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## Appeal Decision

Site visit made on 13 March 2023

by **D Cleary MTCP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11 May 2023

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**Appeal Ref: APP/F4410/D/22/3312342**

**2 Rectory Gardens, Wheatley, Doncaster DN1 2JU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Andrew Muscroft Gosden against the decision of Doncaster Council.
  - The application Ref: 22/01663/FUL, dated 08 July 2022, was refused by notice dated 27 September 2022.
  - The development proposed is described as the Erection of two-storey rear and side extension and installation of gates.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues are the effects of the proposed development on:
  - a) The living conditions of No.4 Rectory Gardens with regard to overlooking; and,
  - b) Highway safety

### Preliminary Matters

3. I have been made aware that since my site visit, 1.8m high railings have been erected along the roadside boundaries of the site, with a photograph provided showing the railings in situ. It is understood that these railings were granted under a previous planning permission. The Local Planning Authority have confirmed that they have no objection to me accepting this factual development. As such, I consider that no party is prejudiced by my consideration of this point of clarity.

### Reasons

#### *Living Conditions*

4. Policy 44 of the Doncaster Local Plan 2015-2035 (2021) requires that development must protect existing amenity and not significantly impact the living conditions of neighbours. The Transitional Developer Guidance (2022) identifies that where a habitable room window overlooks a neighbouring garden space, these should normally be positioned at least 10 metres from the site

boundary. I acknowledge that this is guidance only but it is, nonetheless, an indication of what may be acceptable.

5. The proposed first floor window serving bedroom 4, would be sited 8.5m from the site boundary with No.4 Rectory Gardens and as such would not meet the above guidance. A single storey outrigger is located to the rear of No.4 which contains side facing windows. Adjacent to the outrigger is the main area of private amenity space serving that property which is narrow and limited in area. The lack of existing boundary treatment of any substantial height means that there would be direct views into the side windows of the outrigger, and the limited private amenity space of that property. Furthermore, I have observed that the appeal site is set at a slightly higher land level than No.4 Rectory Gardens. I consider the land level changes would make the presence of the proposed window within the extension even more apparent, and that the proposal would result in significant overlooking to the detriment of the living conditions of occupants living in that property.
6. I acknowledge that a fence could be erected along the site boundary under permitted development rights and that a panel of Heras fencing has been positioned along the boundary which the appellants indicate to be circa 2m in height i.e. what could be done under permitted development. On my site visit, I observed the relationship from an existing first floor window in the side elevation and found that some views into the side windows could be achieved if a solid fence were to be erected at the same height as the heras fence. The proposed extension would bring a first floor window in the region of 5.5m closer to No.4 Rectory Gardens. This would increase the views from the bedroom into the neighbouring property, and also the degree of overlooking into the private amenity space. Again, the change in land levels would not favour this relationship. Therefore, I am not persuaded that the erection of a fence would sufficiently address the concern identified.
7. The Council's delegated officer report makes reference to a similar proposal that was previously considered at appeal. I do not have full details of those proposals or the full assessment made by the Inspector, but I understand the relationship to be the same as the first main issue before me. That appeal was dismissed on the grounds of the impact on the living conditions of No.4 Rectory Gardens through overlooking and I have no reason to deviate from that view.
8. For the above reasons, I consider that the proposed development would have an unacceptable effect on and the living conditions of No.4 Rectory Gardens through overlooking. Therefore, the proposals would be contrary to policies of the Development Plan identified above.

#### *Highway Safety*

9. The Council raise no objection to the proposed 2m high pedestrian gate, and I have no reason to disagree.
10. On my site visit I observed the existing vehicular gates and previous boundary railings to be low level with reasonably good visibility achievable. However, I am mindful that 1.8m high railings along the Rectory Gardens boundary have subsequently been erected. While there may be some visual permeability

through the railings, the height of the boundary treatment is likely to have lessened the standard visibility on exiting the site. I consider that the addition of a 2m high access gate could, when opened, further obscure the achievable visibility onto Rectory Gardens, when exiting the site by car, which could be to the detriment of vehicular and pedestrian safety. While Rectory Gardens is a cul-de-sac and vehicular and pedestrian movements may not be frequent this does not lessen the concern that I have identified.

11. The reason for refusal refers to lack of information with regard to the proposed gates. The proposals provide no precise elevational details of the design of the vehicular gates, their width, any visibility splays to be provided and how the gates would interact with the existing 1.8m high railings, with particular regard to permeability. I have limited detail to confidently assess the proposals. Therefore, and with regard to the observations that I have made above, I am in agreement with the Council that there is insufficient information to satisfactorily determine whether the development would provide safe access and egress from the site. As this is a matter of public safety I do not consider that consideration of such a matter should be conditional, and the absence of any comments from the Highway Authority does not alter my conclusions in this regard.
12. In the absence of such information, I find that the development would be contrary to Policy 13, which requires that development does not have an unacceptable impact on highway safety, and Policy 44 which requires points of access to be safe.

#### *Other Matters*

13. I have had regard to the other considerations advanced by the appellant. I do not consider that the use of a bedroom should be treated in a lesser manner than other habitable rooms, and the Development Plan makes no such distinction either. Furthermore, I am also not convinced the proposed layout is the only feasible internal configuration and agree with the Council that the issue of overlooking could possibly be overcome by an alternative internal layout or design. While I note the concern with regard to outlook and the relationship with St Marys Nursing Home to the north, I note that a new first floor window serving bedroom 3 is proposed to face towards this site. Therefore, I am not persuaded by the argument for this relationship not being acceptable for bedroom 4.
14. Reference has been made to other development in the area which result in overlooking, however I have no details of the spacing provided or the circumstances under which these developments were constructed. In any event I have considered the appeal proposal on its merits.
15. With regard to the first main issue, I am mindful that a letter of support has been received from the existing occupants of No.4 Rectory Gardens. While the existing occupants may have no issue with the proposals I am required to ensure that living conditions for future occupants is acceptable, not just those of existing occupants.

16. The proposed extension is required to meet the needs of a person who has the 'protected characteristic' of disability for the purposes of the public sector equality duty under s149 of the Equality Act 2010. I am sympathetic to these circumstances, and while it would be advantageous to provide such accommodation, I can only attach moderate weight in favour of the providing a development which would improve the quality of life for its occupants, particularly having regard to other internal layouts and design configurations that may be achievable. I consider that this, and any other public benefits, do not outweigh the harm that the development would cause in relation to the main issues. Therefore, it is proportionate and necessary to dismiss the appeal.

### **Conclusion**

17. For the above reasons, the development conflicts with the Development Plan when considered as a whole, and there are no material considerations which outweigh the harm identified. Therefore, the appeal is dismissed.

*D Cleary*

INSPECTOR