

Refusal planning consent (Ref: 3/2019/0777) for a proposed two storey extensions to rear and front and a single storey side extension

At: 8 Back Lane, Rimington, BB7 4EL

### **Site Location and Description**

The appeal site is located to the south of Back Lane and within the settlement boundary of Rimington as defined in the Adopted Core Strategy.

The appeal property is a two-storey, link detached dwelling with a hardstanding parking area to the front and garden to the rear. The site is accessed from Back Lane by a private drive. The house is set substantially back from Back Lane and is largely screened from views by the properties to the immediate north (Nos. 12 and 14). The rear curtilage of the site is self-contained being enclosed along its boundaries by close board fencing and some mature planting. To the far south are the rear gardens associated with Pendle Terrace.

The appeal site is attached to the neighbouring property to the west (No. 6 Back Lane) by a single storey garage which has at some point been converted into a dining room. To the east, and positioned significantly forward of the application property, is a detached dwelling (No. 10) which has been substantially extended to the side and rear. It is noted that there is variance in the overall composition and form of the three properties with No 8 being gable fronted, No. 6 presenting its gable to the side and No.10 projecting significantly forward of the building line and with a single storey projection to the front.

### **Appeal Proposal**

Those elements that the LPA have found to cause unacceptable harm to residential amenity are:

#### **The erection of a two storey front extension:**

- The extension as submitted measured 2.0m in depth, subsequently scaled back to a depth of 1.0m (revised drawings submitted 30.09.19)
- The extension measures 4.2m in width and has a forward-facing gable with a ridge 6.6m and eaves 5.4 designed to provide a feature that will provide interest and architecture to the front elevation of the main dwelling.

#### **The erection of a two storey rear (south east) extension:**

- Measure 6.68m (width) by 4.0m (depth) with an eaves height of 5.0m.
- ridge set below that of the main dwelling.
- a render finish to differentiate the extension as a contemporary addition.
- The roof will be grey slate and the main property re-roofed to match.
- Windows will be timber framed with aluminium bi-folding doors to the ground floor.

The appeal proposal also includes a single storey rear extension to the south western side which the LPA, in their delegated report, does not consider would result in any significant impact on the residential amenity of the adjoining neighbour at No 6.

### **Main issues for consideration:**

The reason for refusal is not clear with respect to the individual impact on the neighbouring residential amenity (ie. Nos 10 and 12 Back Lane). It is however clear, from the delegated report, that the main issues for consideration are:

- The impact of the proposed front extension upon the residential amenity of No 12 Back Lane with regards adequacy of the privacy distance (ie the degree of over-looking)
- The impact of the proposed two storey rear (south east) extension upon the residential amenity of No.10 Back Lane with regards the adequacy of day lighting (ie the degree of loss of light and loss of outlook (dominance)).

### **Points of Clarification**

- The delegated report states that the rear two-storey rear extension will result in an 8m span of wall within 2m of the shared boundary with No 10. This is not an accurate assessment of the separation distance. The shared boundary is splayed and whilst the proposed extension starts at approximately 1.8m from the boundary with No 10, its distance from the shared boundary at its full 4.0m projection is approximately 2.5m. Neither does the assessment make reference to the change in level, with the garden to No 12 being around 1.0m higher (at its lowest point) than the ground level of the proposed extension at No 10.
- It is to be noted that the LPA did not make contact with the applicant to arrange access. It would not have been possible for the officer to gain independent access to the rear garden which is enclosed and secured by a 6ft high locked gate. It became clear during the course of correspondence that the officer had not observed the correct configuration of the first floor windows to the rear of No 10. In order to provide clarity, a photograph showing the windows was provided and reference to approved drawings for the extensions at No 10. A drawing showing the extended footprint of No.10 and its relationship to the appeal property was also provided (**Doc 14** )
- An analysis of impact using the 45 degree rule from the nearest habitable room windows was provided by the appellant to demonstrate the likely impacts of the appeal proposal (**Doc 12 and 14**). In the assessment of neighbouring amenity, the delegated report makes no reference to this key supporting evidence and as such it is not clear if it was taken into account in reaching the decision.
- During the determination period, the case officer referred to the need for the extension to cause “no loss of light” (**Doc 18**). This is not the correct interpretation of Policy DMG1 which is that a degree of loss can be acceptable insofar that it maintains an adequate level of light.

## **Grounds for Refusal:**

### **1.The impact of the proposed front (north west) extension upon the residential amenity of No 12 Back Lane**

On the 30.09.19 revised drawings (**Docs 11, 12,13**) were submitted to the LPA for consideration. The revised proposal reduced the depth of the proposed front extension back to 1.0m in order to increase the privacy distance. The delegated report refers to the originally submitted drawing (ie a 2.0m deep extension) and it is therefore assumed that in reaching their decision, the LPA did not take into consideration the revised plans.

Policy DMG1 requires developments to provide “adequate” privacy distances. In the absence of a relevant Supplementary Planning Document, the LPA’s assessment of “adequate” is not clearly defined, for example by means of standard distances. However, a 21m separation distance is generally considered to be an acceptable distance and as such I take the view that the proposed front extension, particularly when considering the scaled back projection as submitted in the revised plans, would not result in a degree of over-looking that has an impact significantly greater than the existing situation. In accordance with Policy DMG1 the proposed extension is considered to provide an adequate privacy distance between the appeal property and No 12 Back Lane.

### **2. The impact of the proposed two storey rear (south east) extension upon the residential amenity of N0 10 Back Lane**

The rear (south east) two storey extension is considered by the LPA to cause a detrimental impact on the residential amenity of No.10 due to an a significant loss of light, overbearing and overshadowing on the rear elevation and amenity space of 10 Back Lane.

Policy DMG1 requires developments to provide “adequate” day lighting. In the absence of a relevant Supplementary Planning Document, the LPA’s assessment of “adequate” is not clearly defied and as such the appellant has made an assessment under the 45 degree rule, taking other site specific considerations into account. The 45 degree rule is a well-established rule of thumb used to consider potential loss of light and overbearing impact where a proposal is located at a right angle to neighbouring windows.

When assessing loss of light and overbearing impact, regard should be had to the use of the affected rooms/space rather than whether the extension would merely be visible from that room/space or elevation. The delegated report makes general reference to the detrimental impact on the “rear elevation” of No.10 as a consequence of the extent of projection. There is no indication that regard has been given to the impact on individual habitable room windows and no reference is made to the appellants supporting drawings (**Doc 12**).

The configuration of windows to the rear of No 10 Back Lane is set out in Document 15 as follows:

Window 1 – Bathroom Window (non-habitable room)

Window 2 – Bedroom window (habitable room)

Window 4 – Kitchen window (non-habitable room)

Window 5 – Dining Room window (habitable room)

On the 30.09.19 the applicant submitted a revised drawing showing the 45 degree rule applied to the centre of the nearest habitable room windows with the potential to be most affected (**Doc 12**). The LPA considered Window 2 would be particularly adversely affected (**Doc 17**).

#### Impact on the nearest first floor window (Window 1)

The nearest first floor window serves a bathroom. Ribble Valley Core Strategy (Adopted 2014) Policy DMG1 requires developments to provide “adequate” day lighting. In the absence of a relevant Supplementary Planning Document, the LPA’s assessment of “adequate day lighting” and to the circumstances when this is a relevant consideration is not clearly defined. It is however generally accepted that bathrooms fall within the definition of non-habitable rooms for the purposes of assessing impact on residential amenity. The appellant therefore takes the view that any loss of light or outlook or dominance to this window caused by the appeal proposal would not justify refusal of permission.

#### Impact on the nearest first floor “habitable room” window (Window 2)

This bedroom window lies above the single storey extension on the original rear elevation of No 10. The LPA considered this window would be particularly adversely affected by the appeal proposal (**Doc 16**).

The 45 degree rule has been used to assess the potential for loss of light and overbearing impacts. (**Docs 12 and 14**) shows this rule applied to the centre of this window. It demonstrates that the proposed extension does not breach the resulting splay. It is therefore concluded that whilst the appeal proposal would increase the bulk and mass, within a maximum distance of 2.5m from the shared boundary with No.10, it is unlikely to result in an undue effect with regard to loss of light and dominance. In reaching this view, consideration has been given to that the orientation of the window which faces in a south easterly direction providing a generous source of light that extends the longer into the day.

#### Impact on nearest ground floor window (Window 4)

At the rear of No 10 is a single storey extension constructed within 1.4m of the mutual boundary. The extension is used as a kitchen and a dining room. The nearest ground floor window serves the kitchen and is framed to the west by the shared boundary fence. It is not visible from the appeal site.

Ribble Valley Core Strategy (Adopted 2014) Policy DMG1 requires developments to provide “adequate” day lighting. In the absence of a relevant Supplementary Planning Document, the LPA’s assessment of “adequate day lighting and to the circumstances when this is a relevant consideration is not clearly defined. It is however generally accepted that kitchens fall within the definition of non-habitable rooms for the purposes of assessing impact on residential amenity.

The kitchen is considered by the LPA to be a non-habitable room and this is clarified in Document 17. It is considered that, as a non-habitable room window, any loss of light or outlook or dominance to this window caused by the appeal proposal would not justify refusal of permission. In reaching this view it is also taken into consideration that there are other sources of light to the extension including a larger south east facing double window (serving the dining area and principle light source to the extension); patio doors and a rooflight. The appeal proposal will also be sited on lower ground (approximately 1.0m lower than the garden at No 10). These factors are considered to reduce the impact of the appeal proposal on the kitchen, notwithstanding its definition as a non-habitable room.

#### Impact on the nearest ground floor habitable room window (Window 5).

The nearest ground floor habitable room window is the principle window to the single storey extension providing light to the dining area. This window is south east facing and framed to the west by the shared boundary fence. It is not visible from the appeal site. There are other sources of light to the room from patio doors and a rooflight.

The window sits directly below Window 2 with their centre points aligned (**Document 15**). The 45 degree rule has been used to assess the potential for loss of light and overbearing impacts. Documents 12 and 14 show the 45 degree rule applied to the centre of this window. It demonstrates that the proposed extension does not breach the resulting splay and therefore it is concluded that whilst the appeal proposal would increase the bulk and mass, within a maximum distance of 2.5m from the shared boundary with No.10, it is unlikely to result in an undue effect with regard to loss of light and dominance.

In reaching this view, consideration has been given to that the orientation of the window which faces in a south easterly direction providing a generous source of light that extends the longer into the day and that there are other sources of light to the extension including the patio doors and a rooflight.

#### Over-dominant and over-bearing impact.

The rear extension has been designed to respect the scale of the main building. It is not disproportionately large nor dominant to the length of the boundary and a reasonable garden area has been maintained. The appellant considers that the proposed extension would appear as a proportionate addition within its context. Consequently, the scale and appearance of the extension would not appear sufficiently dominant or incongruous from the neighbouring garden (No. 10) that it would cause unacceptable harm.

Furthermore, the 45 degree line projected from the middle of the nearest habitable room windows (2 and 5) at No.10 demonstrates that the occupiers will have at least 90 degrees of open view in front of these windows thus maintaining a satisfactory degree of openness and outlook for the occupiers.

With regards to overshadowing the garden of No.10, any potential overshadowing is likely to be confined to the latter parts of the day when the sun is at its lowest. No 10 has a reasonably sized garden and due to the orientation, the set back from the common boundary and the existing vegetation any relative impact on the garden is not likely to be

substantial overall.

#### **Fall Back Position under Permitted Development Rights**

The appellant considers the exercise of the fall-back position under permitted development rights to be a material consideration. Having regard to Class A of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 it is considered that the fall-back position under permitted development rights would be a 3.0m projecting two storey extension at a minimum distance of 2.1m from the shared boundary. An application for a Lawful Development Certificate is currently with the LPA for determination Ref 3/2019/1070. It is considered that the appeal proposal (4.0m projecting extension) would not have an impact that is significantly greater than that of an extension allowable under permitted development rights.

In the likelihood that this appeal is dismissed the appellants intend to exercise their permitted development rights, subject to the positive assessment of the LDC.

#### **Conclusion**

For the reasons set out above, the appellant has demonstrated that the appeal proposal would provide for adequate privacy distances and adequate day lighting in accordance with Policies DMG1 and DMH5 of the Ribble Valley Core Strategy, and that any resulting loss of light, outlook, over-looking or dominance would not result in a significant enough negative impact to justify refusal of permission.

Furthermore the appellant has borne in mind what could be carried out as a fallback position under permitted development and considers that the appeal proposal would not have an impact that is significantly greater than that of an extension allowable under permitted development rights.

#### **Documents**

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|-------------|--------------------|
| Document 1  | Application Form   |
| Document 2  | Bat Survey         |
| Document 4  | Existing Plan      |
| Document 5  | Location Plan      |
| Document 7  | Site and Roof Plan |
| Document 8  | Statement          |
| Document 9  | Decision Notice    |
| Document 10 | Delegated Report   |

The following documents have been added as extra documents. These were not uploaded onto the Council's website:

Document 11 Amended Block Plans 30.09.19

Document 12 45 Degree Rule 30.09.19

Document 13 Amended Proposed Plans and Elevations 30.09.19

Document 14 45 Degree Rule 09.10.19 showing the footprint of the extensions at No 10

Document 15 Window configuration and Layout to rear No 10 Back Lane

Document 16 Email: Submission of Amended Plans and Acknowledgement of receipt

Document 17 Email: Initial Observations from the LPA

Document 18 Email: Summary of main concerns from LPA 07.10.19