



Appeal Decision

Site visit made on 15 June 2021

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 July 2021

Appeal Ref: APP/P4605/W/21/3272557

40 Oak Tree Lane, Selly Oak, Birmingham B29 6HX

- 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 Sandeep Krishan of Flare Homes Ltd against the decision of Birmingham City Council.
 - The application Ref 2020/09499/PA, dated 27 November 2020, was refused by notice dated 5 February 2021.
 - The development proposed is the erection of a two-storey rear extension and installation of front dormer.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the banner heading above is taken from the appeal form, as it is more concise than that used on the original planning application form.
3. The Council's statement referred to Policy DM2 of the emerging (and still in draft form) Development Management in Birmingham DPD ("the DMDPD"), and the appellant submitted comments during the course of the appeal. I have taken both parties' comments into account in my reasons below.
4. I am also the Inspector appointed to determine another appeal at 40 Oak Tree Lane, reference APP/P4605/W/21/3267518. The two appeals are rather different in nature, and the other appeal is the subject of a separate decision.

Main Issues

5. The main issues are the effects of the proposed development on living conditions for occupiers of the neighbouring property at 38 Oak Tree Lane, with particular regard to outlook and daylight, and on the character and appearance of the area.

Reasons

6. The appeal property is a two-storey, semi-detached house with a two-storey rear outrigger. It has been extended and adapted over the years, and now has an additional single storey rear extension, and accommodation in the converted loft which is served by a rear dormer and a rooflight on the front roof slope.

7. The proposed development is a two-storey rear extension, approximately 3m deep and 2.3m wide which would infill a corner between the "main" rear elevation and the side of the rear outrigger, as well as a dormer on the front roof.

Living conditions

8. No 38 Oak Tree Lane sits immediately to the north of the appeal site. There is a narrow gap between the side elevations of two properties, which then widens out between the rear outriggers. The ground floor room nearest the appeal site in No 38 has a set of glazed patio doors on the rear elevation.
9. The proposed rear extension would be around 2.3m nearer to No 38's patio doors than the existing two-storey outrigger, and considerably taller than the boundary fence separating the two properties. It would breach the "45° Code" set out in the development plan and the Council's supplementary guidance, and would lead to both a loss of daylight and sunlight reaching the patio doors, and a loss of outlook from within the room they serve.
10. I acknowledge that the "45° Code" is already breached in respect of No 38 by the existing rear outrigger on the appeal property. Given the close proximity between the two properties and the extent to which daylight reaching and outlook from the rear of No 38 are already constrained, I do not accept the appellant's argument that the effects of the extension would be minimal.
11. I note also the appellant questions whether or not the "45° Code" should even be applied to a patio door. However, in my view any sensible reading of the development plan and guidance indicate that it should apply, certainly as far as this appeal is concerned, as the patio door in question is the main (and quite possibly only) source of natural light for a habitable room. I am not therefore persuaded by the appellant's argument on this point, and give it very little weight in my decision.
12. I find that the proposed rear extension would lead to an unacceptable loss of daylight and outlook, and so conclude that it would be harmful to living conditions for the occupiers of No 38. The proposal therefore conflicts with Policy PG3 of the 2017 Birmingham Development Plan ("the BDP"), the saved "Design of New Development" (paragraph 3.14C) and "45° Code for House Extensions" (paragraphs 8.39-8.43) Policies of the 2005 Birmingham Unitary Development Plan ("the UDP"), as well as guidance in the 2001 "Places for Living" Supplementary Planning Guidance and the 2007 "Extending Your Home" Supplementary Planning Document. Together these seek to ensure that development does not cause unacceptable harm to neighbouring occupiers' living conditions. For the same reasons, the proposal conflicts with the requirements of the National Planning Policy Framework ("the Framework"), in particular paragraph 127. My conclusions on this issue are consistent with those of the Inspector in a previous appeal to which the Council drew my attention¹, although this earlier case related to a single-storey extension.
13. I also find that the proposed development would conflict with Policy DM2 of the emerging DMDPD, which seeks to ensure that development provides a good standard of amenity for neighbours including in respect of outlook and daylight. That plan has not yet been adopted and consequently conflict with it does not

¹ Ref: APP/P4605/W/20/3251927

carry full weight. However, notwithstanding the appellant's remark that the emerging policy represents a "pragmatic approach" compared to the current development plan, appraising this scheme against the emerging policy as currently drafted would not alter my overall findings or have a significant bearing on my decision.

Character and appearance

14. While the proposed rear extension would be away from public views it would be visible from neighbouring properties, and so would affect the character of the area. The appeal property, for the most part, reflects the prevailing design of its neighbouring dwellings, with a long part two-storey, part one-storey rear wing. The reasonably regular rhythm of gaps between rear wings gives the properties on the west side of Oak Tree Lane a degree of architectural unity, and helps to retain some of the traditional character and appearance of the area.
15. The proposed extension would occupy part of the space at the side of the rear wing, and at two storeys it would be a large and obtrusive feature. While it would not fill the entire space at the side of the rear wing, it would significantly reduce the gap between the rear wing of the appeal property and No 38. Notwithstanding the proposed use of materials to match the existing building, the extension would nevertheless represent an intrusive and discordant addition to the host property. This would detract from the appearance of the host property, and in turn would diminish its contribution to the character of the area.
16. The Council did not raise any concerns in respect of the proposed front dormer, and on the basis of the evidence before me and my observations on site I see no reason to take a different view. However, this does not outweigh or negate the other harm I have found.
17. I conclude that the proposed rear extension would be harmful to the character and appearance of the area. The proposal therefore conflicts with Policy PG3 of the BDP, and the saved "Design of New Development" Policy (paragraphs 3.14C-D) of the UDP, as well as guidance in the "Extending Your Home" SPD, which seek to ensure that development is well-designed and reinforces local distinctiveness. For the same reasons, it conflicts with the requirements of the Framework, in particular paragraph 130.

Other Matters

18. The appellant indicates that the ground storey element of the rear extension and the proposed front dormer are already the subject of (respectively) a Certificate of Lawful Development and a planning permission². While this represents a "fallback" position for the appellant, the evidence before me suggests that these other developments would be less substantial, and therefore less harmful, than the scheme now before me. They therefore carry very little weight in favour of the current proposal.
19. While the proposal would be acceptable in other ways, including its effects (or lack of effects) on parking, highway safety, trees, and crime, these are neutral factors which do not weigh in favour of the scheme.

² LPA refs: 2020/09500/PA and 2020/09498/PA

Conclusion

20. The proposal would conflict with the development plan taken as a whole. There are no material considerations, including those of the Framework, which indicate that the decision should be made other than in accordance with the development plan.

21. For the reasons given above, the appeal is therefore dismissed.

M Cryan

Inspector