

Appeal Decision

Site visit made on 21 March 2017

by C J Anstey BA (Hons) DipTP DipLA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7th April 2017

Appeal Ref: APP/T5150/D/17/3166968

40 Evelyn Avenue, London, NW9 0JH.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 1, Paragraph A.4 of The Town and Country Planning (General Permitted Development)(England) Order 2015.
 - The appeal is made by Mr Ghulum Sarwar against the decision of the Council of the London Borough of Brent.
 - The application Ref 16/4184, dated 26 September 2016, was refused by notice dated 7 November 2016.
 - The development proposed is prior approval for single storey rear extensions to dwelling-house (extending beyond the rear wall of the original house by 4.545m [along the boundary with No. 42 Evelyn Avenue] and 6m [along boundary with No. 38 Evelyn Avenue], maximum height of 3m, and eaves height of 3m).
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Decision

1. The appeal is dismissed.

Reasons

2. The Council's decision notice does not explicitly state that prior approval is refused. However, taking account of the notice as a whole including the reason as set out, it is reasonable to read as a notice of the refusal of prior approval. The decision notice makes it clear that the Council considers that the proposed development is not permitted development as it would not be in compliance with *Schedule 2, Part 1, Class A, A.1.(j)(iii) of the Town and Country Planning (General Permitted Development)(England) Order 2015*.
 3. *Schedule 2, Part 1, Class A, A.1.(j)* specifies that an enlargement of a dwelling-house is not permitted development if *the enlarged part of the dwelling-house would extend beyond a wall forming a side elevation of the original dwelling-house and would-*
 - (i) *exceed 4 metres in height*
 - (ii) *have more than a single storey, or*
 - (iii) *have a width greater than half the width of the original dwelling-house*
 4. The rear elevation of the original dwelling-house at No. 40 is stepped with the kitchen extending beyond the living area. Consequently as a matter of fact
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there is a wall forming a side elevation of the original dwelling-house at the rear of No. 40.

5. The proposal involves an extension to the rear of the kitchen (Extension 2) and an extension to the rear of the living area (having first demolished the existing conservatory) (Extension 1) separated by a very narrow gap of 90mm. The extensions have been designed to ensure that neither is attached to the side elevation at the rear of the original dwelling-house, with the side elevation of Extension 1 only 90mm away from the side elevation. The proposals would extend across the width of the property (apart from the 90mm gap) with Extension 1 having a greater width than half of the original dwelling-house.
6. Although set very slightly away from the side elevation of the original dwelling-house Extension 1 would extend beyond a wall forming a side elevation of the original dwelling-house and essentially fill in the area between the side elevation and the rear wall. The government's *Permitted Development Rights for Householders: Technical Guidance* makes it clear that in such an instance the restrictions on extensions beyond rear walls and side walls will both apply. Consequently Extension 1 does not comply with *Criterion (iii) of Schedule 2, Part 1, Class A, A.1 (j)* as it is of a greater width than half of the original dwelling-house. Regard has been paid to the case in London Borough of Barnet but it would appear that the proposed extension beyond the side elevation was not of greater width than half of the original dwelling-house. However, notwithstanding this, the current appeal has been determined on the basis of the wording in the *General Permitted Development)(England) Order 2015* and the *Technical Guidance* and the particular details of the proposed development.
7. Consequently the proposal would not be permitted development. This finding constitutes compelling grounds for dismissing this prior approval appeal. None of the other matters raised outweigh the considerations that have led to this decision.

Christopher Anstey

Inspector