the rear at 75A Balmoral Terrace. A number of windows of No 75A face onto the appeal site, and there is also a small yard adjacent to the appeal site which serves as the amenity area for No 75A.
5. Due to the relationship with the appeal site and nearby properties, the windows and amenity area of No 75A have an enclosed character and are therefore particularly sensitive to development which may exacerbate this. In respect of the appreciation of openness for residents of No 75A, I saw that this mainly derives from the outlook onto Count de Burgh Terrace as well as views of the sky above the rear roofslope of the appeal site. Views are also enabled along the rear of the terrace, although this is of a more limited benefit due to the layout of the area including an enclosing ground floor offshoot at No 75A and a two storey outrigger at an adjoining property.
6. The proposed rear dormer would be visible from No 75A projecting above the rear roof slope of the host building. Due to its proximity, elevation and bulk, I consider that the rear dormer would be apparent as an overbearing and oppressive feature in views from the amenity area of No 75A as well as from a window serving a bedroom. It would also be apparent from ground floor windows serving the kitchen and living area, albeit with a limited angle of view.
7. The dormer would be set back from the eaves of the roof as well as from the gable elevation of the host building. However, even allowing for this arrangement I consider that the dormer would be readily apparent as an obtrusive enclosing feature in relation to No 75A. Due to the existing tight-knit layout of the site and the enclosed character of No 75A, the harm arising from the dormer would go beyond the impacts that residents could reasonably expect.
8. The Daylight and Sunlight Assessment (DSA) submitted by the appellant concludes that the development would not result in a notable reduction in the amount of daylight and sunlight enjoyed by neighbouring buildings. It also concludes that the proposal would not lead to an increase in overshadowing of the external amenity area of No 75A, although this is on the basis that the amenity area does not receive any sunlight on the ground on the assessed date. However, the assessment of outlook is a more subjective matter than a technical assessment in respect of light. Consideration of the DSA does not lead me to a different conclusion in respect of the harm to outlook arising from the rear dormer.
9. With regards to the proposed two storey rear extension, this would project no further to the rear than an adjoining two storey outrigger on a neighbouring property. It would also not project further into the appeal site than the existing ground floor offshoot, and would be significantly lower than the flank wall of the adjoining two storey outrigger. The gap which enables views to the rear of the terrace would be retained, although the extension would have a minor effect on the appreciation of this gap from No 75A. On that basis, although this

element of the proposal would be closer to No 75A at first floor level than existing buildings, I consider that this would be mitigated to a significant degree due to the context established by the adjoining buildings. Whilst this element of the proposal would bring the extent of built development closer to No 75A, I consider that the effect on apparent enclosure would be very limited and would not warrant the refusal of planning permission.

10. The scale of the proposed ground floor extension would differ only slightly from that of the demolished extension. The rooflights would not be readily apparent from No 75A. These matters are a neutral factor in my assessment of this main issue.
11. Notwithstanding my conclusions in respect of the proposed rear extensions and rooflights, for the reasons given previously, I conclude that the rear dormer would lead to significant harm to the living conditions of residents of No 75A with regards to outlook. In that respect, the proposed dormer would be contrary to policy D11 of the City of York Publication Draft Local Plan (2018) as well as policies GP1 and H7 of the City of York Development Control Local Plan (2005) which, amongst other things, seek to protect the amenity of nearby residents by ensuring that they are not unduly dominated by overbearing structures. The proposed dormer would also be contrary to the National Planning Policy Framework (the Framework) in respect of providing a high standard of amenity for existing and future users of properties. The dormer would also be contrary to the advice of the Draft House Extensions and Alterations SPD¹ in respect of the impact of the dormer on neighbours' outlook.

Other Matters

12. There is disagreement between the parties as to whether the extant dwelling at No 75A is lawful. Planning permission for an extension to the dwelling was granted in 2011. It would appear that the extension as built does not reflect the approved details, including matters such as internal layout and the arrangement of windows. However, the evidence suggests that the extension has been in situ in excess of 4 years, and the Council considers that it is now lawful. There are other methods available to the parties to determine the lawfulness of the dwelling and this matter does not fall within the remit of this appeal. Whilst the appellant has made an enforcement complaint to the Council, there is no evidence before me in respect of substantive action being taken on this matter. I have therefore considered this appeal on the basis of No 75A as it currently exists.
13. Based on the evidence before me, the residential accommodation provided by the appeal property is limited. However, it would not appear to be fundamentally unsuitable for habitation, even if only for a studio flat. The rear extensions and rooflights, which I have concluded should be permitted, would also improve the quality of accommodation. The improvements to residential accommodation provided by the development as a whole, including the rear dormer, should therefore carry only limited weight in favour of the proposal.
14. It is clear that there is substantial support for the proposal, as demonstrated by the number of letters and the petition emphasising the benefits of the development. Reference has also been made to the benefits of the proposed

¹ City of York Council: House Extensions and Alterations Draft Supplementary Planning Document (December 2012)

business in respect of sustainability, including providing services to the local community and reducing the need to travel. However, the evidence suggests that the site has previously been in use for commercial purposes and there is no substantive evidence that it is no longer suitable for this purpose. The principle of a commercial use at the ground floor as proposed by the appellant is also not in dispute. Improvements to the building in respect of the commercial use therefore carry only limited weight as a benefit.

15. I am mindful of the personal circumstances of the appellant, including her wish to provide accommodation for her family whilst residing above the business. However, this reflects the personal intentions and situation of the appellant rather than a fundamental inability of the property to accommodate its existing uses, and are therefore of limited weight in favour of the proposal.
16. The Council Officer's report refers to the effect of the built form of the development in public views from Count de Burgh Terrace and the existing pattern of buildings and the spacing between them. However, in the Council's reason for refusal, this matter is only referred to in terms of the effect on living conditions of nearby residents. That said, whilst the rear two storey extension would be of a relatively unorthodox design, within the context established by existing development to the rear of the terrace I do not consider that the proposal as a whole would lead to unacceptable harm in respect of the character and appearance of the area.
17. Reference has been made to dormers and alterations permitted to other properties in the vicinity of the appeal site. However, based on the evidence before me, these schemes do not represent a direct parallel to the appeal proposal, including their relationship with nearby dwellings. In any event, I have determined this appeal on its own merits.
18. I note the frustrations expressed by the appellant in relation to the advice from the Council and the decision process leading up to this appeal. However, this is not a matter for this appeal which I have determined on its planning merits.

Conclusion

19. I have concluded that the rear dormer would lead to significant harm to the living conditions of residents of No 75A. The adverse impacts of this element of the proposal would significantly and demonstrably outweigh the limited benefits, considered individually and cumulatively, when assessed against the policies of the Framework taken as a whole.
20. The rear dormer would be physically and functionally divisible from the remainder of the proposal. I shall therefore issue a split decision to dismiss the appeal in relation to the rear dormer, but allow it in relation to the other elements of the proposal.
21. In addition to the standard time limit condition, I have imposed a condition requiring that the development is carried out in accordance with the approved plans in the interests of certainty. A condition is also required to ensure that external materials match those of the existing building in the interests of character and appearance.

David Cross INSPECTOR