



Appeal Decision

Site Visit made on 11 May 2021

by Rachel Hall BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 June 2021

Appeal Ref: APP/P4605/W/20/3263287

Flat 1, 409 City Road, Harborne, Birmingham B17 8LD

- 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 Mr Steve Singh against the decision of Birmingham City Council.
 - The application Ref 2020/06637/PA, dated 21 August 2020, was refused by notice dated 11 November 2020.
 - The development proposed is described as 'extension to flat'.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of single storey side and rear extensions to Flat 1, 409 City Road, Harborne, Birmingham B17 8LD in accordance with the terms of the application, Ref 2020/06637/PA, dated 21 August 2020, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: OS/1001 and 02/1002.
 - 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used on the existing building.

Preliminary Matters

2. Notwithstanding the description of development in the heading above which has been taken from the application form, the development is more fully described on the decision notice and appeal form as 'erection of single storey side and rear extensions'. The Council determined the application on that basis and so have I. I have therefore used that description in my formal decision.

Main Issue

3. The main issue is the effect of the proposed rear extension on the living conditions of the occupants of 407 City Road, with particular regard to outlook and light.

Reasons

4. Both the appeal building ('No 409') and adjoining house at 407 City Road ('No 407') have long rear gardens that slope away from the house giving a relatively open aspect. At ground floor level No 407 has one window opening, comprising patio doors with a windowpane on either side. Whilst this is the only ground floor window it is a reasonable size and could therefore be expected to allow a

good level of light into the downstairs room at the rear of the property. I observed the boundary fence between the two properties which extends a significant way up the rear window at No 407. The fence would be visible and would frame the current outlook from this window when looking towards the appeal site.

5. The proposed development has been designed such that the depth of the rear extension is least where it adjoins the boundary with No 407, thus minimising the change to outlook and light from within No 407 at ground floor level. Consequently, I consider the additional effect from the part of the proposed single storey extension that adjoins the boundary with No 407, to the extent that it would be visible above the existing fence, would not have an unacceptable effect on living conditions at No 407 in respect of light or outlook.
6. The deepest part of the proposed extension is set further from the boundary with No 407. This setback would limit its dominance from both within the rear ground floor room at No 407 and from its rear garden, where it would be visible over the top of the garden fence. Despite the length of this part of the extension, the degree of set back combined with the sizeable window at No 407 and the presence of the existing intervening fence, would ensure that it would not be harmful to outlook or light from the rear window at No 407.
7. The design of the proposal, being single storey with side facing windows, would not compromise privacy in neighbouring houses or gardens. The levels at both No 407 and No 409 are such that there is a step down from the ground floor level into the rear garden. The combined effect of the garden levels, which also slope away from the existing houses, and the presence of an existing boundary fence¹, means intervisibility between the development and the garden at No 407 would be very limited. Consequently an acceptable level of privacy in the garden of No 407 would be retained. The scheme does not involve development at the rear of the garden and would therefore avoid any related loss of privacy in neighbouring gardens, thereby addressing any concerns in that regard.
8. The set back of the deepest part of the proposed development from the boundary with No 407 would also significantly avoid the potential for any shading of the garden at No 407. Due to the orientation of the buildings, the lower part of the garden in particular would remain unaffected by shading from the proposed development. There is no substantive evidence that the proposals would require any partitioning garden hedges to be disturbed.
9. The proposed side extension would effectively infill a small set back along the flank elevation of the flat and would not cause any harm in respect to living conditions of its future occupiers and those at No 411. I note that the Council raised no objection to this element of the proposal.
10. The rear extension element of the proposal would breach the '45 degree rule' and therefore be contrary to saved paragraphs 8.39 – 8.43 of the Unitary Development Plan ('UDP') (adopted 2005). However I have concluded that there would not be any harm to the living conditions of occupants of No 407 with respect to loss of outlook or light. Accordingly the development would accord with policy PG3 of the Birmingham Development Plan 2031 (adopted

¹ In accordance with the Council's 'Extending your Home' supplementary planning guidance (adopted March 2007).

January 2017). This seeks to ensure all new development demonstrates high design quality, including responding to site conditions.

11. For the reasons given above, I find that the rear extension would result in a technical breach of the 45 degree rule as referenced in the Council's 45 Degree Code Supplementary Planning Guidance (March 2006) and the Extending your Home Supplementary Planning Guidance (March 2007). However, in accordance with the 45 Degree Code guidance I have taken account of the intervening distance between the window at No 407 and the proposed development. In doing so I conclude that there would be no harm from loss of outlook or light at No 407 and therefore that it does not conflict with this guidance overall.
12. In light of my conclusion on the 45 Degree Code guidance I therefore find that the proposal would accord with paragraph 3.14C of the UDP which requires developments to have regard to relevant supplementary planning guidance.
13. Given the conflict with paragraphs 8.39 – 8.43 of the UDP I conclude that the proposed development would be contrary to the development plan when taken as a whole. Nevertheless, the absence of harm to living conditions is a material consideration that indicates taking a decision that is contrary to it. It is also a material consideration that the proposal would be in accordance with paragraphs 124 and 127 of the National Planning Policy Framework ('the Framework') which amongst other things seek to ensure development creates places with a high standard of amenity for existing and future users.

Conditions

14. I have imposed a condition requiring compliance with the approved plans as this creates certainty. For similar reasons I have imposed a condition requiring materials to be used in construction of external surfaces to match those used on the existing building. This is to ensure the development integrates effectively with the existing building and will address concerns from a neighbour about the finish of the structure.
15. The Council suggested a condition be applied to reduce the scale of the rear extension. As I have found the proposal would be acceptable as shown on the submitted drawings the suggested condition is not necessary. In any event, a condition requiring substantial modification to the development would be unreasonable and therefore would not meet the relevant tests for planning conditions set out in the Framework.

Conclusion

16. For the reasons set out above, although I conclude that the proposal would conflict with the development plan taken as a whole, the absence of harm to neighbours' living conditions with respect to outlook and light is a material consideration that indicates planning permission should be granted. Therefore having had regard to the development plan as a whole along with all other relevant material considerations, I conclude that the appeal should be allowed.

Rachel Hall

INSPECTOR