

Appeal Decision

Site visit made on 10 August 2017

by Gary Deane BSc (Hons) DipTP MRTPI

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

Decision date: 25 August 2017

Appeal Ref: APP/P4605/D/17/3177646

120 Little Sutton Lane, Sutton Coldfield B75 6PQ

- 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 N Mellor against the decision of Birmingham City Council.
 - The application Ref 2017/01159/PA, dated 7 February 2017, was refused by notice dated 31 March 2017.
 - The development proposed is the erection of two and single storey rear extensions.
-

Decision

1. The appeal is dismissed insofar as it relates to the erection of a 2-storey rear extension. The appeal is allowed and planning permission is granted for the erection of a single storey rear extension at 120 Little Sutton Lane, Sutton Coldfield B75 6PQ in accordance with the terms of the application Ref 2017/01159/PA, dated 7 February 2017, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) That part of the development hereby permitted shall be carried out in accordance with the following approved plans: Refs 04 A, the OS Plan, which shows the site edged red and the OS Plan that depicts the footprint of the development.
 - 3) The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those used in the existing building.

Procedural matters

2. The names of the appellants are given as Mr and Mrs Nic Mellor on the planning appeal form, whereas the name appearing on the application form is Mr N Mellor. As the right of appeal rests solely with the original applicant, I have proceeded on the basis that Mr N Mellor is the appellant in this case.
3. On 11 August 2017, I viewed the site from 122 Little Sutton Lane with the consent of the occupiers of this adjacent property and did so unaccompanied.

Main issue

4. The Council appears to raise no objection in relation to the proposed single storey rear extension. I, too, find this element of the appeal scheme
-

acceptable because it would be a proportionate addition and in keeping with the character and appearance of the host building, with no material harm to the living conditions of others.

5. The main issue is, therefore, the effect of the proposed 2-storey rear extension on the living conditions of the occupiers of 122 Little Sutton Lane with particular regard to outlook and light.

Reasons

6. The proposal includes a 2-storey rear extension to one side of the appeal property, which is a mainly 2-storey detached dwelling in a predominantly residential area. The existing conservatory at the back of No 120 would be demolished and removed to make way for the new development.
7. Adjacent to the site is 122 Little Sutton Lane, which is a detached dwelling that stands broadly side-by-side with No 120. Within the rear elevation of No 122 are several windows, the nearest of which to the site is at ground floor level and serves a small room, which I saw is currently in use as a study. The window serving this room, which hereafter I shall refer to as 'the window', and a partly glazed external door next to it, provides the sole external outlook from, and natural light to, this internal space.
8. Whether or not the room served by the window should be defined as a 'habitable' room, I observed that it is an area of the house that provides comfortable living accommodation within which users could be expected to spend a reasonable amount of time. While not a living room, it is in use and provides livable internal space. That the room is long and narrow; modest in size; forms part of a much larger house that is unaffected by the proposal; is accessed through the garage; and may have been previously used for storage; does not reduce its importance as clearly part of the home nor diminish the reasonable expectation that the neighbours' should be able to enjoy it.
9. In oblique views from the window, I observed that the tall brick wall that marks the common rear boundary between Nos 120 and 122 nearest to the main house is evident with sky above and beyond. This existing boundary wall partly frames the main view from the window, which is across the external patio and large rear garden of No 122. From what I observed, the position and height of this wall would influence the natural light reaching the room that the window serves. In those circumstances, it seems to me that any reduction in the outlook from and natural light to the window could be significant.
10. The new 2-storey rear addition would be noticeably set back from the shared boundary between the site and No 122 and, when seen from the rear of the adjacent house, its pitched roof slope would angle away from view. In my experience, it is not unusual for part of the roof and flank wall of a house to be seen from the adjacent property where detached dwellings stand side-by-side. However, in this instance, the upper section of the new sidewall would project well above and beyond the existing boundary wall and so it would be visible from the window. In these oblique views, a tall, solid wall of considerable height and depth would be evident, replacing the skyward view mainly across the top of the existing boundary wall.

11. Having carefully viewed both the rear of No 122 from the site and the appeal property from the window, I consider that the proposed 2-storey rear extension, due to its scale, height and close proximity, would unacceptably dominate the outlook from the window. During sunshine, this part of the appeal scheme would also reduce the amount of sunlight entering into the room served by the window especially during late morning. The shadow cast by the new built form would exacerbate its harmful effect on the outlook from the window. The main outcome would be that the neighbours' reasonable enjoyment of the room served by the window would be seriously curtailed.
12. In reaching this conclusion, I have taken into account the large garden at the back of No 122 and the views towards and across it from the window. I have also had careful regard to the appellant's Daylight Statement, dated December 2016, which states that the proposal meets the target daylight criteria contained within the BRE¹ Document. For the room served by the window, the Daylight Statement concludes that the proposal would have no material effect on daylight. I have no reason to disagree with those findings.
13. I also share the appellant's opinion that a breach of the 45-degree code, which is an imaginary line drawn at that angle from the nearest window of No 122, would not in itself justify withholding planning permission in this case. That is because the existing rear boundary wall between Nos 120 and 122 does likewise and, in applying the 45-degree code, local conditions should also be taken into account. Consequently, whether or not the 45-degree code is met is not determinative in this case.
14. Having considered all of the evidence before me, including the appellant's response to the representations made by the occupiers of No 122 at the application stage, and based on my own observations from the window in particular, I am unable to share the appellant's strongly held opinion that the occupiers of No 122 would not be seriously and adversely affected.
15. On the main issue, I therefore conclude that the proposed 2-storey rear extension would materially harm the living conditions of the occupiers of No 122. Accordingly, this part of the new development is contrary to Policy PG3 of the Birmingham Development Plan 2031, saved paragraph 3.14C of the Birmingham Unitary Development Plan, the Council's Supplementary Planning Document, *extending your home*, and its Supplementary Planning Guidance, *places for living* insofar as they aim to safeguard residential amenity. While the extra living space within the new 2-storey rear addition would enhance the living conditions of the appellant and his family, a core principle of the National Planning Policy Framework is to always seek to secure a good standard of amenity for all occupiers of land and buildings.
16. As the proposed single storey rear extension would be compatible in its context it would comply with the policies cited by the Council. From my inspection of the plans, it is clearly severable to the proposed 2-storey rear extension, which is objectionable, and so I am able to issue a split decision that grants planning permission solely for it.

¹ Building Research Establishment Document, Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice (2011)

Conditions

17. In addition to the standard time limit condition, I have imposed a condition specifying the relevant drawings and to require that the development be carried out in accordance with them as this provides certainty. To ensure the satisfactory appearance of the development, a condition is imposed to require that the external materials match those of the existing building.

Conclusion

18. For the reasons set out above, I conclude that the appeal should be dismissed in part and allowed in part.

Gary Deane

INSPECTOR