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# Appeal Decision

Site visit made on 22 August 2017

**by Jason Whitfield BA (Hons) DipTP MRTPI**

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

**Decision date: 29<sup>th</sup> August 2017**

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**Appeal Ref: APP/M5450/D/17/3179878**  
**79 Brancker Road, Harrow HA3 9AW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3, Schedule 2, Part 1, Paragraph A4 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
  - The appeal is made by Mr Jay Vekaria against the decision of the Council of the London Borough of Harrow.
  - The application Ref P/1464/17/PRIOR, dated 18 March 2017, was refused by notice dated 28 April 2017.
  - The development proposed is single storey rear extension (6m deep) and associated internal alterations.
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## Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3 and Schedule 2, Part 1, Paragraph A4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) for a single storey rear extension (6m deep) and associated internal alterations at 79 Brancker Road, Harrow HA3 9AW in accordance with the details submitted pursuant to Article 3 and Schedule 2, Part 1, Paragraph A4 (2) of the GPDO.

## Main Issue

2. The provisions of the GPDO under Article 3 and Schedule 2, Part 1, Paragraph A4(12) require the local planning authority to assess the proposed development solely on the basis of its impact on the amenity of any adjoining premises, taking into account any representations received. My determination of this appeal has been made in the same manner.

## Reasons

3. Class A of Article 3, Part 1, Schedule 2 of the GPDO allows permitted development rights for the 'enlargement, improvement or other alteration of a dwellinghouse'. For non-detached dwellings until 19 May 2019, Paragraph A1(g) states that development is permitted by Class A if the enlarged part of the dwellinghouse would have a single storey and extend beyond the rear wall of the original dwellinghouse by no more than 6m, or exceed 4m in height.
4. The proposed rear extension would be single storey, 6m in depth from the original rear wall of the dwellinghouse and would be less than 4m high.

5. Schedule 2, Part 1, Paragraph A4(7) of the GPDO requires that, where any owner or occupier of any adjoining premises objects to the proposed development, the prior approval as to the impact of the proposed development on the amenity of any adjoining premises is to be sought from the local planning authority before development can take place.
6. The Council refused prior approval on the basis that the proposal would conflict with Policy DM1 of the Harrow Development Management Policies Local Plan 2013 and the guidance contained within the Harrow Residential Design Guide SPD 2010 (SPD). However, the Courts have held that there is no statutory obligation to decide a prior approval application on the basis of the approach in s38(6) of the Planning and Compulsory Purchase Act 2004. The principle of development is already established through the grant of permission by the GPDO.
7. Nevertheless, policies contained within the development plan can be relevant considerations in prior approval cases only insofar as they relate to the matters at hand. In this instance, such matters are confined to the impact on the amenity of adjoining premises. I have therefore taken into account Policy DM1 and the SPD insofar as they are relevant.
8. The appeal relates to a two-storey, semi-detached dwelling. It has an existing single-storey extension which projects to the side and rear. The extension adjoins the shared boundary with 81 Brancker Road and is of such depth that it extends beyond the rear wall of No 81. Both properties have long rear gardens with a low level hedge and fence between the two. No 81 is set away from the shared boundary. It also has a small lean-to extension which infills the space to the side.
9. The rear elevation of No 81 contains an obscurely glazed window closest to the shared boundary with a kitchen window and door closest to its shared boundary with No 83. Given the significant offset of the kitchen window and door from the shared boundary with the appeal site, the extension would only be seen from those windows at an oblique angle and residents would retain a direct outlook down their garden.
10. No 81 does have a small patio area to the rear across the width of the property. The Council indicates that the proposal would not accord with the guidance set out in paragraph 6.61 of the SPD which states that, where a greater rear extension depth is acceptable, the additional depth should be set away from any side boundaries of the property by twice the amount of additional depth sought.
11. However, it is not clear whether the Council's assessment takes into account the presence of the existing extension at No 79. Whilst the proposed extension would be clearly visible from the patio of No 81, and would be in relatively close proximity to it, it would not have a significantly greater depth than the existing extension nor would it be noticeably greater in height. It would be around 2.5m greater in depth and the height would be the same, apart from a small glazed element above the parapet. The extension would also be sited around 2.2m from the shared boundary, in contrast to the existing extension which projects along the boundary, and would be around 5m from the side wall of No 81.

12. Moreover, residents of No 81 would retain a relatively open outlook from the patio across their own garden and, given the low level boundary treatments, across neighbouring gardens. As a result, the extension would not appear unduly obtrusive in the outlook of No 81.
13. The proposed extension would not project beyond the extended rear elevation of No 77. Thus, it would not have a harmful effect on the levels of light or outlook received by residents of the adjoining property. The extension would be a substantial distance from the properties to the rear and would not as such affect the amenity of those residents.
14. I conclude, therefore, that the proposal would not have a harmful effect on the amenity of adjoining residents.

### **Conditions**

15. Class A, paragraph A.3 provides that development is permitted subject to the condition that the materials used in any exterior work, other than in the construction of a conservatory, shall be of a similar appearance to those used in the construction of the exterior of the existing dwelling. It would therefore be unnecessary to impose a condition regarding materials.
16. In addition, Paragraph A.4 (11) requires that, where prior approval is required, development must be carried out in accordance with the details approved by the local planning authority. It would not therefore be necessary to impose a condition relating to the approved plans.
17. The Council indicates that a condition should be imposed to restrict the installation of windows in the flank elevation of the extension facing No 81. However, Paragraph 204 of the Framework is clear that conditions should not be used to restrict permitted development rights unless there is clear justification for doing so. In the absence of any compelling justification I do not consider such a condition is necessary.

### **Conclusions**

18. For the reasons given above, I conclude that the appeal should be allowed and prior approval granted. The planning permission granted for the single storey rear extension and associated internal alterations under Article 3 and Schedule 1, Part 1, Class A is subject to the following conditions: A.4(13), A.4(14) and A(15) which specify that the development shall be completed on or before 30th May 2019, that the developer shall notify the local planning authority in writing of the completion of the development as soon as reasonably practicable after completion, and such notification shall include the name of the developer; the address or location of the development, and the date of completion.

*Jason Whitfield*

**INSPECTOR**