



Appeal Decision

Site visit made on 16 February 2024

by M J Francis BA (Hons) MA MSc MCIfA

an Inspector appointed by the Secretary of State

Decision date: 11th April 2024

Appeal Ref: APP/X1355/W/23/3334665

28 Forster Avenue, Sherburn, Durham DH6 1EP

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 Frank Killen against the decision of Durham County Council.
 - The application Ref DM/23/02638/FPA, dated 12 September 2023, was refused by notice dated 24 October 2023.
 - The development proposed is change of use from domestic annex to 2no. holiday lets.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. At the time of my site visit, the annex had been built with internal works ongoing. The fence separating the proposed garden area of No 28 from the proposed holiday let and parking area had been constructed.

Main Issue

3. The main issue is whether the proposed development would provide acceptable living conditions for the occupiers of No 28 Forster Avenue with regards to noise and disturbance and the provision of external garden space.

Reasons

4. The appeal site is a semi-detached dwelling on a corner plot within a housing estate. At the rear of the site is a single storey row of garages which the garden of No 28 extends up to.
5. Within the rear garden is a detached, two-storey, pitched roof building which has planning permission¹ to be used as an annex in association with No 28. The permission included a fence with a connecting gate separating the area to the rear of the house from the annex.
6. The proposed change of use of the annex to a holiday let would subdivide the garden area of No 28 creating two separate units. This would result in a limited garden area for No 28, particularly as the house has already been extended at the rear with a single storey, partially enclosed and covered, raised veranda (the extension). The remaining garden is a raised area surrounded by wooden fencing and covered by a grass substitute, planters, and garden seats.

¹ DM/19/02398/FPA; and DM/22/01892/VOC

7. The extension is accessed by French doors from the house, and I saw that it contained furniture, rugs and cushions and so has the characteristics of a conservatory or garden room, notwithstanding that it is open on the front, apart from a glazed screen.
8. Whatever the visual effect of the extension on the rear amenity space, it has reduced the length of the garden, which the Council states is approximately 3.5 metres from the extension to the rear boundary fence. This measurement has not been disputed by the appellant, and I have no reason to disagree. The Council's Supplementary Planning Document² (SPD) considers that gardens should be of an appropriate size with regard to the size of the dwelling and the character of the area, and that they should be no less than 9 metres in length. The garden is therefore substantially smaller than recommended in the SPD.
9. Furthermore, when the annex was granted planning permission, it was allowed, despite the separation distance between the rear of the dwelling and the adjoining elevation being two metres less than the recommended amount in the SPD. Whilst this would be appropriate when the annex was ancillary to No 28, the position of the fence and the subdivision of the garden into two units would result in the garden area of No 28, which is both reduced in size and separated from the annex, appearing constrained. This would be inadequate for a family sized semi-detached dwelling, which despite the diverging characteristics and sizes of rear gardens of houses within the estate, are predominantly linear in form. Consequently, it would provide limited outdoor space for the occupiers of No 28 to use and enjoy which would adversely affect their living conditions.
10. The appellant has stated that whilst the annex building has one bedroom suitable for two people, the internal space within the building could provide room for four people. Moreover, if the building was changed to a holiday let, the guests would not be using the rear garden area of No 28, thereby reducing the need for a larger garden area for this property. This does not, however, lessen the requirement for the occupiers of No 28 to have an appropriately sized garden space.
11. Although the existing planning permission³ includes a parking space between the fence subdividing the garden area of No 28 and the annex, and despite the limited space between the side elevation of the annex and the adjacent garages, the land around the annex is currently available for the use of the occupiers of No 28. This would not be so if the annex became holiday lets. This would be further compromised by the proposed additional parking space which would also reduce the size of the rear garden.
12. Furthermore, if guests in the holiday lets were using both these parking spaces, this would result in the limited garden area of No 28 being hemmed in by vehicles. When these vehicles were arriving and departing, there would be the potential for noise and disturbance which would affect the quality and enjoyment that the occupiers of No 28 would expect when using their garden.
13. Notwithstanding the comments of the Environmental Health Officer, the use of the building as holiday lets by up to four guests, would likely result in a more disruptive pattern of occupation than if it was an annex used solely in

² Residential Amenity Standards Supplementary Planning Document, 2023 (SPD)

³ DM/22/01892/VOC

connection with No 28. This would be the result of more comings and goings by the guests using the holiday let than if the building was retained as an annex, which currently has only one allocated car parking space. Furthermore, it would result in a holiday let, which would have no connection to No 28 and its occupiers, located close to the rear boundaries of their property.

14. Therefore, to conclude on this issue, the proposed development would have an adverse effect on the living conditions of the occupiers of No 28 with regards to both noise and disturbance and the provision of external garden space.
15. The proposed development would not accord with Policies 29 and 31 of the County Durham Plan, 2020, which collectively and amongst other things requires all development proposals to provide acceptable living conditions including high standards of amenity and privacy, and to minimise the impact of development upon the occupants of existing adjacent and nearby properties. It would also not accord with chapter 12 of the National Planning Policy Framework which requires development to have a high standard of amenity for existing and future users.

Other Matters

16. The site is close to the city of Durham, with other major tourist sites being promoted within the county. The appeal site has good connections to the road network and is reputed to be close to bus stops providing a regular bus service to a number of locations. Furthermore, it is acknowledged that there is an undersupply of visitor accommodation within the county. The proposal which seeks to provide sustainable tourism⁴ and would be subject to a marketing and promotion strategy, would provide economic benefits to the local area from visitors to the holiday lets, as well as those employed to service the facilities. This would provide moderate weight to the proposal.
17. There is no dispute that the building has been designed with materials to match adjoining properties. This is as expected of new development and is a neutral matter. Furthermore, the amount of parking that would be provided for the proposed development is also not disputed.
18. The parties disagree whether the fencing can be constructed, and the parking area created using permitted development rights⁵. Whilst the subdivision of the garden is relevant to the main issue, the basis on which the fencing has already been erected is a matter for the relevant parties. Although the appellant has provided details of an appeal decision⁶ regarding a fence over one metre in height being constructed adjacent to a highway, I cannot be sure of the full circumstances of that case and whether it is directly comparable to the appeal before me.
19. The appellant has highlighted the opinions of the Council as to whether the rear extension is lawful. The planning status of the extension does not, however, affect my findings on this appeal.
20. The construction of the annex is considered by the appellant to create a buffer between the rear garden space of No 28 and the block of five garages to the rear. Whilst my visit can only represent a brief snapshot in time, the garages

⁴ Forster Avenue Holiday Lets

⁵ The Town and Country Planning (General Permitted Development) (England) Order 2015.

⁶ APP/M2270/C/01/1075234 & 1075235

did not appear to be intensively used, and it is unlikely that facing the rear of the garage block would have harmed the occupiers.

21. The appellant has highlighted that the lack of outdoor space for the holiday lets, which has been noted by a third party, was not covered by the officer report or the Council's reasons for refusal. This does not, however, affect my findings on this appeal.
22. It has been suggested by the appellant that a condition could restrict the garden of No 28 being used by the guests in the holiday lets. Based on the evidence before me, it has not been demonstrated that a suitably worded planning condition would address the harm that I have already found to the living conditions of the occupiers of No 28.

Conclusion

23. The proposed development conflicts with the development plan when considered as a whole and there are no material planning considerations, including the Framework, that outweigh the identified harm and that warrant a decision other than in accordance with the development plan.
24. Therefore, for the reasons given above, I conclude that the appeal is dismissed.

M J Francis

INSPECTOR