



Appeal Decision

Site visit made on 4 April 2023

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 May 2023

Appeal Ref: APP/R1038/D/23/3316911

193 Birkinstyle Lane, Stonebroom, Alfreton, Derbyshire DE55 6LD

- 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 Mrs Sarah Green against the decision of North East Derbyshire District Council.
 - The application Ref 22/00767/FLH, dated 25 July 2022, was refused by notice dated 30 November 2022.
 - The development proposed is a first floor rear extension.
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Decision

1. The appeal is allowed and planning permission is granted for a first floor rear extension at 193 Birkinstyle Lane, Stonebroom, Alfreton, Derbyshire DE55 6LD in accordance with the terms of the application, Ref 22/00767/FLH, dated 25 July 2022, and the following plans submitted with it: Block Plan; Revised Plan SG1/07/22/REV A – Proposed First Floor Rear Extension.

Preliminary Matter

2. The application was made on a retrospective basis and I have considered the appeal as such, though I have removed reference to 'retrospective planning application' from the description of development as this does not relate to an act of development.

Main Issue

3. The main issue is the effect of the development of the living conditions of neighbouring occupants at 195 Birkinstyle Lane, with respect to outlook, light and enclosure.

Reasons

4. The development comprises a first floor extension erected above a previous single storey rear addition. The submitted plans indicate the extension to be 2.85 metres in depth, though neither party quotes a measurement for the depth of the extension in their written submissions.
5. The Council refers to its Successful Places Supplementary Planning Document (SPD) (2013) which sets guidance for rear extensions. In particular, a 45 degree rule is set out which states that a significant reduction in daylight is likely to occur if the centre of the affected window, or a point 2m above the ground level for patio doors, is covered by the shaded areas delineated by two 45 degree lines drawn from the outer corner edge of the extension in plan and the eaves line in elevation. The guidance does state that the rule is to be applied flexibly.

6. The plans submitted include 45 degree lines on the plan drawings only and are not taken from the same points as the SPD guidance. However, they show that the extension breaches a 45 degree line drawn from the centre of the nearest bedroom window at first floor level. The Council adds that the patio doors beneath this window at ground floor level would also fail the test, though I have no graphic representation of this. From what I can glean from the plans, the extension does not breach the 45 degree rule for the first floor window in elevation. However, from my observations, the patio door at ground floor level appears to fail the 45 degree test both in plan and elevation.
7. The Council also points to the fact that the neighbouring windows face in a northerly direction and the extension, being roughly to the west of these windows, would exacerbate the impact on neighbours by reducing sunlight and conversely increasing shadow in the afternoon and evening.
8. I observed the extension from the neighbouring dwelling. It is not especially deep, but combined with its height, it is an immediate presence in views from both the patio and rear bedroom windows. However, it sits to one side of these views, and there remains broad vistas to the rear, where the dwelling borders onto open playing fields, and to the other side of the property. Neighbouring occupants therefore retain a good level of outlook, notwithstanding the massing of the extension.
9. The orientation of the extension would result in some increase in overshadowing during the afternoon and evening. This would have a more pronounced effect on the rear patio doors at ground floor level. However, I saw that the patio doors serve a dual aspect living room with a southerly facing front window that would receive good sunlight and daylight across a large part of the day. The large patio doors also enable good levels of daylight into the ground floor living space, despite the presence of the extension. The garden area beyond the depth of the extension would also remain largely unobstructed and in receipt of good levels of sunlight and daylight.
10. Moreover, the SPD is not prohibitive of two storey extensions where they pass the 45 degree rule. However, based on the plans before me, for the extension to pass the 45 degree test, it would have to be reduced in depth, potentially limiting the utility of the internal space provided. Hence, the SPD directs the rule to be applied flexibly. Here, even if reduced in depth to comply with the 45 degree rule, neighbours would still experience some higher level massing on the boundary. In my judgement, the extension, although it breaches the 45 degree rule, does not do so to a substantial degree, and the difference between an SPD compliant scheme and that built, in terms of additional enclosure, overshadowing or reduced outlook, is not of a scale that would have a significantly worse effect on neighbours' enjoyment of their living spaces.
11. Given these considerations, I find that the effect on outlook, light and sense of enclosure would not be so severe as to significantly harm the living conditions of neighbouring occupants. Therefore, notwithstanding the guidance of the SPD, I conclude that there would be no conflict with Policies LCS, SS7 and SDC12 of the North East Derbyshire Local Plan (November 2021) which together require development to achieve high quality design that avoids significant loss of amenity for residents of neighbouring properties.

Other Matters

12. The Council did not refuse permission in respect of the effect of the proposal on the character and appearance of the area, noting the mix of development styles, including other two storey extensions. I saw one such example at No 197. The location of the extension to the rear means it has no effect on the street scene along Birkinstyle Lane. From all I have seen and read, I have no reasons to conclude differently to the Council in this matter.
13. I note further concerns raised by the neighbouring occupant with respect to the position of the extension relative to the shared boundary. The neighbour points to the submitted plans being inaccurate in this respect. The Council only refers to a difference between the block plan and proposed plans but does not raise specific concern that details submitted are not sufficient to determine the proposal. From my observations, the extension as shown on the site plan is in a different position to the other plans, which are sufficiently accurate to enable the appeal to be determined. For the avoidance of doubt, I have omitted reference to the site plan in the formal decision above.
14. There is also concern raised with regards to the fascia of the eaves overhanging the common boundary between the two properties, as well as concerns with the location of foundations and the safety of wiring on the exterior of the extension. However, such matters relate primarily to party wall legislation falling to be addressed outside the planning process. They are not determinative matters in respect of the main issue of the appeal.

Conditions

15. As the works are indicated to have already been completed, it is not necessary to impose a time limit condition or an approved plans condition, though I shall list the relevant plans in the formal decision for clarity.

Conclusion

16. For the reasons set out, the appeal is allowed.

K Savage

INSPECTOR