



Appeal Decision

Site visit made on 31 January 2024

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th February 2024

Appeal Ref: APP/N4720/C/23/3331169
458 and 460 York Road, LEEDS, LS9 0HH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Yasir Khan against an enforcement notice issued by Leeds City Council.
 - The notice, numbered 19/00760/NCP3, was issued on 12 September 2023.
 - The breach of planning control as alleged in the notice is 'Without planning permission the erection of an extension spanning the rear of both properties'.
 - The requirements of the notice are to:
 1. Demolish in its entirety the rear extension.
 2. Make good the rear walls of the original houses as a result of Step 1.
 3. Restore the levels in the rear garden to those which existed prior to the unauthorised development taking place.
 4. Remove any debris and detritus as a result of Steps 1 and 2.
 - The period for compliance with the requirements is: six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (c) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Applications for costs

2. Applications for costs were made by both of the main parties in the appeal. Those applications are subject to separate decisions.

The appeal on ground (b)

3. An appeal on ground (b) is that the matter stated in the enforcement notice has not occurred as a matter of fact.
4. Little evidence is provided by the appellant in support of the ground (b) appeal. There is some dispute between the parties as to whether or not the extension should be regarded as a single or 2-storey construction. Regardless, this is not explicitly defined in the Notice. At the time of my site inspection an extension spanning the rear of both properties was present as a matter of fact. Accordingly, the appeal on ground (b) therefore fails.

The appeal on ground (c)

5. In an appeal on ground (c) the appellant has to show that there has not been a breach of planning control because, for example, planning permission has been granted or the development is permitted development.
6. It is the appellant's considered position that the development constructed on the site is that permitted by 2 applications of Notification of a Proposed Larger Home Extension submitted to the Council under the provisions of Class A.1(g) of Part 1, Schedule 2 (and associated conditions) of the Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO).
7. Application 16/06684/DHH, dated 24 October 2016, was submitted for a determination as to whether prior notification was required for a 6m single storey rear extension, 4m to ridge and 2.5m to eaves at 458 York Road. The Council confirmed, by a Decision Notice issued on 25 November 2016, that prior notification was not required for the proposed extension.
8. At the same time, prior notification application 16/06685/DHH, relating to 460 York Road, was submitted for a 6m single storey rear extension, 4m to ridge and 2.5m to eaves. The Council also confirmed by a Decision Notice issued on 25 November 2016, that prior notification was not required for that proposed development.
9. In each case, only limited details were shown on the submitted plans accompanying the applications. However, the applications showed individual developments located within the respective curtilages of each plot. The associated plans and forms confirmed that each development will not encroach on to neighbouring property.
10. The Council's photographic evidence, taken at the time of construction, shows the development as a single entity with continuous walls and roof. The extension crosses the rear plot boundary shown on the plans submitted to the Council between nos.458 and 460. It is not, therefore, the individual extensions shown detailed in the submissions associated with the GPDO prior notification applications. Fundamentally, the provisions of the GPDO relate only to development within the curtilage of a dwellinghouse [singular].
11. Even if the extension was considered to be formed of 2 parts, those decisions were subject to several conditions. The Decision Notices make it clear that the development shall be carried out in accordance with the submitted details, shall be constructed of materials of a similar appearance to those of the respective existing house, and be completed on or before 30 May 2019, as set out in paragraph A.3 of Class A.
12. There is no dispute that the roof of the extension as built is different to that approved under either of the applications. According to the appellant, the roofing material is a modern plastic membrane that is visibly distinct from the slate roof of the terrace. Additionally, it is the Council's position that the development had not been completed on or before the 30 May 2019. This is not contested by the appellant. As a development not in accordance with the details submitted, amended by written agreement otherwise¹, or the conditions imposed upon it, it cannot be the development set out under applications 16/06684/DHH and 16/06685/DHH.

¹ Condition A.4(11), Class A, Schedule 2 of the GPDO

13. In the absence of any planning permission for the matters described in the Notice, and as development requiring planning permission, the appeal under ground (c) must fail.

The ground (a) appeal and deemed application for planning permission

Main issues

14. Pursuant to the Council's stated reasons for issuing the Notice, I consider the main issues to be:

- whether or not the development is in keeping with the character and appearance of the existing dwellings and their locality; and,
- the effect of the development on the living conditions of neighbouring residents with particular regard to outlook and privacy.

Character and appearance

15. The consecutive properties of 458 and 460 York Road form one half of a short 2-storey terrace on the southern side of York Road. The locality is characterised by similar terraces and semi-pairs set behind enclosed front gardens with private amenity spaces to the rear.
16. The buildings feature hipped roof forms with chimneys, canopied entrances and repetitive window and door openings. Despite various alterations to elevational treatments, the buildings in the locality have a degree of consistency through their scale, form and detailing. Examples of rear extensions and curtilage buildings in the immediate locality are limited. However, those that were visible are of modest scale.
17. The terrace sits almost level with York Road. In contrast, the land behind the row drops away sharply before levelling to the rear boundaries shared with homes fronting Rookwood Avenue to the south. To facilitate a consistent floor level with the original part of the building, a build-up of the rear and flank elevations have been constructed to account for the change in land levels. This results in the rear openings appearing high on a deep elevation.
18. The size of the extension is significant. It has an overall footprint comparable to the combined footprint of nos.458 and 460. When viewed from the properties to the rear, a public footpath to the east and the gaps between the houses on Rookwood Avenue, the elevated position, spreading scale, high rear gabled elevation, large openings and light render finish cause it to stand out as a discordant and disproportionate feature to the respective character and scale of the original buildings.
19. For those reasons, I find that the extension conflicts with Policy P10 of the Leeds Local Plan Core Strategy (amended)[2019] (the CS), saved policies GP5 and BD6 of the Leeds Unitary development Plan Review [2006] (the UDP) and advice in the Leeds Local Development Framework Householder Design Guide [2012] as together they seek that the scale, design and layout of development is appropriate to its context and respects the character and quality of surrounding buildings and the wider locality. For similar reasons it conflicts with the revised National Planning Policy Framework (the Framework) as it seeks high quality design sympathetic to local character.

Living conditions

20. The ground floor of the adjoining terraced property at 456 York Road is separated by an open walk-through providing for outside access between the front and rear of the terrace. A timber fence delineates the skewed common boundary with no.458. This steps down with the changing ground level. To the rear of no.456 are 2 successive paved terraces dropping to a lawned garden.
21. In the interests of limiting the impact of development on neighbours, the Council's Design Guide indicates a guideline projection of 3m where single-storey rear extensions are located on a common boundary. It acknowledges that greater projections may be acceptable when set off the boundary.
22. The nearest ground floor window of no.456 lies close to the boundary. In conjunction with a relatively low initial eaves level, the height of the fence limits outward views of the nearest part of the extension to only the upper part of the wall. However, the significant projection of the extension and the reducing level of boundary screening will cause the remainder to be a prominent form of development in the outlook from the neighbour's nearest ground floor window.
23. Furthermore, the projection extends to the limit of the outside patio areas of no.456. The increasing visibility of the substantially plain side elevation from users of those paved terraces will also result in a high degree of enclosure when in use. It will unduly impose on the occupiers of that property to cause moderate harm to the living conditions of those neighbouring occupiers.
24. I acknowledge that the roof form as constructed might have a lower pitch than that implied by the plans associated with the prior notification applications. In comparison this would reduce any impact of the roof on neighbouring residents. However, in either case, the roof would be pitching away from the boundary to limit its effect. It would not, however, alter the impact of the side elevation as constructed.
25. The rear-facing windows of the extension address the combined rear garden areas of nos.458 and 460. The distance to the rear boundaries with properties on Rookwood Avenue is estimated by the appellant to vary between 8.5 and 10.5m. In conjunction with the heights of the rear boundary fences, the reduced ground levels beyond and the intermediate height of the windows, the effect on privacy to those neighbouring garden areas will be limited. The level of overlooking of the gardens either side of the appeal site would be little different from those sideways views achievable from windows in the original houses.
26. Due to the length of the plots on Rookwood Avenue, even accounting for the change in ground levels between back-to-back properties, the intervening distance between habitable room windows would be sufficient to provide a level of privacy commensurate with most residential estate settings. Accordingly, I find privacy levels will be largely unaffected.
27. Notwithstanding my finding in favour of the appellant with regard to matters of privacy, for the above reasons, I find that the extension will have a moderate adverse effect on the living conditions of neighbours residing at 456 York Road. It thereby conflicts with the requirements in Policy P10 of the CS, saved policies GP5 and BD5 of the UDP, the Framework and advice in the Design

Guide as together they seek development to protect the amenity of locations, quality of life and wellbeing.

Other matters

28. In support of the development the appellant references the Council's previous determinations² that prior approval of 6m single storey extensions to each of the dwellings was not required. By virtue of the provisions of the GPDO, planning permission was effectively granted for a similar scale of development, albeit consisting of 2 separate structures side by side and with different individual roof forms.
29. Notwithstanding that the extension is not the approved development (for the reasons provided above), or that the provisions of the GDPO cannot be retrospectively applied, those decisions are relevant in the planning histories of the sites.
30. However, whereas the appellant could reasonably expect a similar decision if the extensions were development not subject to GPDO prior notification requirements, or had been granted planning permission on application, that is not the case here. In the instance where a development is subject the conditional requirements set out in paragraph A.4 Class A of Part 1, Schedule 2 of the GPDO, there is no guaranteed fallback position. This is because a neighbour may object and trigger the need for prior approval and the formal consideration of the impact of the proposed development on the amenity of any adjoining premises by the Council³.
31. The absence of neighbour objections at the time of the Council's determination of the prior notification applications in 2016 dictated the applicable procedure within Class A. It limited the scope of considerations by the Council in coming to its decision. However, that is distinct from my own requirement to assess the development against the policies in the development plan. Although no third party objections were received in conjunction with this appeal, that does not preclude the necessity to assess the lifetime effects of the development, and I have proceeded accordingly.
32. Improvements to the landscaping and garden maintenance have limited benefits outside of the site. The advantage of a roof form avoiding a valley construction is noted. However, taken singularly or together, these are not benefits sufficient to outweigh the harm I have identified.
33. I acknowledge that the issue of the Notice has caused stress for the applicant, who provides care for a family member. However, it has not been demonstrated that the extension must be designed in the way that it has, or that the harm could be overcome by imposing conditions. The appellant's circumstances can also be expected to change, whereas the extension would compromise the character and appearance of the locality and living conditions next door in perpetuity.

Planning Balance and Conclusion on Ground (a)

34. Even if some weight was attributed to the argument that a fallback position existed and was sufficient to outweigh the moderate harm to the neighbours'

² Refs. 16/06684/DHH and 16/06685/DHH

³ Condition A.4(7)

living conditions, in my view, it would not provide justification for the harm to the character and appearance of the locality. Extensions under the terms of the GPDO require the eaves not to exceed 3m within 2m of a boundary (para. A.1(i) of Class A). This would limit the significant visual bulk of consecutive extensions by reducing the scale and spread of any rear gable.

35. Furthermore, the conditional requirements for materials of similar appearance to the host buildings would provide a greater degree of assimilation. This would be particularly so for no.460 which has a dark red render finish to its original walls. It would also result in a change in the external elevational treatment between the 2 halves of the extension. This would also assist in breaking up the considerable visual mass of consecutive large extensions. Accordingly, in my view, the argument in relation to a theoretical fallback does not outweigh the totality of the harm identified.
36. For the reasons above, I find the development causes harm to the character and appearance of the locality and the living conditions of neighbouring occupiers. It conflicts with the development plan read as a whole and there are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal on ground (a) should not be allowed.

The hidden ground (f) appeal

37. An appeal on this ground is that the steps required by the Notice to be taken, or the activities required by the Notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by such a breach. Although no specific detail is provided, the appellant indicates that the extension could be altered to incorporate a flat roof and obscure glazing to the 6 rear-facing window openings, if so required.
38. Section 173(4) of the Town and Country Planning Act 1990 sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. In summary, these purposes are remedying of the breach by restoring the land to its condition before the breach took place, or remedying any injury to amenity which has been caused by it. In this case, by requiring the removal of the extension in its entirety, the Notice seeks to remedy the breach of planning control.
39. Pursuant to my findings on the ground (a) appeal, and the absence of any other detailed scheme to remedy the harm identified in the Notice, there is no basis to consider an alternative form of development to remedy the breach. The appeal on ground (f) therefore fails.

Conclusion

40. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

R Hitchcock

INSPECTOR