



Appeal Decision

Site visit made on 24 June 2024

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 July 2024

Appeal Ref: APP/C2741/X/24/3341027

Botland House, Main Street, Heslington, York YO10 5EG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Timothy James (Tim) Clark against the decision of City of York Council.
- The application ref 23/02373/CPD, dated 21 December 2023, was refused by notice dated 19 March 2024.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought was described as '*1) Additional along back wall of main house to form new lobby WC and Shower at back door; 2) Addition to extreme end of main house to form garden room with galley kitchen and conversion of end component of main house (currently a greenhouse) for use as a bathroom*'.

Decision

1. The appeal is dismissed.

Procedural Matters

2. I have adopted the more concise and accurate description of development as cited on the Council's decision notice in setting out the main issue, rather than that set out initially on the application form and repeated in the banner heading, above. I am satisfied that to do so would not prejudice or disadvantage either main party.

Preliminary Matters

3. Class A of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order) grants planning permission (as 'permitted development') for the 'enlargement, improvement or other alteration of a dwellinghouse'. The provisions of Class A are qualified by a number of restrictions. The reason for refusal cites paragraph A(i) (or A.1.(i) to give it its full title) that excludes extensions located within 2 metres of the boundary of the property where the eaves have a height of more than 3 metres.
4. With regard to single storey extensions, paragraph A.1(f) restricts single storey extensions beyond the rear wall of the original dwelling by (f)(i) to no more than 4 metres in the case of a detached dwellinghouse or (f)(ii) not more than 3 metres in the case of any other dwellinghouse. Within the latter description come semi-detached and terraced properties. Single storey extensions of not more than 8 metres (A.1.(g)(i) in the case of a detached dwellinghouse, or 6 metres (A.1.(g)(ii) in any other case, are permitted by virtue of paragraph A.1(g)(i) and (ii) provided that the dwellinghouse is not on article 2(3) land,

and subject to the provisions of paragraph A.4. Article 2(3) land is defined as land within a designated conservation area.

5. Notwithstanding the wording of the reason for refusal, although the Council have stated that the extension would be within 2 metres of the boundary, no case has been advanced that the eaves of the extension would exceed a height of 3 metres. Rather, the wording of the reason for refusal and that of the Council's delegated officer report¹ refer instead to the extension projecting more than 3 metres 'beyond the pertinent section of original rear wall of the dwelling'. This is consistent with an assessment of the proposed extension against the provisions of paragraph A.1.(f) or A.1.(g) as may be applicable, not paragraph A.1(i).
6. Nevertheless, I am satisfied that the nature and basis of the Council's objection to the proposed extension is clear from the officer report and the refusal reason when read together. I am also satisfied that the appellant, in setting out his grounds of appeal against the Council's decision, has also recognised the pertinent points in relation to the matter before me and has sought to address them accordingly. I have therefore determined the appeal on this basis and I am satisfied that neither party would be prejudiced or disadvantaged by my doing so.
7. The appeal site lies within the Heslington Conservation Area (the CA). As such, the provisions of paragraph A.1.(g) of the Order are not relevant to the matter before me. Rather, it is those of paragraph A.1.(f) that are of direct relevance in this instance, and I have determined the appeal accordingly.

Main Issue

8. The main issue is whether or not the Council's decision to refuse to grant an application for a certificate of lawful use or development for a single storey rear extension and rear extension to existing outbuildings was well-founded.

Reasons

9. Section 192(1)(b) of the Town and Country Planning Act 1990 (as amended) (the Act) provides for the making of an application to ascertain whether any operations proposed to be carried out in, on, over or under land, would be lawful at the time of making that application. The onus in such applications is on the appellant to make out their case to the standard of the balance of probabilities. Issues of planning merit and development plan policies are not relevant to the consideration of such matters.
10. For the purposes of Part 1 of the Order, paragraph I provides interpretation on certain key phrases used within that part of the Order. Thus, a terrace house², is taken to mean a dwellinghouse situated in a row of 3 or more dwellinghouses used or designed for use as single dwellings where (a) it shares a party wall with, or has a main wall adjoining the main wall of, the dwellinghouse on either side or, (b) if it is at the end of a row, it shares a party wall with, or has a main wall adjoining, the main wall of a dwellinghouse which fulfils the requirements of paragraph (a).

¹ Paragraph 5.6

² Except for the purposes of Class AA

11. Botland House was, it is commonly agreed, originally constructed as a detached house. Subsequently, but prior to 1 July 1948, Sherburn House and Ashcroft View were constructed directly abutting a significant portion, but not all, of Botland House's southeast facing side. The appellant relies upon extracts from various Ordnance Survey (OS) maps, particularly those indicated as being from 1851 and 1909 to demonstrate the property's evolution and the relationship with Sherburn House and Ashcroft View. Whilst these show that Botland House was indeed built first, with Sherburn House and Ashcroft View built later, they do not in my judgement challenge the Council's contention that Botland House should be considered a terraced property for the purposes of the Order.
12. The appellant has also submitted photographic evidence which, he states, seeks to demonstrate that despite their proximity to each other, the appeal property is not physically attached to, or shares a party wall with or has a main wall adjoining, the main wall of the neighbouring Sherburn House / Ashcroft View properties. Indeed, one of these photographs is described, in its filename title, as a '*close up of 2cm sealed joint separating Botland House*'. Another shows a gap between the roof and gutter of the appeal property, and the side wall of Sherburn House.
13. However, I have no evidence before me to indicate the extent or nature of any gap, should one exist, behind this 'seal'. The gutter and eaves may not directly attach to the exposed portion of the flank wall at Sherburn House, but this is not necessarily unexpected given the significantly different rooflines of the three properties. The roof covering appears to be flashed in to the exposed flank wall of the neighbouring property and I have no evidence to demonstrate that the roof itself is anything other than directly adjoining Sherburn House.
14. Nor is the offset between the appeal property and Sherburn House / Ashcroft View indicative of it being detached. The submitted photographs do not provide sufficient proof, to the required level being that of the balance of probability, that the appeal property is detached from Sherburn House / Ashcroft View. Thus, although set significantly forward of Botland House, for the reasons I have set out, I am satisfied that the three dwellings form a row of three dwellinghouses and thus, by virtue of the definition provided at paragraph I of the Order, form a terrace. Consequently, Botland House is an end of terrace property for the purposes of the application of Class A, Part 1 of the Order and it is the limitation set out by virtue of paragraph A.1(f)(ii) that is determinative in this instance.
15. Having considered the matter of the appeal property's nature as a terraced property, it is also necessary to consider the matter of what is 'original'. There is no dispute that, at 1 July 1948, the appeal property and Sherburn House / Ashcroft View shared their current relationship. Thus, for the purposes of interpretation of the Order as a whole, 'original' is defined in relation to a building existing on (ie; built before) 1 July 1948, as it existed on that date.
16. The submitted map extracts and plans indicate the approximate form of Botland House, to which there are many distinct built elements at the rear of the appeal property that, cumulatively, project a significant distance from the rear of the appeal property. The outline of these elements of the appeal property, and the property as a whole, appear on a number of the submitted map extracts and plans. None are, individually, definitive. However, together they show the evolution of the appeal property and are reasonably consistent

in relation to the area where the proposed single storey entrance lobby extension is proposed to be constructed.

17. An updated guide to permitted development rights for householders³ (the technical guidance) was published in 2019. The technical guidance helpfully explains that there may be instances where the original rear wall of a house is stepped, providing a useful visual example, and that each of the rear walls will form a 'rear wall of the original dwellinghouse'.
18. The appellant's submissions support the notion that the area where the appeal scheme would be constructed, specifically the entrance lobby extension, would be built on a rear wall of the original dwellinghouse. This is despite it not projecting as far as the two storey flat roofed outrigger adjacent to it, and it terminating at against the wider part of the appeal property referred to on the submitted plans as the 'annex / studio'.
19. As the technical guidance sets out, there may be more than one rear wall of the original dwelling house for the purposes of the application of paragraph A.1.(f)⁴, Part 1 of the Order. That is the case in this instance. I am therefore satisfied that the location in which the entrance lobby extension would be constructed amounts to a rear wall of the original dwellinghouse.
20. The submitted floor plans⁵ show that the proposed entrance lobby itself would project in the region of 2 metres from the rear wall of the house. However, the extension's design incorporates an extended roof element that would over-sail the main part of the extension and provide roof-cover over the rear yard area. Overall, the extension including this area of roof would project by more than 3 metres from the rear wall of the original. Although the remaining part of the end elevation and the side elevation would be open-sided, the other sides would be enclosed and the roof over the covered area would be an integral element of the extension as a whole.
21. Thus, for the purposes of Class A, Part 1 of the Order, I conclude that the extension would exceed a projection of 3 metres from a rear wall of the original dwellinghouse and thus, exceed the limitations set out at paragraph A.1.(f) of the Order. Whilst the Council's decision to refuse the application was ultimately well-founded, I find it to be so for the reasons set out herein in relation to paragraph A.1.(f) of Class A, Part 1 of the Order, rather than Class A(i) of Class A, Part 1 of the Order as the Council's initially stated reason for refusal set out.

Conclusion

22. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of a single storey rear extension and rear extension to existing outbuildings was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

G Robbie

INSPECTOR

³ 'Permitted development rights for householders: Technical Guidance' – Ministry of Housing, Communities & Local Government (September 2019)

⁴ and paragraph A.1.(g)

⁵ Drwg No: 004 Revision 2 (12 March 2024)