



Appeal Decision

Site visit made on 15 June 2021

by Benjamin Clarke BA (Hons.) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: Friday, 02 July 2021

Appeal Ref: APP/V4630/D/21/3269329

32 Love Lane, Walsall WS1 4BG

- 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).
 - The appeal is made by Mr Afikul Islam against the decision of Walsall Metropolitan Borough Council.
 - The application Ref: 20/1516, dated 7 December 2020, was refused by notice dated 18 January 2021.
 - The development proposed is a kitchen extension.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The provisions of the 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) (the GDPO) 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. My determination has been made on the same basis.
3. In its decision notice, the Council has referred to policies in the development plan and a Supplementary Planning Document. However, a prior approval appeal should not be determined, expressly or otherwise, on the basis of s38(6) of the Planning and Compulsory Purchase Act 2004, or as though the development plan must be applied. This is because the principle of development is established through the grant of permission by the GPDO. Nevertheless, insofar as the development plan assists in assessing the impacts of the extension, I have had regard to them.

Main Issue

4. The main issue in this appeal is the effect of the development upon the living conditions of the occupiers of 30 Love Lane (No 30), with particular reference to outlook and sun light.

Reasons

5. The appeal site contains a semi-detached dwelling attached to No. 30. The property features a rear garden, with the boundaries marked by fences and a

- wall. The considerable depth of the proposed extension would result in the development projecting a significant way past the rear elevation of No. 30.
6. This is a concern as the height of the proposed extension would be substantially taller than the height of the site's boundary treatment. Furthermore, the appellant's dwelling features several windows on the rear elevation. A similar, but mirrored, fenestration pattern occurs at the neighbouring dwelling of No. 30.
 7. Therefore, when viewed from the neighbouring property, the massing of the proposed extension would be readily perceptible. Owing to the projection of the proposed extension, it would have a significant enclosing and overbearing effect. This would harmfully reduce the extent of the outlook occupiers of the neighbouring dwelling experience. These effects would arise even though the land level of the site would not be altered.
 8. The proposed development would, by reason of its projection and height, in addition to the orientation of the site and the neighbouring property, result in a loss of sun light to the ground-floor rear elevation windows of No. 30. In particular, the proposed development would breach a '45-degree' line drawn from the centre of the nearest ground floor window of No. 30 by a substantial amount.
 9. The '45-degree' line is discussed in the Designing Walsall: Supplementary Planning Document for Urban Design (2008, revised 2013) (the SPD). Appendix D of this document states that the principles of the SPD should be used for shaping the design of development proposals. Therefore, the fact that this appeal does not relate to a refusal of an application for planning permission does not mean that I can forego the requirements of the SPD
 10. The breaching of the '45-degree' line does not have a bearing on whether a proposed development would fall within the definition of permitted development. However, the purpose of the '45-degree' line is to provide a mechanism by which the effects on a neighbouring property might be measured. Therefore, given that this line has been breached, there would be an adverse effect upon the level of light experienced by neighbouring occupiers.
 11. A smaller extension might also breach the '45-degree' line. However, such an extension would naturally be smaller than one proposed through the prior notification process. Therefore, the proposed extension would have much greater adverse effects than one that could be constructed without requiring prior approval and, in consequence, a different approach is justified.
 12. The level of light that would be lost by the proposed development would vary depending on the time of day owing to the passage of the sun. However, the effects particularly during the middle part of the day would be so significant that there would be a large and demonstrable erosion of the living conditions of the occupiers of No. 30.
 13. I understand from the appellant's Statement of Case that the nearest ground floor window of No. 30 to the appellant's dwelling, serves a kitchen. Whilst such a room might be used differently to other rooms, such as a living room, or dining room; there is a likelihood that residents would spend a significant amount of time within the room whilst undertaking cooking or other household

tasks. Therefore, the loss of sun light and outlook would be particularly significant.

14. My attention has been drawn to some other existing extensions elsewhere. I have not been provided with the full information regarding their planning circumstances, which lessens the weight that I can attribute to them. Nonetheless, I note that their immediate surroundings are different to the scheme before me. Therefore, they do not overcome my previous concerns.
15. I note the other points cited by the appellant in favour of the proposed development. However, as I have found harm to the living conditions of the occupiers of No. 30, I do not need to give these matters further consideration.
16. I therefore conclude that the proposed development would have an adverse effect on the living conditions of the occupiers of the neighbouring property owing to a loss of sun light and outlook.

Conclusion

17. For the preceding reasons, I conclude that the appeal should be dismissed.

Benjamin Clarke

INSPECTOR