



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: 28 April 2023

Appeal Ref: APP/C2741/W/22/3312899

37 York Road, Strensall, York YO32 5UB

- 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 Steve Bowser against the decision of City of York Council.
 - The application Ref 22/00775/FUL, dated 10 April 2022, was approved on 17 June 2022 and planning permission was granted subject to conditions.
 - The development permitted is the erection of single storey summer house/office to rear of garden and erection of storage shed to front garden (part retrospective).
 - The condition in dispute is No 4 which states that: *'Within 3 months of the date of this permission, the timber shed at the front of the property shall be painted or stained a colour to be agreed in writing with the local planning authority, and unless otherwise agreed shall be thus maintained'*.
 - The reason given for the condition is: *'To achieve a visually acceptable form of development.'*
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Decision

1. The appeal is allowed and planning permission Ref 22/00775/FUL for the erection of single storey summer house/office to rear of garden and erection of storage shed to front garden (part retrospective) at 37 York Road, Strensall, York YO32 5UB granted on 17 June 2022 by the City of York Council, is varied, by deleting condition No 4 and substituting it with the following condition:
 - 1) The timber shed at the front of the property hereby permitted shall be demolished and all materials resulting from the demolition shall be removed within 2 months of the date of failure to meet the following requirement set out below:
 - i) Within 3 months of the date of this decision the timber shed at the front of the property shall be painted or stained a colour to be agreed in writing with the local planning authority and shall be maintained in that colour thereafter.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Procedural Matter

2. The Council has referred to Policies D1 and D11 of the City of York Local Plan Publication Draft (2018) (PDLP) and Policies GP1 and H7 of 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 was granted in June 2022 for a summer house/office in the back garden and a detached timber shed in the front garden of 37 York Road. This was subject to the imposition of a planning condition (4) which requires the timber shed to be painted or stained a colour to be agreed in writing by the local planning authority, and maintained thereafter, unless otherwise agreed. The Council considers this condition to be necessary to achieve a visually acceptable form of development.
4. On my site visit I saw that the shed has been constructed. The main issue is therefore whether the condition is reasonable and necessary in the interests of the character and appearance of the area.

Reasons

5. The single storey detached timber shed sits within the front garden of No 37, a brick built 2 storey detached dwelling. Whilst there are some natural timber features nearby, the overriding characteristic of York Road is of red brick residential buildings, comprising a mixture of 2 storey houses and bungalows.
6. On my site visit I saw No 37's natural timber gates and low-level planter, and I noted that the shed's materials and colour are similar to these. I am also informed that these have weathered and darkened over time. However, the shed is prominently sited directly in front of, and in proximity to the front elevation of No 37. It is clearly visible through the gap for the vehicular entrance into the site, from several vantage points along York Road and a number of neighbouring residential properties. Even when weathered, its light natural colour would contrast sharply with, and appear incongruous when seen against the darker brick materials of this dwelling, and the green backdrop of the mature hedge, when viewed from the northern direction.
7. Without any further painting or staining to a darker recessive colour, the shed therefore appears as a prominent and conspicuous feature in the street scene. The nearby tree, and recent planting along the garden frontage, even when fully grown, would not provide effective mitigation to overcome this harm.
8. Based on the evidence before me, having regard to the tests set out in paragraph 56 of the Framework, I therefore find that condition 4 is reasonable and necessary in the interests of the character and appearance of the area.
9. However, the timeframe for the submission and approval of an agreed colour has now expired. Since the shed has already been erected, and the painting/staining of it is necessary to make the development acceptable, in the interests of enforceability I have substituted the disputed condition with one that sets out a new timetable for compliance – and a sanction that the approved shed must be demolished if this is not complied with. I have also not included the 'tailpiece' wording which states 'unless otherwise agreed' in respect of its maintenance, as this would weaken the intent of the condition and certainty of what has been approved. I am satisfied that the requirements

of this condition would not leave the appellant in a worse position than they were in before they made the appeal.

10. This would not, in my view, conflict with DCLP Policies GP1 and H7 and Policies D1 and D11 of the PDLP, though these attract limited weight due to their current progress, which relate to design and area character considerations. In similar respects, it would not accord with advice contained in the Council's 'House Extensions and Alterations' Supplementary Planning Document 2012.

Conclusion

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

Mark Caine

INSPECTOR