



Appeal Decision

Site visit made on 3 August 2020

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 August 2020

Appeal Ref: APP/P4605/D/20/3247451

41 Mickleover Road, Birmingham B8 2ND

- 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(1) and Schedule 2, Part 1, Class A, Paragraph A.4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
 - The appeal is made by Mr Sayqab against the decision of Birmingham City Council.
 - The application Ref 2019/05951/PA, dated 5 July 2019, was purportedly refused by notice dated 20 August 2019.
 - The development proposed is conservatory to rear extension.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the heading above has been taken from the planning application form. Part E of the appeal form states that the description has not changed but, nevertheless, a different wording has been entered. As neither of the main parties has confirmed that a revised description has been agreed, I have used the one given on the original application.
3. The appellant's surname and the road name of the appeal property is spelt differently within the appeal submissions. The header above includes the surname as confirmed by the appellant with the street name taken from the road sign near to the site.
4. On my visit I saw a layer of hardcore on the site of the appeal development but there were no open trenches or any sign of foundations or underground pipes having been laid to serve the appeal development. The appellant's submissions indicate that work started at the appeal property in September 2019 although it is unclear whether this statement refers to the appeal proposal or to other alterations that appear to have been recently carried out to the property. Having regard to s.56 (4) of the Town and Country Planning Act 1990 and my observations, I consider that the development subject of this appeal has not yet begun and I have carried out my assessment on this basis.

Main Issues

5. The main issues are (i) whether the appellant was notified within the prescribed timescale that prior approval was required and refused and, if so (ii) the effect on the amenity of any adjoining premises, taking into account any representations received.

Reasons

Prior approval notification

6. An objection was received following the neighbour notification of the proposal. As such, under the terms of paragraph A.4, Class A of Part 1 of Schedule 2 of the GPDO the prior approval of the local planning authority is required. In such circumstances, development must not begin before (i) prior approval has been granted; or (ii) the expiry of 42 days from the date the Council received the information on the proposal without the developer being notified that prior approval is refused. The appellant states that no decision notice was received and so contends the construction of the proposal would now be allowed under the terms of paragraph A.4.10 (c) of the GPDO.
7. In response, the Council has provided a copy of a decision notice dated 20 August 2019 stating that prior approval is required for the appeal development and that permission is refused. While no actual email has been provided, screenshots of the Council's planning system indicate the decision notice was sent by email to the appellant's agent on the same date and therefore before the expiry of the aforementioned 42 day period.
8. Articles 2 (6) and 2 (7) of the GPDO explain that where an electronic communication is used to fulfil any requirement to give notice, this is taken to be fulfilled where the notice transmitted by electronic means is capable of being accessed by the recipient. The evidence before me indicates that the Council's notice was sent to the appellant's agent's email address as stated on the application form. Accordingly, and in the absence of any evidence to the contrary, I deem a notification was sent to the appellant informing that prior approval was required and refused within the prescribed 42 day period. As such, the construction of the proposal would not now be permitted under the terms of paragraph A.4 10 (c).

Amenity

9. In light of the above, it follows to consider whether prior approval should be granted. The provisions of the GPDO¹ 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. I have assessed this appeal on the same basis.
10. Patio doors to the rear of No 39 are set behind a projection to the rear of the appeal property. The proposal would be constructed onto this projection and on the common boundary with No 39 and so would be seen from the patio doors.
11. The proposal would breach the Council's 45° code in respect of the patio doors. Also, by virtue of its close proximity, depth and taller height compared to the existing boundary fence, the development would be obtrusive when viewed from No 39 and would lead to a greater sense of enclosure compared to the current situation. The conservatory would lie to the north and so not cause a loss of direct sunlight to No 39's windows. However, it would be prominent and so would cause a subsequent loss of outlook from No 39's patio doors.

¹ Town and Country Planning (General Permitted Development) (England) Order 2015 as amended, under Article 3(1) and Schedule 2, Part 1, Class A, Part A.4(7).

12. The proposal would be set off the common boundary with No 43 and would not project far beyond the closest windows. As such it would not be conspicuous from the rear of No 43 and so would cause no significant harm in terms of overshadowing or loss of outlook. However, acceptability in this regard does not override the identified harm in respect of No 39.
13. Overall, while it would be acceptable in terms of effects relating to light and in respect to No 43, I conclude the proposal would cause harm to the living conditions of occupiers of No 39 in respect of outlook. I conclude that this harm would represent a significant and unacceptable impact on the amenity of No 39 and so the appeal should be dismissed.

Jonathan Edwards

INSPECTOR