



Appeal Decision

Site visit made on 23 October 2024

by N Teasdale BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 November 2024

Appeal Ref: APP/N4720/D/24/3347130

37 Abbeydale Gardens, Kirkstall, Leeds LS5 3RG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant full planning permission.
- The appeal is made by Mr D Watson against the decision of Leeds City Council.
- The application Ref is 24/01346/FU.
- The development proposed is part two storey part single storey side and rear extension.

Decision

1. The appeal is dismissed.

Procedural Matter

2. The description of development in the above banner heading has been taken from the Councils' decision notice as this accurately describes the proposed development.

Applications for costs

3. An application for costs was made by Mr D Watson against Leeds City Council. This application is the subject of a separate decision.

Main Issues

4. The main issues are:
 - The effect of the proposed development on the living conditions of existing occupiers of No 39 Abbeydale Gardens (No 39) with particular regard to outlook and daylight/sunlight; and
 - The effect of the proposed development on access and parking.

Reasons

Living conditions

5. The appeal site relates to No 37 Abbeydale Gardens (No 37) which is a two-storey property located within an established residential area. It is enclosed by a low fence to the rear which separates the site from the adjoining property No 39. The host property already benefits from an extant planning permission for a part two storey and part single storey extension to side and rear which is yet to be implemented but remains a material fallback position. This extant permission would amongst other things, allow for a two-storey rear extension which would be set in from the boundary with its neighbour by 2 metres.

6. The proposed development seeks consent for a part two storey part single storey side and rear extension with the main difference from the extant consent being that it would further close the gap between the boundary with No 39 leaving a gap of 0.45 metres.
7. Policy HDG2 of the Leeds Householder Design Guide Supplementary Planning Document, 2012 (SPD) explains that all development proposals should protect the amenity of neighbours. Proposals which harm the existing residential amenity of neighbours through excessive overshadowing, overdominance or overlooking will be strongly resisted. The SPD explains that large extensions which impact upon private garden space should be set away from the boundary; generally speaking, the larger the extension, the larger the required distance to the boundary. As a general rule of thumb, single storey extensions can project 3 metres on a common boundary and first floor extensions 1 metre on the common boundary. This allows sufficient level of sunlight and daylight to enter neighbouring windows. It also allows a sufficient level of outlook. The SPD goes on to explain that extensions should be sensitively located to minimise their impact upon neighbouring gardens.
8. The two-storey extension would project 2.3 metres in depth from the rear wall with a further single storey element making up a total depth of 3.6 metres. The extension would be clearly visible from No 39 which would be located within very close proximity to the garden area serving No 39. This close relationship coupled with the extent of projection and overall height would appear imposing and overbearing to existing occupiers of No 39 particularly when utilising their garden space. This would be a clear breach of the guidance contained within the SPD. Whilst I appreciate the appellants' comments regarding the relevance of the above rule of thumb given that the extension would not sit on the boundary and claims made regarding the requirement of a 2-metre gap, it is still clear that a further distance to the boundary would be needed in this case for the two-storey element with due consideration given to the impact upon neighbouring gardens. This requires a level of planning judgement.
9. The SPD refers to the 45-degree code which can be a useful way of assessing the impact that an extension can have upon neighbours and whilst this code will be used by the Council as part of the assessment, the SPD explains that compliance with the code does not guarantee an approval. It appears undisputed that the rear extension complies with the 45-degree code in terms of windows of its neighbour at No 39. This element is therefore of lesser concern to me.
10. The 45-degree guidance is however one aspect of the SPD designed to protect windows from overdominance/overshadowing. The SPD highlights the importance of not overshadowing or being over dominant of private amenity spaces. It explains that particular care should be taken when designing two storey extensions to ensure that the proportions of the extension (including the roof) respect those of the main house and that the extension does not unreasonably overshadow or over dominate neighbours' gardens and windows. On this basis and taking into account the above, the rear extension at first floor would have a dominant and overbearing effect on the outlook of existing occupiers of No 39 when utilising their outside garden area. In doing so, it would reduce the quality and useability of their outside amenity area.

11. At my site visit, I observed the extent of the amenity area serving No. 39 including its size, scale, and depth. However, I found the main extent of useable garden area to be fairly limited in size, located closest to the neighbouring boundary. This is because the land begins to rise to the north giving way to a wooded area. This further exacerbates the harm I have identified as the extension would be unduly close to the main extent of useable garden space and thus compounding its impact.
12. The Sun Path Study undertaken for the site is particularly useful in understanding the level of impact over and above that of the approved extant permission. I appreciate third party comments that the Sun Path Study does not show the situation without an extension. However, as set out earlier, an extension has been approved for this site and given its extant nature, it remains a significant fallback position which I must therefore consider. The study undertaken sufficiently demonstrates that there will be very limited impact arising from the change proposed as part of this appeal. The main difference in the summer is a shadow to the back door of No 39 mid-day although this is not of an extent to be significantly harmful with the majority remaining unaffected. On this basis and without any compelling evidence to the contrary, I am sufficiently satisfied that existing occupiers of No 39 would not be unduly harmed by loss of daylight/sunlight arising from the proposed scheme. This would not however alter my findings in relation to outlook.
13. For the above reasons, I conclude that whilst the proposed development would not unduly harm existing occupiers of No 39 in relation to daylight/sunlight matters, the proposed development would unacceptably harm the living conditions of existing occupiers of No 39 with particular regard to outlook. It would therefore be contrary to Policy P10 of the Leeds Core Strategy (as amended by the Core Strategy Selective Review 2019) (CS) and Policies GP5 and BD6 of the Leeds Unitary Development Plan (Review 2006) (UDPR) which together, amongst other matters, explains that proposals should seek to avoid problems of loss of amenity. For the same reasons, the proposed development would be contrary to Policy HDG2 of the SPD and the guidance contained within the National Planning Policy Framework (the Framework) relating to creating places with a high standard of amenity for existing and future users.

Access and parking

14. As set out, the host property already benefits from an extant planning permission for a part two storey and part single storey extension to side and rear with the approved plans showing parking being translocated to an area in close proximity to the front elevation of No 37. Whilst there is a discrepancy on the submitted plans in terms of parking positioning, the as proposed parking detail plan under reference 01 C does reflect the parking arrangements which has already been approved for the site and thus would not give rise to any additional impact. The discrepancy with the plans to ensure the parking positioning remains closer to the front of No 37 opposed to along the shared access could indeed be covered via an appropriately worded planning condition were I minded to allow the appeal along with details relating to the laying out of such areas. I am aware of concerns relating to ownership although this would be outside my scope of consideration and would also not negate the fact that there is an extant permission in place in respect of the parking to the front.

15. For the above reasons, I conclude that the proposed development would not have a harmful impact over and above that of the extant permission in relation to access and parking. It would therefore comply with Policies P10 and T2 of the CS and saved Policy GP5 of the UDPR which together, amongst other matters, ensures safe and secure access. For the same reasons, the proposed development would also comply with the guidance contained in the Framework relating to safe and suitable access.

Other Matters

16. I am aware of the appellants' frustration with the Council during the application process including matters relating to communication etc. However, this would not alter my findings in relation to the above main issues.

Conclusion

17. Although the proposed development would not harm the living conditions of existing occupiers of No 39 with particular regard to daylight/sunlight and would not have a harmful effect on access and parking, the proposed development would harm the living conditions of the existing occupiers of No 39 with particular regard to outlook. It would therefore conflict with the development plan as a whole. There are no other considerations that individually or cumulatively outweigh this harm and development plan conflict. The appeal should therefore be dismissed.

N Teasdale

INSPECTOR