
Appeal Decision

Site visit made on 18 August 2020

by R Cooper BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 September 2020

Appeal Ref: APP/R1845/D/20/3252741

343 Chester Road North, Kidderminster DY10 2RU

- 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 Abdul Razzak against the decision of Wyre Forest District Council.
 - The application Ref 20/0235/S73, dated 18 March 2020, was refused by notice dated 12 May 2020.
 - The application sought planning permission for a two storey side extension with two storey and single storey rear extension without complying with a condition attached to planning permission Ref 19/0715/FULL, dated 20 January 2020.
 - The condition in dispute is No 3 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that order with or without modification), no development as specified in Part 1 Classes <A>, , <C>, <D>, <E>, <F>, <G> and <H> shall be carried out without express planning permission first being obtained from the Local Planning Authority.
 - The reason given for the condition is: To enable the Local Planning Authority to control the development and to safeguard the character and visual amenities of the area, and to ensure that adequate private open space is retained within the curtilage of the building. To ensure that the development accords with Policies CP11 of the Adopted Wyre Forest District Core Strategy and SAL.UP and SAL.UP8 of the Adopted Wyre Forest District Site Allocations and Policies Local Plan.
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Decision

1. The appeal is allowed and planning permission is granted for a two storey side extension with two storey and single storey rear extension in accordance with the application Ref 20/0235/S73 dated 18 March 2020, without compliance with condition No 3 previously imposed on planning permission Ref 19/0715/FULL dated 20 January 2020 and subject to the schedule of conditions to this decision.

Background and Main Issue

2. The planning permission granted for the two storey side extension with two storey and single storey rear extension includes a condition removing the permitted development (PD) rights for amongst other things, extensions, roof alterations and outbuildings, namely Classes A to H, at the site.
3. Taking the above background into account the main issue is whether the removal of Classes A to H PD rights is reasonable and necessary in the

interests of protecting the living conditions of neighbouring occupiers and in safeguarding the character of the area.

Reasons

4. The appeal site consists of an extended semi-detached dwelling, within a substantially sized plot. The front of the property is set back and separated from the road by a parking area, it is at an elevated ground level above the street. To the rear, the gardens of properties along Highfield Road sit at a significantly higher ground level and overlook the appeal site. No 342 is positioned adjacent to the appeal site at a substantially lower ground level.
5. PD rights are development which is considered to be acceptable in the normal course of events. All are subject to certain limitations, with Class A covering the enlargement or improvement of a dwellinghouse, Classes B and C are concerned with additions or alterations to a dwelling's roof, Class D covering the erection of entrance porches outside a dwelling's external door and Class E involving outbuildings that might be erected in a property's rear garden. Class F relates to hard surfacing, Class G is concerned with chimneys, flues, soil and vent pipes, whilst Class H relates to microwave antenna.
6. Paragraph 53 of the National Planning Policy Framework (The Framework) states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. Furthermore Paragraph 55 states that planning conditions should only be imposed where they are, amongst other things, necessary and reasonable. The Planning Practice Guidance (PPG)¹ says that conditions restricting the future use of PD rights will rarely pass the test of necessity and should only be used in exceptional circumstances. It comments that blanket removal of freedoms to carry out small scale domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity.
7. The Officer's report outlines the Council's reasoning as to why class E should be removed. I have also carried out a site visit, during which I was able to see that No 342 is positioned adjacent to the appeal site and at an exceptionally lower level, so that its terraced rear garden and private sitting areas lie beneath the level of the appeal site.
8. In the event that permitted development rights under Class E were exercised, a building or structure erected in close proximity to the boundary shared with No 342 would appear overbearing given the significant differences in the ground levels. It could also result in overlooking if windows were included adjacent to the boundary. This would adversely affect the occupiers' enjoyment of their property.
9. Classes A and B could also allow for further increases in the volume of the dwelling house, including alterations to its roof. These by virtue of the sites elevated position and proximity to neighbouring properties, could also affect the outlook of the adjacent occupiers and could result in overlooking should the additions incorporate windows.
10. As well as the above implications for the living conditions of neighbouring occupiers, given the topography and the degree to which the site can be seen

¹ Paragraph: 017 Reference ID: 21a-017-20190723

from surrounding properties, and taking into account the scale of existing extensions, further development under Classes A, B and could result in unduly dominant additions, and a cramped and discordant appearance that would be harmful to the character of the area.

11. My findings do not necessarily mean that should any future householder development proposals at the site arise they would be considered unacceptable in planning terms. Instead, it merely means that the Council would retain control to assess the impact of such given the contextual setting. This would also ensure that any such development could be measured against the relevant local planning policies referred to by the Council.
12. The fact that other neighbouring properties might still enjoy PD rights in this regard does not mean that controls should not be exercised in instances such as this, where planning permission has been granted for development. I have considered the various examples of nearby extensions and outbuildings, including that at No 344. It was evident from my site visit that the physical form of the surrounding properties has been altered over time, the site is also not within a conservation area or the setting of a listed building, however this does not alter my findings above.
13. I therefore conclude that Condition No 3 serves a planning purpose, at least in part. However, I see no reason why the occupiers should be excluded from the entitlement available under Classes C, D, F, G and H PD rights, as none of these would potentially have the implications discussed above. Nonetheless, removing Classes A, B and E PD rights is both reasonable and necessary in serving the interests of protecting the living conditions of neighbouring occupiers and in safeguarding the character and appearance of the area. Accordingly, I have deleted the original condition and replaced it with an amended version.

Conditions

14. Planning Practice Guidance (PPG) makes it clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the previous planning permission, unless they have already been discharged.
15. As I have no information before me about the status of the conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant, altered where necessary for clarity and to ensure compliance with the relevant tests. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties outside of this appeal process.
16. As well as the condition removing Classes A, B and E PD rights, in the interests of certainty, I have imposed a condition requiring that the development be carried out in accordance with the approved plans. In addition, to ensure a satisfactory form of development conditions are imposed relating to the external materials and boundary treatments.
17. I have also included a condition to ensure that the windows on the side elevation shall be non-opening and glazed with obscure glass to prevent overlooking and loss of privacy to nearby occupiers.

18. Conditions were previously also imposed relating to the provision of car parking and the submission of details of secure cycle parking. I acknowledge the need for such facilities at the site to ensure a good standard of development and in order to encourage travel by means other than private motor vehicles and include conditions to this effect.
19. I have not included a standard time limit condition as the construction of the extension has already been commenced.

Conclusion

20. For the above reasons, and having had regard to all matters raised, the appeal succeeds, albeit in part.

R Cooper

INSPECTOR

SCHEDULE

1. The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing No 1 Rev A Marked 'APPROVED' and Drawing No 4a Marked 'REVISED 19/0715'.
2. The external surfaces of the development hereby permitted shall be finished in the materials shown on the approved plans.
3. No extension, enlargement, alteration or provision within the curtilage of the dwellinghouse as provided for within Schedule 2, Part 1, Classes A, B and E of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (or any order revoking and re-enacting that Order with or without modification) other than that expressly authorised by this permission shall be carried out.
4. The extension hereby permitted shall not be occupied until the windows in the first floor side elevation (As identified on Drawing No 1 Rev A Marked 'APPROVED') have been fitted with non-opening and obscured glazing, to a minimum of Pilkington Level 3 Glazing. Once installed the obscured glazing shall be retained thereafter. No further windows or other openings shall be formed in that elevation.
5. The extensions hereby approved shall not be occupied until the access and parking facilities have been provided in accordance with the approved plans. The facilities shall be kept available at all times for the parking of motor vehicles by the occupants of the dwelling and their visitors and for no other purpose.
6. The extensions hereby approved shall not be occupied until details of secure cycle parking facilities have been submitted to and approved in writing by the local planning authority. The development shall not be occupied until the facilities have been provided in accordance with the approved details and shall be retained thereafter.

7. The extensions hereby approved shall not be occupied until a close boarded fence at a height of 2 metres has been erected in the location as shown on Drawing No 4a Marked 'REVISED 19/0715'. The fence shall be retained thereafter.

SCHEDULE ENDS