Planning Inspectorate

Appeal Decision

Site visit made on 27 August 2025

by J Moore BA (Hons) BPl MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 September 2025

Appeal Ref: APP/W2465/W/25/3363597
42 St Austell Road, Leicester LE5 2RF

- 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 Mohammed Fareed against the decision of Leicester City Council.
- The application Ref is 20241683.
- The development proposed was originally described as: The project involves a single-story rear extension under 3 meters in height and length, along with a side extension which is also under 3m in height. The extension is built with timber framing and finished with cladding. The proposed rooms include a small lounge at the rear and a lobby in the side extension.

Decision

1. The appeal is dismissed.

Background and Preliminary Matters

2. The description of development stated on the decision notice is: *'retrospective construction of single storey extension at side and rear of house, installation of wall to boundaries and raised ground level at rear of site (Class C3)'.* However, there is no evidence before me to indicate a change was agreed. I have therefore used the description as stated on the application form in my banner heading above.

3. The application was made and considered on a retrospective basis and seeks to regularise extensions, a boundary treatment and changes in land levels at the appeal property. The appellant has submitted amended plans with the appeal, which seek to reduce the height of the proposed boundary wall. The Council's statement of case indicates that the Council did not receive the amended plans, and this position is not disputed by the appellant. The appellant's submissions to the appeal also detail further works undertaken to reduce the height of the proposed wall, which I saw at my visit.

4. In considering whether to accept the amended plans, I have had regard to relevant caselaw[1]. The Council and third parties have had an opportunity to comment on the appellant's written submissions and photographic evidence which detail further works and describe the amended scheme. However, they have not had an opportunity to consider the amended plans. I cannot be certain that further concerns would not be raised by the Council and any third parties on viewing the amended plans, and therefore they would be procedurally prejudiced if I were to accept them. I have therefore determined the appeal in accordance with the plans upon which the Council determined the application, taking account of all other evidence submitted.

[1] Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]; Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin).

5. During my visit, I saw a structure sited within the corner of the rear amenity space, akin to a shed, which is not shown on the existing or proposed plans submitted with the application, nor on the amended plans. For the avoidance of doubt, I have considered the plans as originally submitted, which do not show this structure.

Main Issue

6. The main issue is the effect of the proposal upon the living conditions of neighbouring occupiers at No 44 Austell Road (No 44), with particular regard to outlook.

Reasons

7. The appeal property is a two storey end terraced dwelling in a residential area. The adjoining property at No 44 includes windows within its rear elevation serving habitable rooms at the upper level, and a rear amenity space which includes a shed and outbuilding. The Council considers there is one window in the rear elevation at ground floor level at No 44, serving a kitchen. However, during my visit, I saw two windows, one of which appeared to serve a kitchen. I therefore cannot be certain the rear ground floor of No 42 does not include windows serving habitable rooms.

8. As built and as proposed, the rear amenity space of the appeal property comprises three terraces, each with a flat paved surface, with two of those set at progressively higher levels towards the rear of the plot. The proposed boundary wall would be about 2.575m in height next to the rear extension, close to the eaves height of that extension, and the proposed wall would run along the rear and side boundaries of the plot.

9. The view from the rear facing windows at No 44 and within its rear amenity space would be of the side wall of the rear extension, followed by a further wall extending at a considerable height to the rear boundary. Due to its height and siting, the proposed boundary wall would create such a strong degree of enclosure to No 44 that it would unacceptably diminish the outlook from its rear amenity space. If the windows at ground level within No 44 served a habitable space, the outlook from that space would also likely be unacceptably diminished.

10. The appellant suggests that the Council has misunderstood the levels at the site. The level of the land rises from street level towards the rear of the terraced row, given to be by about 0.5m by the appellant. However, the Council draws my attention to the provisions of the Order[2] regarding permitted development rights for walls not exceeding 2m in height above ground level; and for raised platforms no greater than 0.3m; and the technical guidance: Permitted development rights for householders (2019).

11. The technical guidance sets out that: *height is measured from ground level, which is the surface of the land immediately adjacent to the building in question, and would not include any addition laid on top of the ground such as decking. Where ground level is not uniform (for example if the ground is sloping), then the ground level is the highest part of the surface of the ground next to the building*. The appellant does not dispute the Council's position that the correct approach is to

[2] The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

measure from pre-existing ground level, and in the absence of any substantive evidence to the contrary, I find no reason to consider otherwise.

12. The drawing depicting the pre-existing boundary treatment indicates it was no higher than 1.825m from ground level. The terraces as built and as proposed are at a considerable height above pre-existing ground levels, given by the appellant to have been raised by 330mm and 470mm. The appellant's evidence indicates measurements taken from the finished floor level (FFL) of the terraces to the height of the proposed boundary wall, but no account appears to have been taken of the raising of levels of land within the appeal site, even allowing for the gradual rise in the land.

13. Drawing all the above together, the appellant's approach does not take full or proper account of pre-existing ground levels prior to the development taking place and no account is taken of the effect of the raising of land levels. Consequently, the height of the proposed boundary wall would be much taller than the pre-existing boundary treatment, even taking account of the sloping nature of the land.

14. Although I cannot accept the appellant's amended plans, I appreciate that the appellant seeks to reduce the height of the wall and has undertaken works to that effect as set out in written submissions and photographic evidence. However, this evidence is also based on measurements taken from the FFL of the terraces. For these reasons, the works undertaken and as described do not overcome the harm I have found.

15. I therefore conclude that the proposal would unacceptably harm the living conditions of neighbouring occupiers at No 44, with particular regard to outlook. The proposal conflicts with Saved Policy PS10 of the City of Leicester Local Plan 2006. Conflict also arises with paragraph 135 of the National Planning Policy Framework. Taken together, these policies seek to ensure that development creates places with a high standard of residential amenity for existing and future users.

Other Matters

16. An objection made during the determination phase raises further concerns. I note that these matters were considered where relevant by the Council when it determined the application. Whilst I can understand these concerns, there is no compelling evidence before me that would lead me to come to a different conclusion to the Council on these matters.

Conclusion

17. For the reasons above, I conclude that the proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, the appeal is dismissed.

J Moore

INSPECTOR