
Appeal Decision

Site visit made on 22 December 2020

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd December 2020

Appeal Ref: APP/P4605/D/20/3260156

49 Carless Avenue, Birmingham B17 9BN

- 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 Dr Oliver Smart against the decision of Birmingham City Council.
 - The application Ref 2020/04608/PA, dated 16 June 2020, was refused by notice dated 19 August 2020.
 - The development proposed is described as the demolition of the existing rear conservatory in place of a new contemporary extension, comprising an open-plan kitchen-living space and the inclusion of a contemporary new projecting window within an existing opening.
-

Decision

1. The appeal is allowed and planning permission is granted for the demolition of the existing rear conservatory in place of a new contemporary extension, comprising an open-plan kitchen-living space and the inclusion of a contemporary new projecting window within an existing opening at 49 Carless Avenue, Birmingham, B17 9BN, in accordance with the terms of the application Ref 2020/04608/PA, dated 16 June 2020, subject to the following conditions:
 - (1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - (2) The development hereby permitted shall be carried out in accordance with the following approved plan: A-L-110 Revision 01.
 - (3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.
 - (4) Directly under and within 1 metre of the furthest extent of the canopy of any highways tree there shall be; no storage of building materials or chemicals without suitable ground and trunk protection measure in place, no concrete mixing, storage of oil, cement, bitumen or chemicals. These measures shall apply for the duration of the construction phase and until all equipment; machinery and surplus materials have been removed from the site.

Main Issue

2. The main issue is the effect of the development on the occupiers of 51 Carless Avenue in respect of outlook and light.

Reasons

3. It is proposed to replace a white uPVC framed and pitched roofed conservatory with a flat roof rear extension with brick walls. The proposed extension would occupy a very similar footprint to the existing conservatory. In addition, it is proposed to install a projecting rear window at ground floor level and to the proposed dining room. This would replace an existing window which does not project outwards.
4. There is no dispute between the parties that the projecting window would be acceptable in living conditions terms. I do not disagree that this part of the proposal would be acceptable. In addition, I do not disagree with the Council that the proposed rear extension and new window would be acceptable in design terms.
5. Taking into account the fact that the development would be to the rear of the property, coupled with the fact that it is proposed to replace an existing rear extension with another rear extension of broadly similar overall proportions, I am satisfied that as a whole it would preserve the character and appearance of the Moor Pool Conservation Area. In this respect, the proposal would accord with the design requirements of policy PG3 of the Birmingham Development Plan 2017 (BDP) and Chapter 16 of the National Planning Policy Framework (the Framework).
6. The point of contention between the main parties relates to the proposed rear extension and its effect on the living conditions of the occupiers of No 51 Carless Avenue, the neighbouring semi-detached house, in respect of outlook and light. The existing conservatory already breaches a 45 degree line relative to the neighbouring ground floor window.
7. I acknowledge that the conservatory is a lighter weight structure when compared to the proposed rear extension which would have a side elevation constructed in brick. Nevertheless, the evidence indicates that blinds are currently used for the side windows and roof of the conservatory and hence this has the effect of creating a more enclosing structure when viewed from the neighbouring window. Furthermore, there is a solid wooden fence at about 1.8 metres in height on the common boundary with No 51 Carless Avenue. Consequently, it is essentially only the roof and part of the side elevation of the conservatory that is visible from the neighbouring window of No 51 Carless Avenue.
8. In the context of the above, and given that the proposed rear extension would have a flat roof and hence would be overall lower in height than the existing conservatory, I do not consider that it would have an enclosing impact when viewed by the occupiers of No 51 Carless Avenue. In reaching this view, it is also of note that the occupier of this neighbouring property has raised no objection to the proposal. Therefore, and accepting that the proposal breaches a 45 degree code as outlined in paragraphs 8.39-8.43 of the Birmingham Unitary Development Plan 2005 (UDP), I do not consider that material harm would be caused to the occupiers of No 51 Carless Avenue in respect of outlook.
9. As part of this appeal, the appellant has submitted a daylight, sunlight and overshadowing assessment prepared by EEABS. I do not disagree with the findings of this report, based on Building Research Establishment guidelines,

which concludes that there would be negligible impact to the amount of sunlight hours to the living room at No 51 Carless Avenue and no impact on the amount of overshadowing to the rear garden of this neighbouring property. In this case, the proposal would make very little difference to levels of light penetration to the neighbouring property when compared to the effects from the existing conservatory at the rear of the appeal property. I do not therefore find that it would be reasonable to refuse planning permission in this regard, despite the infringement of the 45 degree code.

10. I conclude that the proposal would not cause significant harm to the occupiers of No 51 Carless Avenue in respect of outlook and light. Whilst there would be some technical conflict with the 45 degree code as outlined in saved paragraphs 8.39-8.43 of the UDP, there are material considerations in this case to demonstrate that in relative terms there would actually be no significant harm caused to the occupiers of No 51 Carless Avenue. In this respect, the development would therefore accord with the amenity requirements of paragraph 127(f) of the Framework. I have not been provided with any evidence to indicate that the proposal would be in conflict with paragraph 3.14C of the UDP. The Council's refusal notice refers to policy PG3 of the BDP, but this is not directly relevant to this main issue as it concerns design.

Conditions

11. Planning permission is granted subject to the standard three year time limit condition. It is necessary that the development shall be carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of certainty. I have therefore imposed a condition to this effect.
12. In the interests of good design, it is necessary to impose a planning condition relating to materials. In the interests of protecting trees which have high amenity value, it is necessary to impose a tree protection condition.

Conclusion

13. For the reasons outlined above, I conclude that the appeal should be allowed.

D Hartley

INSPECTOR