



Appeal Decision

Site visit made on 29 June 2020

by Martin Chandler BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 September 2020

Appeal Ref: APP/P4605/D/20/3252538

141 Tiverton Road, Birmingham B29 6BS

- 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 MTA Investments against the decision of Birmingham City Council.
 - The application Ref 2019/09536/PA, dated 16 August 2019, was refused by notice dated 27 April 2020.
 - The development seeks permission to retain rear ground floor extension and dormer to front.
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Decision

1. The appeal is allowed and planning permission is granted to retain rear ground floor extension and dormer to front, at 141 Tiverton Road, Birmingham B29 6BS in accordance with application ref: 2019/09536/PA dated 16 August 2019 and subject to the following conditions:
 - 1) The development hereby permitted shall begin before the expiration of three years from the date of this permission.
 - 2) The development shall be carried out in accordance with the following drawing numbers: 2 (Proposed Plans and Elevations); and 3 (Location Plan and Site Plan).
 - 3) The materials to be used in the construction of the external surfaces of the extension hereby permitted shall accord with Section 5 of the submitted Application Form and the hereby approved plans.
 - 4) Upon first installation, the proposed window in the side elevation of the development facing towards No. 139 Tiverton Road hereby permitted shall be fitted with obscure glazing which shall have an obscurity rating of not less than 4 in the Pilkington Glass Range (or an equivalent obscurity rating) and the window shall thereafter be retained as such.

Main Issues

2. The main issues are:
 - i) the effect of the proposal on the living conditions of the occupants of 139 Tiverton Road, having particular regard to outlook and light; and
 - ii) whether the proposal would provide suitable living conditions for future occupants, having particular regard to private amenity space.

Reasons

Living conditions – neighbours

3. The neighbouring property, 139 Tiverton Road (No 139) has a kitchen window located in its rear facing wall. This window provides an outlook towards the appeal site. Based on the evidence before me, the proposal would result in a technical breach of the 45 degrees code as interpreted by the Council. The Birmingham Unitary Development Plan (2005) (UDP) confirms that the purpose of this code is to achieve a reasonable balance between the interests of those wanting to develop or extend, and the interests of the occupiers of adjoining residential accommodation. Accordingly, the code seeks to ensure development would not seriously affect the outlook or daylight of such properties.
4. Between the appeal site and No 139, there is a shared pedestrian access. This provides a gap between the extension and the adjacent window. In addition, the kitchen window is a large opening and the room is also served by two smaller, side-facing windows. When the distance between the window and the extension is combined with the size of the opening, the impact of the development on outlook would be limited. This is because the separation would act as a demonstrable buffer between the extension and the window, and consequently the window would still enjoy a largely unrestricted outlook. In addition, due to the distance between the extension and the window, as well as the side-facing secondary windows, I am satisfied that the kitchen would continue to receive a satisfactory level of daylight. Accordingly, when assessed against the requirements of the UDP, the proposal would not seriously affect the outlook from this window or the daylight received by it.
5. Consequently, I conclude that the proposal would not harm the living conditions of the occupants of No 139. It would therefore accord with Policy PG3 of the Birmingham Development Plan (2017) (DP), saved Paragraphs 3.14C and 8.39-8.43 of the UDP, and guidance contained within the Places For Living Supplementary Planning Guidance (2001) (SPG) and the Extending Your Home Supplementary Planning Document (2007) (SPD). Taken together, these seek amongst other things, high design quality which would not seriously affect outlook or daylight.

Living conditions – future occupants

6. Policy PG3 of the DP seeks to ensure that private external spaces are attractive, functional, inclusive and able to be managed for the long term. This is expanded upon in the SPG which seeks to achieve minimum garden space of 70m² for family accommodation.
7. The proposal would fail to achieve the amount of space advised within the SPG. However, the document also implies that a blanket application of numerical standards is not always the most appropriate way to assess external spaces. Instead, it is stated that the objective behind the standards is what is important, rather than the standards themselves.
8. The Council state that the amenity space would not be considered sufficient to meet the needs of future occupants. However, no evidence has been presented to articulate the harm more clearly. The proposal would increase the size of the property and could result in more occupants. However, based on the evidence before me, I have no reason to consider that the remaining amenity space

could not be attractive, functional, inclusive and able to be managed for the long term. The Council confirm that the terraced dwellings regularly provide less than the 70m² advised within the SPG. The proposal would therefore not be significantly different to surrounding gardens. Moreover, due to the side access, the space would be eminently usable and more functional than many other spaces.

9. Accordingly, for the reasons identified above, I conclude that the proposal would provide suitable living conditions for future residents. It would therefore comply with Policies PG3 and TP27 of the BDP, saved Paragraph 3.14C of the UDP and guidance within the SPG. Taken together, these seek amongst other things, high quality design which contributes to making sustainable neighbourhoods.

Other Matters and Conditions

10. I note the comments in relation to the proposal maybe exceeding that allowed by permitted development rights. However, the proposal requires planning permission and therefore, what can be enabled under permitted development is not material to my assessment of the proposal. Work has already commenced, however, I have to assess the proposal solely in relation to the main issues identified above. The fact that development has commenced does not alter my findings against these matters.
11. I also note that comments in relation to parking, sewage and shared access ways. However, the Council did not identify any concerns in relation to these matters and based on the evidence before me, I have no reason to disagree.
12. Due to my findings set out above, conditions are necessary in the interests of precision to establish the time limit for commencing development and to list the approved drawing numbers. Condition 3 is necessary to ensure suitable materials are used and condition 4 is necessary to safeguard the privacy levels for the occupants of No 139.

Conclusion

13. For the reasons identified above, the appeal is allowed and planning permission is granted.

Martin Chandler

INSPECTOR