
Appeal Decision

Site visit made on 19 July 2024

by Peter D. Biggers BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 August 2024

Appeal Ref: APP/V2004/D/24/3343558

2 Birklands Drive, Kingston Upon Hull HU8 0LJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr and Mrs Steve and Janine Gosling against the decision of Hull City Council.
 - The application Ref is 23/03466/FULL.
 - The development proposed is erection of single storey rear extension following demolition of existing rear extension and conservatory; erection of timber decking to rear elevation; and application of white render to rear elevation at first floor.
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Decision

1. The appeal is allowed and planning permission is granted for erection of single storey rear extension following demolition of existing rear extension and conservatory; erection of timber decking to rear elevation; and application of white render to rear elevation at first floor at 2 Birklands Drive, City of Kingston Upon Hull HU8 0LJ in accordance with the terms of the application, Ref 23/03466/FULL, and the plans submitted with it, subject to the conditions in the schedule below.

Preliminary Matters

2. The original description of development as it appears on the application form is missing aspects of the proposal. I have therefore taken the amended description from the decision notice for the purposes of my decision on the appeal.
3. A Prior Approval application for a single storey rear extension 6m long x 5.8m wide x 3.5m (maximum) in height has been determined on this site and no prior approval was required (ref 22/00503/PAH). However, during construction of the extension, the finished height was found to be higher than indicated in the Prior Approval application and a full application was requested and subsequently refused leading to this appeal. The extension has been completed.

Main Issue

4. Whether the proposed development would have an adverse effect on the living conditions of the present and future occupants of No 4 Birklands Drive as a result of proximity, loss of outlook and loss of light.

Reasons

5. Birklands Drive, where the appeal site is located, is a street of two storey, semi-detached houses. To the rear, the houses have varying styles of rear extension. No 2 previously had a single storey, monopitched extension and attached conservatory extension to the same depth as the new extension but the conservatory did not extend across the full width of the property. These pre-existing extensions were in the same position relative to the side boundary with No 4 as is the case with the completed appeal development.
6. No 4 also has its own small, rear monopitched extension but on the opposite side to that on No 2. A small patio and patio doors to the lounge window sit between this offshoot and the side boundary with No 2.
7. The Prior Approval proposal approved on 30 May 2022 was not built in accordance with the submitted plans in two main respects. First, the proposal had originally been for the extension to follow the side boundary to the property which runs at an angle away from the rear wall of No 2 rather than following the right angled line of the pre-existing extensions to the rear of No 2 as now built. Second, the height of the extension was increased from a roof deck height of 3m in the Prior Approval to a roof deck height of 3.39m as built. I took the opportunity to confirm the finished height on the side adjacent to the patio of No 4 whilst on site and the roof deck level accorded with the submitted plans. Building the appeal scheme extension as for the pre-existing extensions, at right angles to No 2, constitutes a slight benefit to the occupants of No 4 in taking the extension off the side boundary compared to what would have been the case under the Prior Approval proposal, providing slightly more space on the patio to No 4.
8. As other dimensions in terms of the extension depth are the same in both schemes the issue is the extent to which the higher roof deck level of what has been built compared to what was approved under the Prior Approval scheme has led to additional harm to living conditions.
9. The occupants of No 4 did not object to the Prior Approval plan and its proposed roof deck height of 3 metres and for the purposes of the assessment I am discounting the added height of the roof lantern in comparing the schemes as this is set away from the extension edge in the centre of the roof and is of lightweight glazed construction.
10. Had the Prior Approval application scheme been built as approved, from my observations on site it would have been similarly enclosing in its effect on the patio and rear windows to No 4. In that respect even though the as-built appeal scheme is slightly higher to the roof deck I am not persuaded the end result in terms of impact on enclosure and outlook would be substantially different. Indeed, I am satisfied that the adjustment made in the appeal proposal to build it at right angles to the house and not to follow the side boundary line actually constitutes an improvement over what was approved as a Prior Approval and contributes to offsetting the impact of the additional height.
11. In terms of sunlight, at the time of my visit (12.15) the sun was already over the as-built extension and shining on the neighbour's rear patio windows and patio. I accept that the additional height would have some added impact on sunlight particularly in the winter when the sun is lower in the sky but again

given what was already approved under the Prior Approval procedures, I am not persuaded that the impacts in terms of sunlight loss would be substantially different.

12. What has been built also needs to be considered against what was pre-existing on site as this was not simply clear garden land prior to the extension being erected. The previous combination of rear extension and conservatory extended to the same depth as the structure now built. The previous monopitch roofed extension rose to a higher level than the appeal proposal at its highest point, dipped slightly below the level of the newly constructed roof deck on the outer edge but then the conservatory extension rose again to the same level as the new roof deck. There was therefore pre-existing structures of a similar height and mass on the boundary of the two properties which already framed the outlook from the patio windows.
13. I acknowledge however that the conservatory being a pitched roof, lightweight, glazed structure that allowed sunlight through would not have had the same impact as the solid brick wall now in place. Nevertheless, the previous structures would have created some degree of enclosure particularly the monopitch rear extension to the patio doors of No 4. Moreover, it does not appear that there was any side screening to the conservatory previously in place so the new extension would have the advantage of removing the potential for overlooking between the two properties.
14. In respect of the proposed decking to allow access down to the garden level this would be at the floor level of the extension so would not of itself add to the sense of enclosure or loss of light. However, it is important that there should be no potential for overlooking of No 4's garden from the deck. This could be controlled by the imposition of a suitable condition to secure screening.
15. The *National Planning Policy Framework* (the Framework) at paragraph 135 requires development to achieve a high standard of amenity for existing and future users. Similarly, the *Hull Local Plan* (HLP) at Policy 14 on Design requires development to consider the impact on surrounding uses and Policy 22 on Extensions at part a) and b) makes clear that extensions should not have an adverse effect on neighbouring properties. The design of the as-built extension does impact on the living conditions for the neighbouring occupants and therefore conflicts with these policies and ordinarily would not be permitted. However, the Prior Approval proposal under the arrangements to enable larger extensions set out in the *General Permitted Development Order 2015* (as amended) Schedule 2 Part 1 Class A(g) has been deemed acceptable and approved and is now a material consideration in this case.
16. Had the Prior Approval scheme been developed as submitted, the impact on the living conditions would have been little different to the as-built scheme. In this scenario the weight I attach to the material consideration is substantial and it outweighs the policy objection. Subject to the imposition of conditions to protect the living conditions of neighbouring occupants from any additional harm, an exception to policy can be made in this case.

Conclusions and Conditions

17. For the reasons above, given that a very similar scheme was deemed acceptable and approved under the prior approval procedure and would have been developed I am not persuaded that the difference between the as-built

scheme compared to the prior approval scheme would amount to significant additional harm sufficient to warrant dismissal of the appeal.

18. The Council has proposed a number of conditions in its appeal questionnaire. I have considered all these in the light of the advice in the Framework and *Planning Practice Guidance*. A condition requiring development to be carried out in accordance with the submitted plans is necessary in the interest of certainty.
19. In order to protect the living conditions of neighbouring occupants three conditions are necessary in order to prevent overlooking and loss of privacy. A condition is required to ensure provision of screening to the proposed decking. A condition is necessary to remove permitted development rights for the installation of any windows in the side elevation facing No 4 and finally a condition is necessary to prevent the use of the extended flat roof at the rear as a balcony or roof terrace. All these are required to ensure no overlooking to the side over No 4 and its garden.
20. Lastly to minimise the risk of surface water flooding a condition is necessary to ensure the appropriate management of surface water draining off the roof of the extended dwelling.

P. D. Biggers

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be carried out in accordance with the following approved plans: PET/PDCS-Gos/001A; PET/PDCS-Gos/002A; PET/PDCS-Gos/003A; PET/PDCS-Gos/004A; PET/PDCS-Gos/005A; PET/PDCS-Gos/006A; PET/PDCS-Gos/008; PET/PDCS-Gos/010; PET/PDCS-Gos/012.
2. Prior to installation of the raised decking, further details of its design, including measures to prevent the overlooking of neighbouring properties and gardens, shall be submitted to and approved by the Local Planning Authority. The development of the decking shall be begun within 3 years of the date of this permission and carried out in accordance with the approved details.
3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows shall be constructed in the north elevation (side elevation facing No. 4 Birklands Drive) of the extension hereby approved.
4. The roof area of the single storey extension hereby permitted shall at no time be converted to or used as a balcony, roof garden or similar amenity or sitting-out area.
5. Surface water drainage (i.e. water from the roof and any new hard surfaced areas) shall be installed by way of a domestic/small scale sustainable drainage system which could comprise either:
 - a. a water butt of not less than 100 litre capacity; or
 - b. a rain garden to provide at least a 100 litre capacity; or
 - c. a combination of (a) and (b) to at least/no less than a 100 litre capacity; or

d. any other sustainable drainage system to be agreed in writing by the local planning authority before installation. The system shall be installed within 2 months of this permission and thereafter be retained.