



Appeal Decision

Site visit made on 7 November 2023

by K Mansell BA (Hons) MPhil TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 January 2024.

Appeal Ref: APP/E2001/D/23/3327667

45 Dene Road, Cottingham, East Riding of Yorkshire HU16 5PD

- 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 Moore against the decision of East Riding of Yorkshire Council.
 - The application Ref 23/00668/PLF, dated 24 February 2023, was refused by notice dated 30 June 2023.
 - The development proposed is proposed balcony to existing flat roof.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. On my site visit I saw that a balcony had been installed to the rear of the appeal property. Whilst taking note of what has been built, the proposal was amended during the period that the Council was considering the application. This included the provision of a masonry screen to each end of the balcony and an element of obscure glazing close to the southern boundary. The Council determined the application based on these amended plans, and I have done the same.

Main Issues

3. The main issues in this appeal are the effect of the development on:
 - The living conditions of the neighbouring occupiers of 43 Dene Road, with regard to overlooking and noise and disturbance.
 - The character and appearance of the host property and the surrounding area, and on the setting of the Cottingham Conservation Area (CCA).

Reasons

Living conditions

4. Dene Road is characterised by mainly semi-detached two storey red brick dwellings of similar appearance and size, reminiscent of their 1930s era origins. The street is reasonably wide, with grass verges to each side. Houses are typically set back from the road behind a modest garden or driveway area bounded by a low brick wall, with a larger garden to the rear. Combined with a generous gap between houses, the area has a spacious character.

5. The appeal site at 45 Dene Road forms a semi-detached pair of dwellings with No 43. The appeal property has previously been extended, including to the back and side of the house, being a single storey projection with a hipped roof. The balcony that is the subject of this appeal would be installed onto the flat roof section of the rear extension for almost the entire width of the dwelling.
6. Being at first floor level, the balcony would introduce a vista over the garden of the adjoining property at No 43. Whilst the masonry wall to the southern edge of the balcony would hinder direct views into the first-floor window of this neighbouring house, it would still offer an elevated vantage point of their rear outside space.
7. Furthermore, notwithstanding the small section of obscure glazing closest to the southern boundary, the rear balustrade of the balcony would mostly be just over 1 metre in height. Consequently, it would be possible to stand on the balcony edge and look towards the garden of No 43. Even if this would result in views mainly towards the rear of the neighbouring garden, it would be from a raised position and it would be detrimental to the privacy of the neighbouring occupiers.
8. It is recognised that the rear first floor windows of the appeal property would also provide views towards the neighbour's garden. However, the balcony would project from the rear elevation. It would also be wide enough to enable the occupants of the appeal property to linger on it. Overlooking from the balcony would feel more intrusive and intense from the neighbouring property as a result.
9. The appellant has drawn my attention to a non-deciduous tree within the garden of No 43 that was previously in-situ at the time the original balcony was constructed. It has since been removed. However, I must consider the impact of the proposal on the neighbouring property based upon the site circumstances as they currently exist. The screening effect of this tree or otherwise is therefore no longer relevant.
10. Turning to the matter of noise and disturbance, the depth of the balcony would be wide enough for the occupants of the appeal property to both stand and sit on for reasonably long periods of time. Even if its use would be ancillary to the residential function of the appeal property, there would be the potential for disruption from people using the balcony, because unlike activities from within the house, they would be at an elevated and prominent first floor level and they would be in the open air. Consequently, this would be harmful to the neighbouring occupiers.
11. The appellant has cited two appeal decisions¹ for a balcony on the same site where each Inspector considered the relevance of neighbouring occupiers being considerate to one another, as well as the use of legislation for those who are not. Regarding the latter, I have nothing before me to set out what these regulations might be, thereby limiting the weight that I can give to this assertion. I have also been provided only with a copy of one of these decisions, which refers to a balcony at raised ground floor level on a mid-terrace property divided into flats. I do not find it directly comparable to the appeal proposal for a first-floor balcony to a semi-detached house, which I have therefore assessed on its individual merits based on the particular circumstances of this appeal.
12. Moreover, planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise, rather than on the premise of good

¹ APP/H5390/W/20/3252421 and APP/H5390/W/18/3195517

neighbourliness. The starting point for the determination of this appeal must therefore be the development plan.

13. In this regard, for the reasons set out above, I find that the appeal proposal would unacceptably harm the living conditions of the occupants of 43 Dene Road as a result of overlooking and a subsequent loss of privacy, as well as unacceptable levels of noise and disturbance. It would therefore lead to conflict with Policy ENV1 of the East Riding Local Plan Strategy Document 2012-2029 (ERLPSD) (2016). This policy determines that development should achieve a high quality of design by, amongst other matters, having regard to the amenity of existing or proposed properties. It would also conflict with the provisions of Paragraph 130 of the National Planning Policy Framework (the Framework), related to securing a high standard of amenity.

Character and appearance and the setting of the CCA

14. To each end of the balcony, a 2-metre masonry wall would be constructed. The position of these walls would each align with the side elevations of the single storey extension below. However, in views of the side of the house, as a result of the height and position of these walls, the appeal proposal would nonetheless create the appearance of a two-storey flat roof extension to the house.
15. The appeal property is neither Listed, nor identified as a building of particular architectural significance or interest. Nevertheless, the Cottingham Neighbourhood Plan and Design Guide 2015-2029, made in February 2018, (CNP/DG (2018)), highlights, amongst other matters, that alterations and extensions should blend with the design of the existing dwelling. Even if the masonry walls to the balcony were to be constructed in brickwork to match the existing house, the impression that they would give in views of the flank elevations, of a flat roof projection, would contrast with the hipped roof form of the main house. It would be an incongruous addition to the host dwelling as a result.
16. The appellant has cited two examples of flat roof extensions within the vicinity at 1 and 2 Parkside Close. I do not have any details of their planning history before me and, in the absence of any evidence to the contrary, these extensions appear to have been in situ for some time. They would therefore significantly pre-date the ERLPSD (2016) and the CNP/DG (2018). Consequently, I do not find them directly comparable. In any event, each case must be considered on its individual merits.
17. I recognise that the generous spacing between properties on Dene Road means that the masonry wall at the northern end of the balcony would be visible from the street, in the gap between the appeal property and the adjacent house at No 47. However, this wall would be set in from the northern side elevation of No 45 by approximately 0.5 metres. Being situated to the rear of the house, it would only be glimpsed in views between these properties, and it would not be unduly prominent. For this reason, it would not result in harm to the street scene or the wider area.
18. I am also mindful that the boundary of the Cottingham Conservation Area (CCA), which includes the wooded area of The Dene, is drawn on the opposite side of Dene Road to the appeal property. Section 72(1) of the Town and Country Planning (Listed Building and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area.

19. The Cottingham Conservation Area Appraisal (CCAA) suggests that it extends to a reasonably large area, incorporating the broadly intact historic core of Cottingham and the architecturally diverse residential development that has evolved around it. Part of the special character of the CCA is also derived from the relationship between built form and open spaces. This includes 'The Dene', which provides an area of woodland that contributes to the leafy setting of the CCA and offers a publicly accessible amenity area within a reasonably densely developed settlement.
20. However, because of the restricted visibility of the appeal proposal from Dene Road that I have identified, there would also be very limited intervisibility between the appeal proposal and the CCA opposite, including from The Dene. For this reason, I find that the appeal proposal would not result in any harm to the setting or significance of the CCA as a whole.
21. Taking all these factors into consideration, I conclude that the appeal proposal would be harmful to the character and appearance of the host dwelling. It would therefore be contrary to Policy ENV1 of the ERLPSD (2016) and Policy GP2 of the CNP/DG (2018), insofar as these relate to securing high-quality design and having regard to the design guide in respect of home alterations. However, I find that it would not adversely impact the character or appearance of the area or the setting of the CCA. It would therefore satisfy the requirements of Policies ENV1 and ENV3 of the ERLPSD (2016) to the extent that the design of proposals should safeguard the appearance of the surrounding area and should conserve the setting and significance of heritage assets. It would also be consistent with guidance within the Framework in this regard to conserve and enhance the historic environment.

Other Matters

22. I acknowledge the matters raised by third parties, which include concerns about overlooking of properties other than No 43. The Council do not raise any issue about the effect of the proposal on the living conditions of other existing occupiers, either because of the degree of separation between the appeal proposal and their gardens or intervening structures. I do not disagree on this point. In any event, I am dismissing the appeal for the reasons given.
23. I appreciate that the proposal would optimise the existing dwelling's external amenity space. I also understand the appellant's desire to seek to maximise the benefit for the family's living conditions. However, on my site visit I observed that the appeal property already has a generous rear garden. Moreover, planning decisions are taken in the public interest. Therefore, these personal circumstances do not, in my view, outweigh the harms that I have identified previously.

Conclusion

24. For the reasons given above, whilst I find no harm arising from the balcony on the character and appearance of the area, or on the setting of the CCA, I find that it would result in harm to the living conditions of the neighbouring property at 43 Dene Road and to the character and appearance of the host dwelling. For these reasons, I conclude that the appeal should be dismissed.

K Mansell

INSPECTOR