

Appeal Summaries for Cases Determined 01/07/2013 to 30/09/2013

Application No: 12/01205/FUL
Appeal by: Mr A Iqbal
Proposal: Dormer to rear
Address: Flat C 2 Marlborough Grove York YO10 4AY

Decision Level: DEL
Outcome: ALLOW

2 Marlborough Grove is set within a traditional terrace. Planning permission was originally refused under ref: 12/01205/FUL for 2 rear dormers. The reason for refusal was that the dormers, - by reason of their mass and scale, had an unsatisfactory and unsympathetic appearance which is out of character with the traditional row of terraces, to the detriment of the visual amenity of the locality. For some reason the applicant did not appeal the planning refusal. Following the refusal an enforcement notice was served seeking the removal of the dormers. The applicant then decided to appeal the enforcement notice on Ground A (That planning permission should be approved). Marlborough Grove has a number of dormer windows to both front and back. These do vary in size and scale but on the whole they are slim and neat in profile with pitched roofs which are well proportioned to the roof within which they sit. The appeal dormers were much wider and being 2 next to each other filled the width of the roof. They replaced 1 of the slim dormers referred to above. They were not PD as the property in question was flats (now an unlawful HMO). The application was part retrospective at the time of the submission. The issue centred on visual impact. The Inspector concluded that the Council had over-stated its case about the impact. He identified other, more dominant features including a rear offshoot next door. He also attached significant weight to the fact that the dormers were on the rear rather than on the, more visually important front. Also, the dormers in question were only visible from a not often used pedestrian path which runs to the rear of the terrace and down to the next street along. He also identified other rear roof extensions in the area which were flat roof box dormers and so more harmful to those which were the subject of the appeal, which at least had pitched roofs.

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He conceded that there was conflict with the SPD on House extensions in that the dormers in question extended over more than a third of the roof slope. He accepted the generality of the view of the Council but considered there were too many important qualifications to it and he concluded that the dormers did not harm the appearance of either the host house or the rest of the terrace and that, sufficient respect had been shown for the local environment, and there was, enough compatibility with the local area to avoid conflict... The appeal was therefore allowed and the Enforcement Notice quashed. I think this shows that we have to think very very carefully about refusing rear dormer windows. They were in conflict with the SPD re their size and scale but the Inspector essentially concluded that notwithstanding this they looked ok and were not harmful. They had pitched roofs and actually looked better than other features in the area, including a number of flat roof box dormers. Although we should not accept the lowest common denominator when assessing these things, it is probable that many of these were PD as they were on a house. The appeal dormers would have been PD had the property in question not being flats. I think this potential, fall-back, position is always very important to consider, whatever the circumstances. Note that the Inspector also very specifically referred to the fact that they were not very visible rear dormers as opposed to, the more visually important front,.

Application No: 12/01911/OUTM
Appeal by: Hogg Builders (York) Limited
Proposal: Erection of 8no. dwellings and associated infrastructure
Address: Land Between Sports Field And Westview Close York

Decision Level: CMV

Outcome: ALLOW

Application No: 12/01911/OUTM
Appeal by: Hogg Builders (York) Limited
Proposal: Erection of 8no. dwellings and associated infrastructure
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Decision Level: CMV

Outcome: ALLOW

Planning permission was refused to put 8 houses on the appeal site as it was designated as green belt land in the 2005 Local Plan. Westview Close is a street with houses on one side at the edge of the cities built up area. The appeal related to the side of the street which is un-developed. There is a hedgerow and mature trees at the site boundary, beyond which is the former Civil Service Sports Club site. The Local Plan (1998) excluded the appeal site from the proposed Green Belt. This remained the case through several modifications until the 2005 version. There was a public enquiry in 1999 of the Local Plan. One of the topics of which were the cities green belt boundaries. The inspector determined that the Civil Service Sports Ground (which is next door to the appeal site) should be green belt land. When CYC re-drew the boundaries for the 2005 Local Plan, the part of Westview Close to which the appeal relates was included in the green belt also. The inspector considered that the key issue in this case was whether green belt policies should be applied to the site, given that the inner boundaries of Yorks Green Belt have not been defined in a formally adopted Local Plan. The inspector noted that the appeal site had not been identified as serving the purposes of the green belt by CYC in its green belt appraisal (2003). He added that in his opinion the appeal site served no green belt function and therefore it could be released for development. The inspector noted that his decision would not set a precedent in relation to similar small sites. However the decision suggests that, regardless of their designation in the current Local Plan, sites at the edge of the cities built up area should be assessed on their own merits as to whether they serve the purposes of the green belt.

Application No: 12/03022/FUL
Appeal by: Mr Osman Doganozu
Proposal: Variation of condition 5 of planning permission
12/01910/FUL for restaurant/bar to extend opening hours to
allow premises to open until 02:00 every day
Address: Lucia Bar And Grill 9 - 13 Swinegate Court East Grape
Lane York YO1 8AJ
Decision Level: COMM
Outcome: ALLOW

Appeal related to the operating hours of Lucias, which is located in Swinegate Court East. The premises wished to operate until 02.00, rather than midnight, as imposed by the Planning Committee. The site had a premises licence which allowed them to trade until 03.00 and this also imposed conditions in the interests of residential amenity (such as no amplified music audible outside the site). The Inspector noted that other conditions had been imposed on the planning permission which required a noise limiter to be installed, no amplified music to be played which was audible within neighbouring residential properties and the prevention of bottles and glass being placed in bottle bins between 24.00 and 08.00. He noted that despite noise complaints having been received into EPU about the premises these were all prior to the noise limiter being installed. EPU had been satisfied that this was successfully restricting noise into neighbours houses and did not object to the application. The inspector considered that the appeal site is in an area with a high concentration of late night drinking establishments and was a mixed use commercial/residential area, some of which had no control imposed by opening hours. He placed significant weight to the substantial degree of control the imposed conditions referred to above provided and also that local residents could not expect the same level of protection as those not living in the heart of a major tourist city. The inspector amended the condition so that the premises should close by 00.30 Sun-Thurs and 02.00 Fri and Sat. He also granted costs to the appellants. The decision confirms that decisions/use of conditions must be backed by demonstrable evidence of harm so demonstrating that they are relevant and necessary. In this case other conditions were imposed to protect neighbour amenity and together with the licensing regime meant that the midnight closure was not reasonable in this busy city centre commercial area.

Application No: 12/03436/FUL
Appeal by: Mr & Mrs Roger Raimes
Proposal: Change of Use of three agricultural buildings to light industrial (Class B1c) and installation of portable office building (retrospective) and (Proposed) Change of Use of 1 agricultural building to light industrial (class B1c), and installation of second portable office building.
Address: Manor Farm Intake Lane Acaster Malbis York YO23 2PL
Decision Level: CMV
Outcome: PAD

The Site at Manor Farm Acaster Malbis is a complicated one. It consists of a farmstead containing a number of buildings which have become surplus as no longer suitable for Modern day agricultural needs and for which planning permission has previously been given for change of use. A visit to the site in connection with the determination of an Agricultural Notification application during the summer of 2012 revealed that a substantial part of the building complex was being used by Papakata , a Corporate Hospitality equipment hire company without the benefit of planning permission. A part retrospective application was submitted seeking regularisation of the activities at the site. This brought to light a number of serious concerns from neighbouring residential properties in respect of loading and unloading activities at the site at unsocial hours. Members duly considered the application and agreed with a recommended condition substantially restricting the hours and range of activities that may take place on site. At the same time they granted planning permission on the basis of a temporary permission for one year in order that the impact of activities at the site could be properly assessed. The two conditions were appealed and the Inspector indicated that he understood the rationale behind the temporary permission but felt it to be unnecessary in view of the length of time the operation had already been taking place. Instead he substituted a condition which forebade the undertaking of activities associated with the Business within the site in the outdoors to the north of the complex of buildings. In terms of the condition restricting hours and operations in order to deal with the concerns about activities taking place at anti-social times the Inspector supported the position of the Planning Authority and dismissed that element of the appeal.

Application No: 12/03467/FUL
Appeal by: Mr A Sullivan
Proposal: Erection of single storey 3 bedroom self-contained student dwelling to the rear
Address: 65 Wycliffe Avenue York YO10 3RH

Decision Level: DEL

Outcome: DISMIS

Planning permission was sought for the erection of a substantial three bed room detached bungalow within the rear garden of the property which was previously a Local Authority dwelling dating from the 1950s. The proposed bungalow would have no form of vehicular access and would have been directly adjacent to the rear garden of the next door property which remained in conventional residential use. A previous proposal for a similar scheme had been refused on the grounds of over-development and impact upon the visual amenity of the wider street scene. The current proposal was once again refused on the grounds of over-development and impact upon the residential amenity of the adjacent property. An appeal was submitted on the basis that there was felt to be a shortage of suitable student housing and that the development of the site would actually improve the visual amenity of the wider street scene. In considering the issues the Inspector discounted these arguments and agreed that the likely level of harm in terms of over-development, impact upon the residential amenity of neighbouring properties and also likely increases in anti-social behaviour would be severe. Unsurprisingly the appeal was dismissed.

Application No: 13/00786/FUL
Appeal by: Mr Colin Gardner
Proposal: Single storey rear extension
Address: 144 Fulford Road York YO10 4BE

Decision Level: DEL

Outcome: DISMIS

The appeal related to the refusal of planning permission for the erection of a single storey rear extension approx 5.3 metres in length by approx 3.48 metres in height. The application was refused on the basis that the extension would appear unduly oppressive and overbearing when viewed from the rear of the neighbouring property at 146 Fulford Road. The Inspector dismissed the appeal concluding that the massing and proximity of the extension would lead to an overbearing feature that would have a negative impact on the living conditions of both current and future occupants of No. 146 Fulford Road. This would not only be contrary to policy GP1(i) and H7(d) of the City of York Draft Development Control Local Plan 2005 (DDCLP) but also the core planning principles of the National Planning Policy Framework 2012 (NPPF)

Decision Level:

DEL = Delegated Decision

COMM = Sub-Committee Decision

COMP = Main Committee Decision

Outcome:

ALLOW = Appeal Allowed

DISMIS = Appeal Dismissed

PAD = Appeal part dismissed/part allowed