



Appeal Decision

Site visit made on 11 April 2023

by Mark Caine BSc (Hons) MTPL MRTPI LSRA

an Inspector appointed by the Secretary of State

Decision date: 26 April 2023

Appeal Ref: APP/C2741/W/22/3312254

13 Middlethorpe Grove, York YO24 1JW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Knighting against the decision of City of York Council.
 - The application Ref 22/01302/FUL, dated 20 June 2022, was approved on 7 September 2022 and planning permission was granted subject to conditions.
 - The development permitted is a single storey rear extension, hip to gable roof extension with 3no. roof lights to front and dormer to rear.
 - The condition in dispute is No 3 which states that: *'The materials used externally shall be as specified on approved drawing No: 280 3-003 REV D, unless otherwise agreed in writing by the Local Planning Authority prior to their use. The materials of the proposed gable roof extension shall match those of the existing house in colour, size, shape and texture. Samples of the proposed slate to the rear dormer and the black brick to the rear extension shall be submitted to and approved in writing by the Local Planning Authority prior to their use'.*
 - The reason given for the condition is: *'For the avoidance of doubt and to ensure that the development is carried out only as approved by the Local Planning Authority'.*
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Decision

1. The appeal is allowed and planning permission Ref 22/01302/FUL for a single storey rear extension, hip to gable roof extension with 3no. roof lights to front and dormer to rear at 13 Middlethorpe Grove, York YO24 1JW, granted on 7 September 2022 by the City of York Council, is varied, by deleting condition No 3 and substituting it with the following condition:
 - 1) Notwithstanding condition 2, the bricks and tiles of the gable roof extension hereby permitted shall match the colour, size, shape and texture of those used in the existing dwelling. Prior to the commencement of construction works for the rear dormer extension hereby permitted coloured samples of the hanging artificial slate shall be submitted to and approved in writing by the Local Planning Authority. The relevant works shall be carried out in accordance with the approved samples.

Procedural Matter

2. The Council has referred to Policies in the City of York Local Plan-Publication Draft (2018) (PDLP) and the City of York Draft Development Control Local Plan (2005) (DCLP), which was approved by the Council for development control purposes. Neither of these plans have been formally adopted. The Council does not clearly set out the amount of weight that they consider should be afforded to these policies. Therefore, whilst I have had regard to these policies in my determination of this appeal, in accordance with paragraph 48 of the National

Planning Policy Framework (the Framework), I have given them limited weight as material considerations.

Background and Main Issue

3. Planning permission for the single storey rear extension, gable roof extension, roof lights and rear dormer (Ref: 22/01302/FUL), included condition 3, which requires, unless otherwise agreed in writing, that the external materials to be used are as specified in the approved drawing.
4. The approved drawing refers to the use of (1) hanging artificial slate for the rear dormer, (3) black brick for the external walls of the single storey rear extension and (7) brick to match existing for the gable roof extension. However, condition 3 also goes on to state that the materials of the proposed gable roof extension are required to match the colour, size, shape and texture of the existing house, and that samples of the proposed slate for the rear dormer and black brick for the rear extension shall be submitted to the Local Planning Authority for its approval prior to their use.
5. The Council considers this condition to be necessary for the avoidance of doubt and to ensure that the development is carried out only as approved by the Local Planning Authority. Nonetheless, it is clear from the evidence before me that the reasons for imposing this condition also relate to character and appearance. I therefore consider the main issue to be whether the condition is reasonable and necessary in the interests of the character and appearance of the dwelling and the surrounding area.

Reasons

6. The appeal relates to one half of a pair of semi-detached dwellings that is located within a predominantly residential area. The immediate area is characterised by a mixture of detached and semi-detached bungalows and 2 storey houses. My site observations confirmed that a number of the 2 storey houses in the vicinity have roof alterations and side dormer extensions that have been constructed in materials of a similar colour to those found on the roof of the dwellings that they sit within.
7. Paragraph 56 of the Framework states that planning conditions should only be imposed when they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
8. Condition 2 already ensures that the development is to be carried out in accordance with the approved plans. As such a separate condition requiring that the external materials are constructed in accordance with the details specified in the approved plans is not necessary as it repeats this requirement. In addition, the 'tailpiece' wording that states 'unless otherwise agreed', would weaken the intent of the condition and certainty of what has been approved, contrary to the Council's reason for imposing it. These components of the condition are therefore unnecessary.
9. However, in the interests of precision, it is necessary to ensure that the tiles of the approved gable roof extension are included in the wording of the condition as materials that are required to match those of the existing dwelling.

10. The Council's development management officer report clearly sets out the reasoning for allowing black brickwork and hanging artificial slate to the rear extension and rear dormer respectively. Despite not matching the existing dwelling's brickwork or roof tiles, these are deemed to be acceptable due to, amongst other things, the variety of materials on view in the immediate area and I have no substantive reason to question this. Given the limited scale and restricted public views of the single storey rear extension, and the fact that the colour of the proposed brickwork has clearly been accepted by the Council, I see no reason why the submission of materials for this element of the scheme is reasonable or necessary.
11. However, the approved plans are lacking detail in respect of the colour of the rear dormer's hanging artificial slate. On my site visit I noted that the dwellings on the northern side of Middlethorpe Grove have a staggered layout to follow the curved alignment of this section of the road. As a result of this, and the set back of No 15, the side cheek of the approved rear dormer would be exposed and readily apparent when approaching from the eastern direction. Without the requirement for samples to be provided and approved, there would be the potential for the rear dormer to be constructed in an artificial slate that has an unacceptable and contrasting colour to the dwelling's roof tiles. Given its visibility along Middlethorpe Grove, any such colour could draw the eye, and further accentuate the rear dormer's visual presence. This would appear conspicuous and out of context with the prevailing colours of the roof alterations and side dormers (that match the colour of the roof materials of dwellings) in the street scene.
12. As such, it is necessary and reasonable for coloured samples of this material to be submitted for the Council's approval. An implementation clause to ensure that the dormer is carried out in accordance with the approved samples is also needed. It is unlikely, in my view, that the sourcing and submission of this material for approval would cause significant construction delays.
13. Although I saw a few other rear dormers of differing coloured finishes in the locality, most notably at Nos 17 and 19, I have not been provided with the full details of the circumstances that led to them being accepted. On the evidence presented I therefore cannot be certain that they represent a direct parallel to the appeal proposal.
14. Condition 3 in its current form is therefore not reasonable or necessary in respect of the character and appearance of the dwelling and the area. As such it is required to be removed and replaced by a condition that omits reference to the approved plans and the submission of samples of the black brick for the Local Planning Authority's approval. The substitute condition shall also be worded to ensure that the tiles of the gable roof extension match those found on the existing house and require coloured samples of the rear dormer's hanging artificial slate to be submitted to and approved in writing by the Local Planning Authority.
15. This would not, in my view, conflict with PDLP Policies D1 and D11, and Policies GP1 and H7 of the DCLP or advice contained in the Council's 'House Extensions and Alterations' Supplementary Planning Document 2012. These seek, amongst other things, to ensure that the design and materials of development proposals are appropriate and sympathetic to the main dwelling and respects or enhances the local environment.

16. In similar respects, no conflict would arise with advice contained in Paragraph 130 of the Framework which seeks to ensure that developments are sympathetic to local character.

Conclusion

17. For the reasons given above, the planning permission should be varied as set in the formal decision.

Mark Caine

INSPECTOR