



Appeal Decision

Site visit made on 28 July 2022

by Susan Hunt BA (Hons) MA MRTPI

Inspector appointed by the Secretary of State

Decision date: 12TH August 2022

Appeal Ref: APP/C2741/W/22/3300730
29 Fylingdale Avenue, York YO30 5FP

- 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 Anthony Bell against the decision of City of York Council.
 - The application Ref 21/02747/FUL, received 7 January 2022, was refused by notice dated 1 April 2022.
 - The development proposed is described as 'Part removal of a sloping roof over an integral garage to form a flat roof. On top of this will be a glazed enclosure'.
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Decision

1. The appeal is allowed and planning permission is granted for a first floor balcony to front elevation at 29 Fylingdale Avenue, York YO30 5FP in accordance with the terms of the application, Ref 21/02747/FUL, received 7 January 2022, and subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan received 6 January 2022, Proposed front elevation received 30 December 2021, and the following plans received on 20 December 2021: proposed side elevation, proposed side elevation section through, and proposed first floor plan.
 - 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.

Preliminary Matters

2. The Council more succinctly describes the proposal in its decision notice and it is this which I have used in my decision. The application form was undated so I am unable to ascertain the date the proposal was submitted to the Council. I have therefore referred instead to the date it was received.
3. The City of York Council does not currently have a statutory development plan. The reason for refusal refers to policies GP1 and H7 of the draft York Development Control Local Plan (2005) (DCLP) and policy D11 of the City of York Publication Draft Local Plan (PDLP), which relate to design and residential amenity considerations. Whilst the PDLP was submitted for examination in May 2018, no update on its current status has been provided, and there is no evidence before me to indicate the extent of any unresolved objections or the degree of consistency of the policies with the National Planning Policy

Framework (the Framework). Therefore, having regard to paragraph 48 of the the Framework, I afford limited weight to the aforementioned policies. Likewise, whilst the draft House Extensions and Alterations Supplementary Planning Document (2012) (SPD) provides some useful guidance, I can only give it limited weight in my decision.

Main Issues

4. The main issues are the effect of the proposed development on the character and appearance of the existing dwelling and street scene, and the effect on living conditions of neighbours at 27 Fylingdale Avenue, with particular reference to overbearing effects.

Reasons

5. The appeal site is situated on a modern housing estate of predominately two storey red brick detached dwellings of varying sizes and designs. The host dwelling is a two storey gable fronted property with a part integral garage, and is typical of 1990's estate housing. Its two immediate neighbours are different house types, larger properties which project forwards of No. 29. They front onto a private drive with detached gardens leading on to Clifton Park Avenue. The Council's officer report notes that the surrounding house types are of individual designs with no clear uniformity and following my site visit I agree with this assessment.
6. It is proposed to remove the existing mono-pitch roof over the integral garage, and create a balcony with glazed balustrade and insertion of French doors serving a bedroom. A brick wall would be constructed to the side which faces its neighbour at 27 Fylingdale Avenue (No. 27). The structure would be relatively small scale, projecting no further than the existing front of the dwelling. The contemporary design of the balcony and associated alterations would be in keeping with the existing dwelling and would not dominate it nor detract from it. Given the position of the property on a private drive, set back from both of its immediate neighbours, the impact on the street scene and the character of the wider area would be negligible.
7. In terms of living conditions, No. 27 is the only property which would be directly affected. The side wall of the dwelling contains two windows, which the occupant states serve a kitchen at ground floor and bathroom at first floor.
8. I acknowledge there would be some overbearing impact or enclosure with resultant loss of natural light to the bathroom. However, the bathroom is a non-habitable room and such an effect on this room would not justify rejection of the proposals. The kitchen window at ground floor is already enclosed by the existing side wall of the appeal property. As this side window is not the only window serving the room, such effects would also not result in significant harm to living conditions. The properties would continue to have a reasonable sized gap between them providing paths to rear gardens.
9. The proposed side wall is necessary to prevent overlooking from the balcony into the aforementioned windows. Whilst the plans are hand drawn, they are to an appropriate scale and it is clear from the side elevation and section plans that the side wall of the balcony would reach the eaves of the existing house. I am satisfied that this would be of sufficient height to preserve the privacy of the neighbouring occupants at No. 27.

10. I acknowledge that the appellants are more likely to sit out and spend time on a balcony than at a window. However, the woodland gardens and front gardens are open plan and already overlooked by the existing front windows serving all of the houses which are situated on the private drive. Private (enclosed) gardens are situated to the rear of the properties. In terms of noise, there is no persuasive evidence before me to indicate that disturbance from a balcony would be any worse than use of existing gardens in the summer months.

Other Matters

11. The site lies within the York Green Belt, being formerly part of the Clifton Hospital site as identified in the DCLP and this is continued through to the PDL. The proposed development involves the alteration of a building that does not result in disproportionate additions over and above the size of the original building. I am satisfied that the proposed development meets exception d) of paragraph 149 of the Framework so is not inappropriate development. Consequently, I have not considered this matter any further.
12. The safety aspects of the construction are matters which are dealt with under separate legislation, including a requirement for separate approval under the Building Regulations. Comments relating to rights of access to the private drive are also irrelevant to my determination of this appeal. In terms of the condition suggested by the neighbour, I consider it would be unreasonable to impose limits to working hours for a minor development whose construction is likely to be very limited in duration. Therefore this type of condition would fail to meet the tests set out in paragraph 56 of the Framework.

Conclusion

13. For the reasons above I conclude that subject to standard conditions requiring adherence to the approved plans and use of matching bricks, the appeal should be allowed.

Susan Hunt

INSPECTOR