

**Date:** 18 June 2020                      **Ward:** Micklegate  
**Team:** West Area                              **Parish:** Micklegate Planning Panel  
**Reference:** 19/02133/FUL  
**Application at:** Southbank Stores 75 Balmoral Terrace York YO23 1HR  
**For:** Two storey rear extension, single storey rear extension, dormer to rear, 1no. rooflight to rear and 2no. rooflights to front following demolition of single storey rear extension.  
**By:** Ms Sara Winlow  
**Application Type:** Full Application  
**Target Date:** 23 June 2020  
**Recommendation:** Refuse

## 1.0 PROPOSALS

1.1 The application site is Southbank Stores, 75 Balmoral Terrace, York, a two storey end of terrace building with a shop on the ground floor and flat above on the first floor. Southbank Stores is located on the corner of Balmoral Terrace and Count De Burgh Terrace in a dense urban residential setting.

1.2 The decision for this application was deferred by the Area Planning Sub-Committee on 6 February 2020 to allow the applicant time to produce an acceptable scheme suitable for both parties.

1.3 The revised proposals relate to a two storey rear extension and single storey rear extension, following demolition of the existing single storey rear extension. The proposed rear extensions are of the same external design as previously considered by the Area Planning Sub-Committee. The design of the flat roof dormer to the rear roof plane of the host building has been amended in the revised proposals. The roof dormer would be approx. 4.3 metres in width and set back approx. 1.0 metres from the eaves. A roof light to the rear roof plane and two roof lights to the front roof plane of the host building are also included in the proposals.

1.4 The applicant seeks to extend the property to enable the creation of a sustainable business in the ground floor shop unit that would serve the local community. The additional space in the flat above includes a first floor kitchen that would be used to support the business and a loft conversion with an attic bedroom and shower room in the roof dormer to create a family home above the shop and enable the applicant care for family whilst running the business.

1.5 A call-in request was received from Councillor Jonny Crawshaw for the application to be considered by the Area Planning Sub-Committee. Councillor Crawshaw advised that the impact of the proposals on residential amenity should be considered by Members.

## **2.0 POLICY CONTEXT**

### Draft Development Control Local Plan 2005

GP1 Design

H7 Residential Extensions

### Emerging Local Plan Policies

D11 Extensions and Alterations to Existing Buildings

## **3.0 CONSULTATIONS**

### Micklegate Planning Panel

3.1 With regard to the revised proposals, Micklegate Ward Planning Panel forwarded a consultation response with no comment.

## **4.0 REPRESENTATIONS**

4.1 Following the submission of revised proposals on 17 March 2020, re-consultation of neighbours and interested parties took place from 20 March 2020 to 3 April 2020. The neighbouring resident at no. 75A Balmoral Terrace raised objections to the revised proposals which are summarised as follows;

- The applicant has not considered the discussion from the Area Planning Sub-Committee; a rear roof dormer remains part of the revised proposals.
- There is no precedent in the area for the size of extension proposed in an arrangement as close as between the properties at 75 and 75a Balmoral Terrace.
- The loss of light, privacy and amenity to 75a Balmoral Terrace arising from the height, size and proximity of the proposed extensions.
- The scale and overbearing nature of the two storey rear extension that would result in the neighbouring resident feeling 'boxed in', would detract from outlook and the feeling of space.
- The revised plans still include a very large dormer to the rear roof plane of the property which has increased in width and is located in the upper part of the rear roof slope. As a result the dormer will affect light levels in the living

room, yard and second bedroom and may now further impact the kitchen/diner.

- The accuracy of measurements on the drawings; were they corrected the existing loft space without any dormer may provide more useable space than shown on the drawings presented.
- The deferral from the Area Planning Sub-Committee was to allow the applicant time to produce an acceptable scheme suitable for both parties. The applicant has not consulted the neighbouring resident or sought to compromise to come up with a scheme that meets the needs of the both parties.

4.2 A Daylight and Sunlight Assessment report (DSA) was submitted by the applicant on 31 March 2020. A revised version of the DSA was submitted on 28 April 2020. With regard to the original DSA report, the neighbouring resident at no. 75A Balmoral Terrace responded raising the following issues;

- The report does not resolve concerns regarding the impact of the proposals on light levels in the neighbouring house.
- The report notes that the neighbouring property fails BRE standards; the current light levels are deemed inadequate for a residential property.
- The analyses in Appendix A.3 shows a small but marked reduction in light. Any further reduction in light levels will be more evident for the neighbouring house than in a property with much better light levels.
- The modelling in the report does not appear to reflect the existing relationship and relative height of the buildings at 75 and 75A Balmoral Terrace. The internal layouts of 75A Balmoral Terrace in the report are not in line with the current layout of the house.
- The images in Appendix A.2 show the closeness of the two storey extension and size of the dormer in relation to 75A Balmoral Terrace and this highlights the dominant and overbearing nature of the proposals that will make the neighbouring property feel 'boxed in' and be detrimental to the sense of space.

4.3 In response to the re-consultation regarding the revised proposals, comments of support were received from fourteen interested parties and are summarised as follows;

- The amended proposals are in keeping with the alterations and additions to many neighbouring properties which were allowed through the planning process.
- From the plans and knowing the site, the extension would be unobtrusive to the neighbouring property.
- The light study shows there is barely any impact on the neighbouring property and there are many properties built up much closer together in the surrounding area.

- The renovation of the retail element to a non-chain business will provide a local service and the potential for employment that would benefit local residents.
- The proposals will benefit the local area by renovating an unused premises and extending with a dormer so that the existing dwelling is a useable space fit for twenty first century living.
- The proposals are required to provide essential living accommodation for the business owner and the required space and configuration to operate the business.
- The proposed re-use of the building will give the applicant an opportunity to run a small business, provide a useful service to the local community and provide an income to support herself and her family for the future.
- South Bank would welcome the addition of this new venture in a long established retail outlet.
- The current crisis has demonstrated the huge role that local shops have played within our community.
- Local shops are vital for community spirit. This shop will be a great addition to the area as an alternative to Bishopthorpe Road.
- The cafe will be a useful local amenity and will provide a focal point for people to meet and support each other.
- The reopening of Southbank stores as a coffee shop/florist will greatly improve the neighbourhood.
- So many local shops have closed over the years. The injection of some life and colour into the area with a new cafe would be great.
- Privacy distances were considered acceptable when 75a was converted.
- First floor extension modest compared with surroundings.
- Outlook from 75a windows largely unchanged or has no material impact.
- Windows could be conditioned as obscure glazing
- In the planning balance the benefits of the proposal outweighs the minor harm to the outlook from 75a.

4.4 The applicant submitted a copy of a petition supporting planning permission for a small extension and dormer to allow the applicant and family to live above the shop at 75 Balmoral Terrace, with the intention of restoring the shop and re-opening it to serve the local community and to allow the applicant to set up her own business. At the time of the submission of the petition on 3 April 2020 there were 708 signatures on the petition.

4.5 In response to the revised proposals, four interested parties raised the following concerns;

- There is very little change in the revised proposals. The constructive feedback from the Area Planning Sub-Committee has not been fully taken on board.
- The particular difficulty with the application site is the unusual proximity and orientation between numbers 75 and 75a Balmoral Terrace. This means that

precedents, for example dormers within the neighbourhood, are of limited relevance, and that it is imperative that a high quality design is put forward to address the difficulties posed by the site.

- The recent Daylight and Sunlight Assessment report demonstrates that the existing light levels at 75A Balmoral Terrace are low. The proposals would result in a further loss of light and have a material adverse impact on the amenity of the neighbouring residents.
- The nature of the proposals will result in the loss of natural sunlight and also privacy for the neighbouring residents.
- The proposals would result in a greater intensification and would set an unfortunate precedent for the whole of the area.

4.6 The applicant has submitted a statement to accompany the revised proposals making the following points:

- The neighbour's concerns have been taken into account in the revised scheme.
- The light study shows the impact on 75a is acceptable.
- The dormer window has been pulled away from the eaves as far as is allowable to have less impact on 75a. This resulted in the loss of the family shower room on the first floor to allow for the re-orientated stairs. The increase in the width of the roof dormer is to allow for the shower room in the loft conversion.
- There is a significant reduction in the cubic meter mass of the roof dormer in the revised proposals.
- The existing single storey offshoot to 75A Balmoral Terrace is at 90 degrees from the living room window. The proposed two storey extension to 75 Balmoral Terrace does not come out any further than this and is further away from their property and window.
- To address the neighbour's concerns regarding privacy and overlooking, the windows in the roof dormer are obscure glazed.
- Existing outlook from 75A Balmoral Terrace is limited. The additions will have relatively little effect on outlook, replacing a view of an unsightly gable wall with a neat extension and the view of a roof to that of a dormer.
- Most of the side by side terraces have less separation distance between them and many with additions granted not only closer to neighbouring windows but directly overlooking them.
- Comparable example cited at 61 Balmoral Terrace, a commercial property with domestic use above, which has a roof dormer and first floor and second floor extensions. There are neighbours to the side who are affected directly by the mass, as are many other neighbours in the surrounding streets, where numerous bulky dormers covering the whole width of roofs have been allowed under permitted development rights.

- The surrounding streets are characterised by dormers, extensions and side returns; much bulkier dormers have been permitted alongside extensions and large corner dormers.
- There are five rear and one front dormer in Balmoral Terrace alone. The scale and design are clearly appropriate to the character of the surrounding area.
- The proposals would assist in every one of the Council's aims in the Plan "inclusive economy, greener and cleaner city, getting around sustainably, good health and wellbeing, safe communities, creating homes and focus on children".
- The proposals would create a local sustainable business and a community facility with the coffee shop serving as a hub for the community.
- The proposals would maintain the original history of the shop within its original use. The shop was in operation in 1909 serving the workers at the Terry's factory.
- The reopened shop will be a community facility which is supported by local plan policy.

## 5.0 APPRAISAL

### KEY ISSUES

- Design and visual impact on dwelling and surrounding area
- Neighbouring amenity

### PLANNING POLICIES

#### National Planning Policy Framework

5.1 In the absence of a formally adopted local plan in York the most up to date representation of key relevant policy issues is the National Planning Policy Framework, February 2019 (NPPF). This sets out the Government's planning policies and at its heart is a presumption in favour of sustainable development. Achieving sustainable development means that the planning system has three overarching objectives; an economic objective; a social objective and an environmental objective, which are interdependent and need to be pursued in mutually supportive ways.

5.2 In NPPF Chapter 4 Decision-making, Paragraph 38 advises that local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available and work proactively with applicants to secure developments that will improve the economic,

social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.

5.3 In NPPF Chapter 11 Making effective use of land, Paragraph 117 states that planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, whilst safeguarding and improving the environment and ensuring safe and healthy living conditions. Paragraph 118 e) states that planning policies and decisions should support opportunities to use the airspace above existing residential and commercial premises for new homes. In particular they should allow upward extensions where the development would be consistent with the prevailing height and form of neighbouring properties and the overall streetscene, is well designed (including complying with any local design policies and standards) and can maintain safe access and egress for occupants.

5.4 In NPPF Chapter 12 Achieving well-designed places, Paragraph 127 states that planning policies and decisions should ensure that developments will achieve a number of aims including:

- function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development:
- be visually attractive as a result of good architecture, layout and appropriate and effective landscaping;
- are sympathetic to local character and history, including the surrounding built environment and landscape setting;
- create places that are safe, inclusive and accessible and promote health and well-being with a high standard of amenity for existing and future users.

5.5 The NPPF also places great importance on good design. Paragraph 128 says that design quality should be considered throughout the evolution and assessment of individual proposals. Paragraph 130 says that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents.

#### Publication Draft York Local Plan 2018

5.6 The Publication Draft City of York Local Plan 2018 ('2018 Draft Plan') was submitted for examination on 25 May 2018. In accordance with paragraph 48 of the NPPF the Draft Plan policies can be afforded weight according to:

- The stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);
- The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- The degree of consistency of the relevant policies in the emerging plan to the policies in the previous NPPF published in March 2012. (NB: Under transitional arrangements plans submitted for examination before 24 January 2019 will be assessed against the 2012 NPPF).

The evidence base underpinning the 2018 Draft Plan is capable of being a material consideration in the determination of planning applications.

5.7 2018 Draft Plan Policy D11 (Extensions and Alterations to Existing Buildings) is relevant here. This says that proposals to extend, alter or add to existing buildings will be supported where the design responds positively to its immediate architectural context, local character and history in terms of the use of materials, detailing, scale, proportion, landscape design and the space between buildings. Proposals should also sustain the significance of a heritage asset, positively contribute to the site's setting, protect the amenity of current and neighbouring occupiers, contribute to the function of the area and protect and incorporates trees that are desirable for retention.

#### York Development Control draft Local Plan 2005

5.8 The York Development Control draft Local Plan was approved for development control purposes in April 2005. Its policies are material considerations in the determination of planning applications although it is considered that the policies should be afforded very limited weight except when they are in accordance with the NPPF.

5.9 Development Control Local Plan Policy GP1 refers to design, for all types of development. Of particular relevance here are the criteria referring to good design and general neighbour amenity. Development proposals will be expected to be of a density, layout, scale, mass and design that is compatible with neighbouring buildings, spaces and the character of the area, using appropriate building materials. Development proposals will be expected to ensure that residents living nearby are not unduly affected by noise, disturbance, overlooking, overshadowing or dominated by overbearing structures.

5.10 Development Control Local Plan Policy H7 states that residential extensions will be permitted where; the design and materials are sympathetic to the main dwelling and the locality; the design and scale are appropriate to the main building;



there is no adverse effect upon the amenities of neighbours; the proposals respect the spaces between dwellings; and the proposals would not result in an unacceptable reduction in private amenity space.

5.11 The Council has an agreed Supplementary Planning Document 'House Extensions and Alterations' (SPD), dated December 2012, which provides guidance on all types of domestic type development. A basic principle of this guidance is that any extension should normally be in keeping with the appearance, scale, design and character of both the existing dwelling and the road/streetscene where it is located. In particular, care should be taken to ensure that the proposal does not dominate the house or clash with its appearance with the extension/alteration being subservient and in keeping with, the original dwelling. The character of spacing within the street should be considered and a terracing effect should be avoided where required. Proposals should not unduly affect neighbouring amenity with particular regard to privacy, overshadowing and loss of light, over-dominance and loss of outlook.

## ASSESSMENT

### DESIGN AND VISUAL AMENITY

5.12 The application site, Southbank Stores, 75 Balmoral Terrace, is comprised of a ground floor shop with a flat above accessed via an external door to the side elevation facing Count De Burgh Terrace. The application site is located in a dense urban residential setting. The property to the rear at no. 75A Balmoral Terrace is a two storey dwelling house with a front yard facing the rear elevation of Southbank Stores. There is a separation distance of approx. 6.0 metres between the rear/north elevation of Southbank Stores and the front/south elevation of no. 75A Balmoral Terrace.

5.13 The applicant seeks to refurbish the ground floor shop unit and create a sustainable business serving the local community, whilst living with family in the flat above the shop to accord with the NPPF objectives of achieving sustainable development. The proposals include a stock room and WC to the ground floor and a kitchen to the first floor of the two storey rear extension and an attic bedroom and shower room in the rear dormer accessed via a new staircase designed to comply with Building Regulations. The first floor kitchen would serve the flat and would also be used for preparing food as part of the business, whilst the attic bedroom and shower room in the loft conversion would improve the residential accommodation above the shop in accordance with NPPF paragraph 118 e) relating to making effective use of land. The proposals would contribute to the creation of a sustainable local business and enable the applicant to manage and operate the business alongside caring for family.

5.14 Following deferral of the application by the Area Planning Sub-Committee on 6 February 2020 to allow the applicant time to produce an acceptable scheme suitable for both parties, the applicant discussed the proposals with officers and submitted revised drawings on 17 March 2020. A meeting was also held between officers and the neighbouring resident at 75A Balmoral Terrace. The revised proposals include a two storey and single storey rear extension of the same external design as previously considered by the Area Planning Sub-Committee. A rear roof dormer of an amended design is included in the revised proposals, together with roof lights to the front and rear roof planes that formed part of the previous scheme.

5.15 A Daylight and Sunlight Assessment (DSA) report was submitted by the applicant in March 2020 in support of the revised proposals and subsequently a revised version of the DSA report was submitted in April 2020. The applicant submitted further revised proposals in May 2020 which are considered as follows.

5.16 The two storey rear extension would be approx. 3.1 metres in length and approx. 2.2 metres in width; the same width as the existing single storey rear offshoot to both the host building and the dwelling at no. 75A Balmoral Terrace to which it would connect. The two storey rear extension would have a lean to pitched roof attached to the side elevation of the rear offshoot to the adjoining terraced house at no. 73 Balmoral Terrace, with a ridge height of approx. 6.5 metres aligned with the eaves of the existing building and an eaves height of approx. 5.1 metres. In the revised proposals, there is a small variation in the window design to the side elevation of the two storey rear extension, with a tri-partite window serving the kitchen at first floor level rather than a bi-partite window as part of the previous proposals.

5.17 It is noted that a single storey rear extension with a lean to roof was present to the rear of the host building at the time of the submission of the application. The extension was of similar footprint and dimensions as the single storey element in the current proposals. The proposed single storey rear extension would be attached to the side of the two storey extension and rear elevation of the host building, with a ridge height of approx. 3.7 metres and an eaves height of approx. 2.6 metres to the lean-to roof. The rear elevation of the single storey extension would be set back from the rear boundary with no. 75A Balmoral Terrace by approx. 1.2 metres. The extensions would be finished in brickwork and slate to match the external finishes of the host building.

5.18 In the latest revised proposals, the roof dormer has been increased in width from approx. 3.1 metres in the previous proposals to approx. 4.3 metres in width and is located further back in the upper part of the roof slope, approx. 1.0 metres above the eaves. The dormer would be offset from the west/side elevation of the building

facing Count De Burgh Terrace by approx. 2.0 metres. The dormer would be finished in vertical hung slate to match that of the host dwelling and would include two obscure glazed bi-partite windows to the rear elevation. A roof light would be installed adjacent to the rear dormer in the rear roof plane and two roof lights installed in the front roof plane to serve the loft conversion. In addition, a new window opening would be formed in the side elevation at second floor level that would be obscure glazed and non-opening.

5.19 With regard to design and visual amenity, the two storey and single storey rear extensions are of the same design as those previously considered by the Area Planning Sub-Committee. Therefore, the assessment remains as before. Due to the dense character and limited space between the buildings at nos 75 and 75A Balmoral Terrace, it is considered that the two storey rear extension would appear dominant and increase the density of the built form in public views from Count de Burgh Terrace. With regard to paragraph 7.4 a) of the SPD it is considered that the scale and mass of the two storey rear extension would be detrimental to the existing pattern of buildings and the spacing between them.

5.20 In the revised proposals, the roof dormer has been set further back up the rear roof slope and increased in width. With reference to paragraphs 7.2 and 13.4 of the SPD, it is considered that the combined additional mass of the two storey rear extension and rear roof dormer would appear visually dominant, reduce the space around the buildings and have a significant effect on adjoining occupiers. Although there would be a set-back in the location of the rear roof dormer approx. 1.0 metres above the eaves, the increase in the width of the dormer would result in this element of the proposals reading as a bulky dominant mass open to public view from Count De Burgh Terrace that would detract from the host building's visual appearance and the streetscene contrary to paragraph 14.1 of the SPD.

## IMPACT ON NEIGHBOURING AMENITY

5.21 With regard to the impact of the revised proposals in terms of loss of light, the revised Daylight and Sunlight Assessment report, April 2020, refers to the current internal layout of the neighbouring dwelling at no. 75A Balmoral Terrace and concludes that the reduction in daylighting to the windows/rooms of the neighbouring building will be within the acceptable limits set out within the BRE guidelines. Any changes to the daylight received by the habitable rooms of the neighbouring building will not be significant. With regard to the impact of the proposed development on the sunlight enjoyed by the neighbouring building, the study has shown some very small reductions in the number of probable sunlight hours enjoyed by the windows/rooms to the neighbouring property that are within the limits prescribed by the BRE Guidelines as being acceptable.

5.22 In the revised proposals, the rear dormer would be set back approx. 1.0 from the eaves of the host building and would therefore be further from the rear elevation of the neighbouring house at 75A Balmoral Terrace. However, given the close proximity of the properties at 75 and 75A Balmoral Terrace, it is considered that the mass and greater width of the roof dormer would detract from the outlook of neighbouring residents at 75A Balmoral Terrace, would appear dominant and overbearing and restrict reasonable sight of the sky from the ground floor living room window and first floor bedroom window of the dwelling house contrary to paragraph 5.1 of the SPD. Due to the limited space between the properties, the combined scale and mass of the rear extensions and roof dormer would detract from the established character of the area, lead to a loss of the existing feeling of openness between the properties and result in the neighbouring residents feeling unduly hemmed in by the proposals, contrary to paragraph 5.2 of the SPD.

5.23 The applicant has drawn attention to paragraph 182 of the NPPF which states that existing businesses should not have unreasonable restrictions placed on them as a result of development permitted after they were established. The applicant contends that the grant of permission for the residential use of the shop's outbuilding which appears to date from the late 1990s and its extension in 2011 is placing restrictions on the development of the business and that this contrary to the NPPF. This has been taken into account in the decision making process, however it is considered that the NPPF policy should not be applied retrospectively. The 2011 planning permission took into account the adjacent retail use as it operated at that time. The proposed new business and its associated improved residential part is not considered to be subject to this policy which considers existing businesses.

## **6.0 CONCLUSION**

6.1 For the reasons stated, it is considered that the proposals would lead to harm to neighbour amenity and that this would outweigh the sustainable objectives of the proposals. In terms of making effective use of land, the combined additional mass of the proposals would appear visually dominant and increase the density of the built form in the streetscene such that the proposals would not comply with local design policies and standards. Therefore, the proposals would fail to comply with the NPPF, Policy D11 (Extensions and Alterations to Existing Buildings) of the Publication Draft City of York Local Plan 2018, Policies GP1 (Design) and H7 (Residential Extensions) of the Development Control Local Plan and City of York Council's Supplementary Planning Document (House Extensions and Alterations).

## **7.0 RECOMMENDATION:** Refuse

1 The mass of the two storey rear extension and rear roof dormer would appear dominant and overbearing to neighbouring residents at no. 75A Balmoral Terrace. The additional mass of the two storey rear extension and rear roof dormer would be detrimental to the pattern of the existing buildings and the spacing between them resulting in the neighbouring residents feeling unduly 'hemmed in'. The proposals would detract from the outlook from the ground floor living room and first floor bedroom of the neighbouring dwelling house resulting in harm to the levels of amenity that these neighbouring residents could reasonably expect to enjoy. As such the proposals result in harm to residential amenity and visual amenity which is in conflict with paragraph 127 c) of the National Planning Policy Framework, Policy D11 of the Publication Draft York Local Plan 2018, Policy GP1 (criterion b and i) and H7 (criterion d and e) of the 2005 Development Control Draft Local Plan and advice contained in the City of York Council House Extensions and Alterations Draft Supplementary Planning Document, approved in December 2012, in particular paragraphs 5.1, 5.2, 7.2, 7.4 a), 13.4 and 14.1.

## **8.0 INFORMATIVES:**

### **Notes to Applicant**

#### **1. STATEMENT OF THE COUNCIL'S POSITIVE AND PROACTIVE APPROACH**

In considering the application, the Local Planning Authority has implemented the requirements set out within the National Planning Policy Framework (paragraph 38) in seeking solutions to problems identified during the processing of the application. The Local Planning Authority took the following steps in an attempt to achieve a positive outcome:

- Discussion with the agent and applicant regarding the neighbour amenity issues relating to the scheme. Revised proposals were submitted that did not address the issues raised.

Notwithstanding the above, it was not possible to achieve a positive outcome, resulting in planning permission being refused for the reasons stated.

### **Contact details:**

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