

Appeal Decision

Site visit made on 28 August 2024

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2024

Appeal Ref: APP/E2001/W/24/3344439

Browsholme Lodge, Harland Way, Cottingham, East Riding of Yorkshire HU16 5TB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr & Mrs David Allen against the decision of East Riding of Yorkshire Council.
 - The application Ref is 24/00145/VAR.
 - The application sought planning permission for the erection of a two-storey extension to the rear and the increase in roof height and construction of a dormer to the rear of the detached garage without complying with conditions attached to planning permission Ref 22/02176/PLF, dated 21 October 2022.
 - The conditions in dispute are Nos 2 and 6 which state:
Condition 2: The materials to be used in the construction of the external surfaces of the development hereby permitted, with the exception of the 'HardiePlank' cladding, shall match those used in the existing building, unless otherwise agreed in writing by the Local Planning Authority. The cladding should be of a colour to complement the slate roof.
Condition 6: The development hereby permitted shall be carried out in accordance with the following approved plans: 239-12A - Proposed Elevations, Floor Plans and Sections, received 03/10/2022; 239-13 - Proposed Site Elevations, received 03/10/2022; 239-1 - Location Plan and Proposed Site Plan, received 29/06/2022.
 - The reasons given for the conditions are:
Condition 2: This condition is imposed in accordance with policy ENV1 of the East Riding Local Plan, and policy GP2 of the Cottingham Neighbourhood Plan, and because if the external surfaces of the development were to consist of materials, which did not match the existing building, the development would detract from the appearance of the area.
Condition 6: This condition is imposed in accordance with policy ENV1 of the East Riding Local Plan, and policy GP2 of the Cottingham Neighbourhood Plan, and for the avoidance of doubt and to ensure that the development hereby permitted is carried out in accordance with the approved details in the interests of the character and amenity of the area and the provisions of the development plan.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a two-storey extension to the rear and the increase in roof height and construction of a dormer to the rear of the detached garage at Browsholme Lodge, Harland Way, Cottingham, East Riding of Yorkshire HU16 5TB, without complying with Conditions 2 and 6 set out in planning permission 22/02176/PLF granted on 21 October 2022 by East Riding of Yorkshire Council, but otherwise subject to the conditions in the attached schedule.

Background and Main Issue

2. Planning permission¹ for the construction of a two-storey rear extension and a second storey to an existing detached garage ("the original permission") included Condition 2 that required the 'HardiePlank' cladding to be of a colour to complement the slate roof. Condition 6 required the development to be undertaken in accordance with the approved drawings which contained annotations of the proposed materials, including "*James Hardie 'HardiePlank' cladding system to first floor elevations*" on both the extension and garage.
3. Planning permission² was sought to vary the development as approved to include the insertion of three rooflights, to omit French doors, to enlarge a ground floor window, to omit a first floor window, and to change the cladding to both the extension and the garage from 'HardiePlank' to 'Waney Edge'. The Council raised no objection to the fenestration changes but refused the application because of the revision to the cladding.
4. At the time of my site visit, the extension to the dwelling and the alterations to the garage had been completed. 'Waney Edge' cladding had been erected to the first floor of the garage which had been left untreated, while the exterior cladding to the first floor of the approved extension was absent. The fenestration changes contained within the appeal proposal appeared to have been completed. The development as constructed therefore does not comply with the requirements of Conditions 2 and 6 of the original planning permission.
5. The Council indicates that the cladding to the garage (with a wavy edge rather than a straight edge and untreated) detracts from the character and appearance of the host dwelling and the visual amenity of the surrounding area. While the appellant considers the cladding to be sympathetic to its wooded and verdant setting.
6. Taking the above background into consideration, the main issue is whether the conditions specifying the type and colour of the cladding are reasonable and necessary in the interests of the character and appearance of the surrounding area.

Reasons

7. The appeal site is on the corner of Harland Way and Harland Park (the entrance to a housing development currently under construction) and consists of a detached two-storey dwelling with a detached garage. The

¹ Planning Ref 22/02176/PLF

² Planning Ref 24/00145/VAR

dwelling was a lodge to the now demolished Browsholme Hall. It is a characterful property with various decorative features and is constructed of buff coloured brick with a slate roof. It is set within a large plot that contains numerous mature trees, which together with the woodland to the west, has a verdant and wooded character and appearance.

8. The use of 'Waney Edge' cladding is more rustic in appearance than the approved 'HardiePlank' cladding due to its wavy edge. However, it would complement the woodland setting of the buildings. The appellant's appeal statement suggests that the cladding would remain untreated. The 'Waney Edge' cladding attached to the garage has a yellow/orange hue. However, this would weather in time and complement the buff bricks, woodland setting and the host dwelling's existing untreated close boarded boundary fencing and wooden gates.
9. Consequently, the use of untreated 'Waney Edge' cladding would not have a detrimental impact on the visual amenity of the wider area or the host dwelling. Nor would it diminish the quality of the development as originally approved.
10. In reference to the main issue, the conditions specifying the type and colour of the cladding are not reasonable or necessary in the interests of the character and appearance of the surrounding area. The proposal would comply with Policy ENV1 of the East Riding Local Plan 2012-2029 Strategy Document adopted 2016 which, amongst other things, requires development to have regard to the specific characteristics of the site's wider context and the character of the surrounding area.
11. It would comply with Policy GP2 of the Cottingham Neighbourhood Plan and Design Guide 2015-2029 ("the NP") which requires all new development proposals to have regard to the Design Guide contained within the NP. It would also comply with paragraphs 135 and 140 of the National Planning Policy Framework ("the Framework") that seek to ensure developments are visually attractive, are sympathetic to local character including the surrounding built environment and landscape setting, and that the quality of the approved development is not diminished between permission and completion because of changes made to the permitted scheme.

Conditions

12. I have had regard to the conditions suggested by the Council and the tests for conditions set out within the Framework. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) should also reinstate the conditions imposed on earlier permissions that continue to have effect.
13. Condition 1 of the original permission is no longer applicable as the development has already commenced and therefore it does not need to be reimposed. I have re-imposed Conditions 3, 4 and 5 of the original permission as these continue to have effect. However, I have made amendments to these where necessary, in the interests of enforceability.

14. I have amended Condition 2 of the original decision notice to reference the use of 'Waney Edge' cladding rather than 'HardiePlank' cladding. I have found no harm to the cladding remaining untreated. However, the appellant's final comments³ state they would be agreeable to the Council's suggested condition of staining/painting the cladding to match the slate roofs, as originally approved. I have therefore amended the condition to allow for the timber to either be left untreated or painted/stained.
15. I have also amended Condition 6 of the original decision notice to specify the revised drawings for the avoidance of doubt and in the interests of proper planning.
16. Condition 2 of the Council's list of suggested conditions for the removal and replacement of the 'Waney Edge' cladding is not reasonable or necessary as I have found that it causes no harm to the character and appearance of the host dwelling and the surrounding area.

Conclusion

17. For the reasons given above I conclude that the appeal should be allowed. I will grant a new planning permission amending some of the disputed conditions and restating those undisputed conditions that are still subsisting and capable of taking effect.

A Berry

INSPECTOR

³ "Comments on LPA's Statement", produced by Doug Jennings and dated 25 August 2024

Schedule of Conditions

- 1) The cladding hereby permitted shall be 'Waney Edge' and either left untreated or stained/painted in a colour to match as closely as possible the colour of the slate roof of the building on which it is located. It shall be retained in such a form thereafter.
- 2) Measures installed pursuant to the Arboricultural Report by Mark S Feather dated September 2022 (hereinafter called the "Approved Tree Protection Scheme") shall be retained intact throughout the site clearance and construction period and shall not be breached, removed or re-positioned without the prior written approval of the local planning authority. No excavations for services, storage of materials, plant or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of waste or surplus construction materials or liquids, shall take place within any area designated as being fenced off or otherwise protected pursuant to the Approved Tree Protection Scheme.
- 3) Two replacement trees, which shall be one Bird Cherry (*Prunus padus*) and one Silver Maple (*Acer saccharinum*) (unless otherwise agreed in writing by the local planning authority), shall be planted within the garden within the first available planting season following the felling of the trees hereby approved. Any replacement tree which, within a period of five years, dies, is removed, or becomes seriously damaged or diseased, shall be replaced in the next planting season with another of a similar size and species, unless otherwise agreed in writing by the local planning authority.
- 4) The altered garage hereby permitted shall not be used or occupied at any time other than for purposes ancillary to the residential use of the dwelling known as Browsholme Lodge, Harland Way, Cottingham.
- 5) The development hereby permitted shall be carried out in accordance with the following approved plans:
239-1B - Location & Site Plan
239-12C - Proposed Details
239-17B - Proposed Site Elevations

*****End of Conditions*****