



Appeal Decision

Site visit made on 24 April 2019

by Rebecca Thomas MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th August 2019

Appeal Ref: APP/G3110/D/19/3223446

9 Cavendish Road, Oxford, OX2 7TN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Ms Patricia Daley against the decision of Oxford City Council.
 - The application Ref 18/02739/VAR, dated 12 October 2018, was refused by notice dated 14 December 2018.
 - The application sought planning permission for erection of a single storey extension without complying with a condition attached to planning permission Ref 18/01131/FUL, dated 23 July 2018.
 - The condition in dispute is No. 2 which states that: The development permitted shall be constructed in complete accordance with the specifications in the application and approved plans listed below, unless otherwise agreed in writing by the local planning authority.
 - The reason given for the condition is: To avoid doubt and to ensure an acceptable development as indicated on the submitted drawings in accordance with policy CP1 of the Oxford Local Plan 2001-2016.
-

Decision

1. The appeal is allowed and planning permission is granted for erection of a single storey extension at 9 Cavendish Road, Oxford, OX2 7TN in accordance with the application Ref 18/02739/VAR, dated 12 October 2018, without compliance with condition number 2 previously imposed on planning permission Ref 18/01131/FUL, dated 23 July 2018 and subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 23 July 2021.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 170809.2a and 171809.4a.
 - 3) The external finishes of the development hereby permitted shall match in material, colour, style, bonding and texture to those of the existing building.

Background and Main Issue

2. Planning permission has been granted for a single storey rear extension. The appeal seeks permission to carry out the development without complying with condition 2 which identifies the approved plan. The parties agree that the proposed amended plans are to reflect an error on the approved plan. The variation would move the wall closest to 11 Cavendish Road (number 11) by

approximately 30 centimetres. The development remains the same in all other respects.

3. At the time of my site visit I was able to see that the permitted development had not taken place. Nonetheless the planning permission remains extant.
4. The main issue is the effect of the development on the living conditions of the neighbouring residents at number 11 Cavendish Road, with particular regard to daylight and sunlight.

Reasons

5. The appeal site is a semi-detached two storey brick dwelling, attached to number 11. At the ground floor both dwellings have double glazed doors with windows either side which open out onto the gardens. The nearest affected opening at number 11 is the small window set alongside the double doors, which the occupier has confirmed that these doors and windows serve a dining room.
6. The Council has concluded that the development would fail to pass the 45 and 25 degree tests and therefore the proposal would not be compliant with the access to light test as outlined in Policy HP14 and Appendix 7 of the Oxford City Council Sites and Housing Plan 2011-2026 adopted in 2013 (the SHP). Policy HP14 of the SHP sets out criteria for ensuring that privacy and daylight to existing homes are suitably protected.
7. The National Planning Policy Framework (The Framework) says that planning decisions should achieve high quality design which includes a high standard of amenity for existing and future users. I consider that the Framework is broader in its consideration of development and the SHP is more prescriptive and restrictive in this regard.
8. Whilst I have not been provided with evidence to demonstrate that the proposal would fail the 45 degree test, I was able to see that the development would sit close to the boundary between the two dwellings. The extension would be single storey and the roof would slope away from number 11, thus reducing shadow to an extent. There is a large opening available to the dining room at number 11 as described above with additional light sources from the glazed doors and another window on the other side of the doors.
9. The Council says the orientation of the extension to the south of number 11 would exacerbate the loss of light. I accept that the orientation could affect sunlight from the south to an extent, however the dwellings are south-westerly facing and the change in wall position is small. I am satisfied that the development would not result in material harm. This is supported by the light assessment carried out by the appellant.
10. Notwithstanding the above, I must have regard to the extant planning permission which is identical in all other respects. I am not persuaded that the slight increase in footprint towards the boundary would significantly alter any impacts on living conditions to residents at number 11 from any loss of daylight or sunlight that would already be created by the extant permission. In the absence of any evidence that this permission would not be carried out should this appeal fail, it is a position to which I afford significant weight.

11. Concerns are also raised about the impact to light allowed into the upstairs bedroom. As the development is single storey there would be no effect to the light to this room. In addition, the roof slopes away from the first floor windows at number 11. The variation in the plan would result in limited additional impact to the loss of daylight or sunlight to number 11.
12. I therefore conclude that the proposal would not significantly harm the living conditions of the adjoining occupier at number 11 Cavendish Road through the impact of the development on daylight and sunlight. Thus, it would not conflict with the requirements of Policy H14 of SHP, or The Framework, which seek, amongst other things, to ensure that living conditions of all occupiers are protected.

Conditions

13. The Planning Practice Guidance makes it clear that decision notices for the grant of planning permission under section 73 of the Town and Country Planning Act 1990 (the Act) should also repeat the relevant conditions from the original planning permission, unless they have already been discharged.
14. The Planning Practice Guidance also confirms that planning permission granted under section 73 of the Act cannot extend the time which a development must be started. Therefore, I have adjusted the date to reflect the time passed at condition 1.
15. Condition 2 the subject of this appeal reflects the amended plan references for the purposes of clarity. To ensure a satisfactory appearance, the development must be carried out using materials that match (3).

Conclusion

16. Therefore, for the reasons given, and having had regard to all other matters raised, the appeal is allowed.

Rebecca Thomas

INSPECTOR