



Appeal Decision

Site visit made on 16 August 2021

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

an Inspector appointed by the Secretary of State

Decision date: 5th October 2021

Appeal Ref: APP/N4720/W/21/3271982

3 Windermere Drive, Leeds LS17 7UZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant approval required under Article 3, Schedule 2, Part 1, Class AA of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (GPDO).
 - The appeal is made by Mr G White against the decision of Leeds City Council.
 - The application Ref 21/00395/DPD was refused by notice dated 5 March 2021.
 - The development proposed is prior approval for enlargement of a dwellinghouse by construction of an additional storey; the development will go 2.65m above the highest point of the existing roof.
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Decision

1. The appeal is dismissed.

Applications for Costs

2. An application for costs was made by Leeds City Council against Mr G White. An application for costs was also made by Mr G White against Leeds City Council. These applications are the subject of separate Decisions.

Preliminary Matters

3. The description of the development in the heading above has been taken from the Council's decision notice, as this concisely describes the proposal. The same wording is given on the appeal form.
4. A revised version of the National Planning Policy Framework (the Framework) was published on 20 July 2021. Both main parties have had the opportunity to comment on any relevant implications for the appeal, and I have taken account of any comments made.

Main Issues

5. The main issues are:
 - The effect of the proposal on the external appearance of the dwellinghouse;
 - The effect of the proposal on the amenity of residents of 5 Windermere Drive with regards to outlook and light; and
 - Whether sufficient evidence has been provided with regards to the management of the construction of the development.

Reasons

External Appearance

6. Paragraph AA.2.(3)(a) of the GPDO sets out four matters for which the developer must apply to the local planning authority for prior approval. On this main issue, the Council refused prior approval in respect of matter (ii) the external appearance of the dwellinghouse, including the design and architectural features of (aa) the principal elevation of the dwellinghouse, and (bb) any side elevation of the dwellinghouse that fronts a highway.
7. The appellant contends that the GPDO restricts the design assessment to the dwellinghouse itself, and not with the wider landscape. However, the list within matter (ii) is prefaced by the word *including*, which indicates that it is not a closed list and that other factors may be taken into account. It is therefore a matter of planning judgment as to whether consideration is given solely to the effect on the dwellinghouse's intrinsic design and/or the effect on the building's relationship with adjoining or nearby properties.
8. In this case, the appeal site is located in an estate of a pleasant suburban appearance characterised by two-storey detached dwellings, and to that extent I do not consider it to be appropriate to consider the external appearance of the dwellinghouse in isolation. The relationship with the wider streetscape is, in this case, a relevant aspect of the consideration of the effect of the development on the external appearance of the dwellinghouse.
9. Although the architectural detailing of the extension, including fenestration, would reflect that of the existing dwellinghouse, the additional storey would significantly add to the height and massing. Even allowing for variations in the design of nearby dwellings, the proposal would result in an obtrusive and incongruous building which would contrast uncomfortably with the prevailing scale of dwellings within the streetscape.
10. This harm would be exacerbated due to the prominent location of the appeal site near to the entrance to the estate. The massing of the relatively featureless gable wall in particular would be viewed as a bulky and stark element within the streetscape, even allowing for the step down in the ridge of the roof. The appellant refers to the potential to include side windows, but these are not part of the scheme before me.
11. The proposal would fundamentally alter the scale of the building within the streetscape, and consequently would have a harmful effect on the external appearance of the dwellinghouse as a result of its inconsistency with the prevailing character of this estate.
12. The appellant refers to three-storey dwellings located elsewhere. However, whilst three-storey dwellings of a suitable design may be appropriate in other locations, it has not been demonstrated that the circumstances of those developments are a direct parallel to the appeal proposal, which I have determined on its particular merits.
13. For the above reasons, I conclude that significant harm would be caused to the external appearance of the dwellinghouse. In this respect, the proposal would not accord with the Framework with regards to achieving well-designed places.

Amenity

14. The host dwelling is located in close proximity to the boundary with 5 Windermere Drive, and projects slightly beyond the main rear elevation of No 5.
15. Due to this proximity and siting, the increased height and bulk of the extension would have an oppressive relationship with the outlook from the rear garden of No 5. The proposal would result in an unacceptably overbearing relationship with the rear of No 5 to the significant harm to the amenity of residents.
16. Furthermore, due to the arrangement and proximity of the dwellings, the proposal could lead to an unacceptable degree of overshadowing to the rear of No 5, particularly in the morning. The appellant has provided a sun chart diagram for the vernal equinox, and the Council expresses concern that this does not address the remainder of the year. More fundamentally, the Council submits that the sun path analysis is based on a corner of the roof and appears to fail to address the increase in height. The appellant has not countered the Council's concerns regarding the increase in height. Whilst I have had regard to the appellant's reference to the BRE guidelines, considered objectively and in context, I do not consider that it has been demonstrated that the proposal would not lead to unacceptable loss of light to No 5. In any event, even if I was to conclude that the proposal would not harm the amenity of neighbouring residents in respect of loss of light, this would not negate my conclusions regarding the overbearing impact of the proposal.
17. The appellant contends that the consideration of amenity in respect of prior approval should relate to 'specified elements' in the GPDO, which do not include aspects such as over-dominance, overbearing or loss of outlook. However, the provisions of matter (i) of paragraph AA.2.(3)(a) of the GPDO are prefaced by the word *including*. This indicates that it is not a closed list and that other factors may be taken into account. It is therefore reasonable to take into consideration other issues relating to amenity which are not specifically referred to in matter (i).
18. I conclude that the proposal would lead to unacceptable harm to the amenity of residents of No 5 in respect of outlook, and it has not been demonstrated that the proposal would not lead to an unacceptable loss of light. The proposal would therefore conflict with the Framework in respect of creating a high standard of amenity for existing and future users of premises.

Management of Construction

19. The GPDO requires that before beginning the development, the Council must be provided with a report for the management of the construction of the development, to address the mitigation of noise, dust, vibration and traffic. This report was not provided as part of the application for approval.
20. The GPDO sets out that the Council may refuse an application for prior approval where the developer has provided insufficient information to establish whether the development complies with a number of conditions, limitations or restrictions; which includes a construction management report.
21. However, the GPDO also specifies that the Council may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. In any event, the condition in respect of a

construction management report placed on the development as part of Class AA would remain extant. It is at the discretion of the Council as to whether to rely on that condition, but that discretion should be exercised appropriately. Unless there is a reason why the Council considers that construction management cannot be addressed by the pre-commencement condition in the GPDO, it would not be necessary to insist on such a report at an earlier stage in the prior approval process.

22. The Council has not justified why the submission of a construction management report was required as part of its consideration of the prior approval application when it could have relied on the condition as set out in the GPDO. Therefore, in respect of the appeal before me, this matter does not represent sufficient reason for withholding approval. On the issue of the management of construction, the proposal would therefore not conflict with the Framework with regards to a high standard of amenity for existing and future users.

Other Matters

23. The appellant refers to the Planning Practice Guidance¹ on the specified elements and range of matters to be considered under the prior approval process. However, the GPDO is a statutory instrument passed by Parliament as secondary legislation to the Act. I have therefore based my Decision on the wording of the legislation itself.
24. I am mindful that prior approval is intended to be a light-touch process which applies where the principle of the development has already been established. It is inevitable that permitted development rights to extend buildings upward will have some impact on the appearance of the host building and the surrounding area, as well as potentially affecting the amenity of nearby residents. However, this does not negate the requirement to address the conditions placed on development permitted under Class AA.
25. The appellant refers to the potential impacts from a rear dormer which has previously been approved at the site. However, due to the differing scale and height compared to the appeal proposal, I do not consider that the dormer would lead to similar harm in respect of character and appearance or amenity.
26. I have had regard to the Appeal Decisions which have been provided by the appellant. However, these do not lead me to a different conclusion based on my understanding of the legislation and the evidence before me.
27. I note the frustrations expressed by the appellant in relation to the handling of this proposal by the Council. However, this is not a matter for this appeal which I have determined on its planning merits.

Conclusion

28. Notwithstanding my conclusion in respect of the submission of a construction management report, the proposal would lead to significant harm to the external appearance of the dwellinghouse as well as to the amenity of neighbouring residents. The proposal would therefore be contrary to the Framework in respect of achieving well-designed places.

¹ Paragraph: 026 Reference ID: 13-026-20140306

29. For the reasons given above, I conclude that the appeal should be dismissed.

David Cross

INSPECTOR