

Appeal Decision

Site visit made on 30 July 2024

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th August 2024

Appeal Ref. APP/U2750/D/24/3344873

Swan Mere, Caudle Hill, Fairburn, Knottingley WF11 9JQ

- 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 John Handforth against the decision of North Yorkshire Council.
 - The application ref. is ZG2023/1041/HPA.
 - The development proposed is “Raised access to front of dwelling for emergency escape”.
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Decision

1. The appeal is allowed and planning permission is granted for raised access to front of dwelling for emergency escape at Swan Mere, Caudle Hill, Fairburn, Knottingley WF11 9JQ in accordance with the terms of the application ref. ZG2023/1041/HPA and the plans submitted with it, subject to the following condition:
 - 1) In the event of the fence adjacent to the common boundary with The Old Garages not being increased to 1.8m in height above the decked walkway of the raised access hereby permitted, then that decked walkway shall be used solely as a means of safe egress from and safe access to the dwelling at Swan Mere during times of flooding emergencies and for the essential maintenance and repair of the raised access itself and the structures on the boundary with The Old Garages and shall not be used as a general pedestrian route to and from the dwelling at any other times, or used as a balcony, patio garden or similar amenity area at any time.

Main issues

2. The main issues are the implications of the development for the character and appearance of the surrounding area and the living conditions of the occupiers of The Old Garages with regard to the potential for overlooking and loss of privacy.

Reasons

3. Swan Mere is a detached house situated at the western edge of Fairburn. It lies at the bottom end of Caudle Hill on its southern side. Situated in extensive grounds which reach down at the rear to part of the RSPB Fairburn Ings Nature Reserve, the appeal site is within Flood Zone 3 and a Flood Storage Area. There is no
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dispute between the parties that the subject development has been built within the defined development limits of Fairburn and outside of the Green Belt.

4. The raised access, which was completed in June 2023, runs alongside the site's common boundary with The Old Garages from a pedestrian gate in the highway boundary up to a point roughly level with a kitchen side door in the front part of the dwelling. There have been a series of flooding events at the property leaving the occupants stranded, requiring rescue by emergency services or having to sit tight and wait for the flood waters to recede. The appellant states that the sole reason for the construction of the raised decked walkway was to provide safe access to and egress from the dwelling for the occupiers during times of flood.
5. In the decision notice, the Council said in the first reason for refusal that "...the raised access way is of poor design, which has a significant impact on the character and appearance of the area...".
6. However, the Council's Delegated Planning Report (DPR) acknowledges that its materials of construction (timber boarded decking and balustrades, painted or stained grey) are acceptable and points out that the development is set back from the road. Indeed, given the dense evergreen vegetation, walling and solid vehicular entrance gates along the site's roadside boundary, the raised access way is of very little consequence in visual terms when viewing from publicly accessible areas.
7. There is no negative commentary in the DPR specifically concerning the design of the existing raised access way as such. I found it to be a simple garden structure which is not disproportionately sized in terms of its depth, width or height. It is a functional, yet appropriate form of development. Even if it were to be glimpsed in public views, for instance when the vehicular entrances gates are left open, it is sufficiently respectful of the host building's proportions, scale, character and appearance, and of the local character more generally, including the wider setting of the site. In short, it does not amount to a poorly designed built form that it is visually disruptive for any reason.
8. Although not included in the description of the proposal on the application form or the decision notice, the plans propose that the fence height on the boundary with The Old Garages should be increased to 1.8m above the walkway deck level. This fencing was the subject of the second reason for refusal. In the DPR, the Council took the view that this fence, if constructed, "...would largely mitigate overlooking of the rear garden of The Old Garages...", yet at the same time said that it would "...represent poor quality design that would harm the character and appearance of the area, despite not being visible from the public viewpoint."
9. What it is that would lead the Council to refer to the fence's poor quality design is not made clear. It would be a close boarded timber fence with a natural stain and be divided by concrete posts as commonly found along residential garden boundaries. If it would not be visible from public viewpoints, it is not clear how visual harm would occur. In any event, it is simply incorrect to say that the fence would not be visible from public vantage points. The forwardmost section of the fence would be noticeable when approaching the site down Caudle Hill from the east. However, as it would not be materially higher than the flat-roofed store at the front of the appeal site and the tall front gates to The Old Garages in the foreground, it would not be visually intrusive in the street scene. The more obvious

height differences between the top of the raised fence and the ground levels on the neighbouring land would occur at a considerable distance away from the highway boundary.

10. In removing the fence from the scheme, the proposal would not automatically lead to material overlooking of The Old Garages as suggested by the Council. It has been put to me that the increase in the height of the fence was not proposed in response to a request from the neighbour who, given that the decking is only to be used at times of flooding emergencies, had no issues in terms of loss of privacy. Be that as it may, I am clear that if the raised decked walkway was to be used solely as a means of safe egress from and safe access to the dwelling at Swan Mere during times of flooding emergencies and for the essential maintenance and repair of the raised access itself and the structures on the boundary with The Old Garages and not used as a general pedestrian route to and from the dwelling at any other times, nor used as a balcony, patio garden or similar amenity area at any time, then I consider that any overlooking would be wholly within tolerable limits. This can be covered by a planning condition which need not rule out the fencing proposal as that would also satisfactorily deal with the matter of overlooking too.
11. The plan provides a safe access and escape route during flooding events thus minimising vulnerability, improving resilience and minimising reliance on emergency services to make development safe. This accords with the National Planning Policy Framework (the Framework). The scheme also complies with the Planning Practice Guidance which advises that when assessing the safety implications of flood risk for development, consideration should be given to the safety of people within a building if it floods and also to the safety of people around a building and in adjacent areas, including people who are less mobile or who have a physical impairment. This includes the ability of residents and users to safely access and exit a building during a design flood and to evacuate before an extreme flood. The photographs provided by the appellant showing the site in flood before and after the construction illustrate the success of the scheme in these respects.
12. These are very important material considerations in favour of the scheme. The Council had regard to these matters but may well have misdirected itself and attached limited weight to them by its reference to the decking terminating prior to the gated access where there is evidence of flooding. In fact, that decked walkway continues at a high level close to a separate gated pedestrian access slightly higher up the highway frontage that works as a safe access during times of flood.
13. I find on the main issues that the development would not harm the character and appearance of the surrounding area or the living conditions of the occupiers of The Old Garages with regard to overlooking and loss of privacy. As the scheme avoids any adverse effects upon the character of the area or the amenity of adjoining occupiers and delivers high quality design and sustainable development, at the same time as making an existing dwelling in an area of flood risk safer, there would be respect for the most relevant development plan policies – Policy ENV1 of the Selby District Local Plan and Policies SP1, SP15 and SP19 of Selby District Core Strategy. These policies are consistent with the Framework.
14. The Council, in its questionnaire, suggests 2 planning conditions should be imposed in the event of the appeal being allowed. However, as the raised access to

the front of the dwelling for emergency escape has already been completed in an acceptable manner in appropriate materials, it is not necessary for conditions requiring the development to be carried out in accordance with the approved plans or ensuring the use of matching materials. I shall still refer to the submitted plans in the main body of the decision. I have added the condition I referred to in paragraph 10 above, which should not come as a surprise to any party since the condition is simply tailored to confirm the stated use of the decked walkway at the same time as playing down the necessity to increase the height of the boundary fence, which would nonetheless remain an option as proposed.

15. For the reasons given above and having regard to all other matters raised, I conclude that this appeal should be allowed.

Andrew Dale

INSPECTOR