



Appeal Decision

Site Visit made on 22 June 2021

Decision by Chris Preston BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 August 2021

Appeal Ref: APP/N5090/D/21/3270491

80 Golders Manor Drive, London NW11 9HT

- 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, Schedule 2, Part 1, Class AA of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
 - The appeal is made by Ms Andrea Clerk against the decision of the Council for the London Borough of Barnet.
 - The application Ref 21/0291/PNU, dated 03 February 2021, was refused by notice dated 01 March 2021.
 - The development proposed is the construction of an additional storey following the removal of the existing roof
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. The Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order) was amended on 31 August 2020 to introduce Class AA to Part 1 of Schedule 2, setting out permitted development rights for development consisting of works for the construction of up to two additional storeys on an existing dwellinghouse that consists of two or more storeys, or for one additional storey on an existing single storey dwellinghouse, together with any reasonably necessary engineering operations.
3. Development is permitted under Class AA subject to various limitations and conditions. Paragraph AA.1(a) to (k) sets out a number of limitations with which a proposal must comply to fall within the scope of development permitted by the Class. In this case, the Council considers that the dwellinghouse was constructed prior to 1st July 1948, such that it would fail to comply with AA.1(c). There is no dispute that the proposal would comply with any of the other limitations.
4. In addition to those limitations, paragraph AA.2 sets out a number of conditions that must be complied with. The Council maintains that the proposal would contain windows in a side facing elevation, thus contravening the requirements of paragraph AA.2(2)(b).
5. All development is subject to a requirement that details are submitted for prior approval in relation to the matters set out at paragraph AA.2(3)(a)(i) to (iv). Councils are required to undertake certain consultations as part of the prior approval process, as may be relevant under paragraphs AA.3(5) to (8). However, if a Council considers that a proposal would fail to comply with the conditions and limitations of paragraphs AA.1 and AA.2 it may refuse the

application on that basis, without considering the matters of prior approval, as set out in paragraph AA.3(3 & 4). In this case, the Council did not do that but considered the prior approval matters, notwithstanding its position that the proposal would not meet the terms of paragraphs AA.1 and AA.2. Having considered those matters, the Council determined that prior approval should not be granted having regard to the external appearance of the dwellinghouse and the impact on the amenity of neighbouring occupiers.

6. If the Council is correct in its assessment of the failure to comply with the requirements of paragraphs AA.1 and AA.2, the proposal would not amount to development permitted by the Order. In that case, the appeal would be dismissed and it would not be necessary for me to consider whether to grant prior approval for the matters listed at paragraph AA.2(3)(a). However, if the appellant succeeds on those matters, I will then continue to consider the prior approval details.
7. Given that planning permission is granted by virtue of the Order, subject to conditions and limitations, the proposal does not need to be assessed in line with the presumption in favour of the development plan.¹ The Council has referred to various development plan policies. I have taken account of the content of those policies insofar as they may be relevant to the context of specific prior approval matters. However, the policies are not determinative and I have considered the proposal on its merits in the confines of the prior approval regime.
8. In view of the above, the main issues are:
 - i) Whether the dwellinghouse was constructed prior to 1st July 1948 such that the proposal would fail to comply with paragraph AA.1(c) of the Order;
 - ii) Whether the proposed windows are in a side facing elevation of the dwellinghouse, such that the proposal would fail to comply with the condition at paragraph AA.2(2)(b) of the Order; and
 - iii) If the appeal succeeds in relation to main issues (i) and (ii), whether prior approval should be granted having regard to the external appearance of the dwellinghouse and the impact on the amenity of neighbouring occupiers at Nos. 28 and 30 Heathfield Gardens.

Reasons for the Recommendation

i) Whether the Dwellinghouse was constructed prior to 1st July 1948

9. As noted above, paragraph AA.1(c) states that development is not permitted if the dwellinghouse was constructed before 01 July 1948 or after 28 October 2018. The dwellinghouse in question was formed as a result of the conversion and extension of a former domestic garage at the bottom of the garden of No.28 Heathfield Gardens. The Council contends that the building was likely to have been constructed before the relevant date and has referred to the fact that a garage is shown on historic maps. Those maps have not been provided and it is not possible to compare the current building with what may be shown. However, judging by what I could see of the building, the original part of the garage could well have been in situ before 1948. The appellant doesn't explicitly dispute that point. A very similar neighbouring garage (which has not

¹ As set out at Section 38(6) of the Planning and Compensation Act (2004)

- been extended or converted) sits directly adjacent and that also appears to be of some vintage, as do 2 garages directly opposite.
10. The appellant's point is that the relevant date should not be taken from when the original building was constructed but when the building was constructed and available for use as a dwellinghouse. It appears that planning permission was not granted for the conversion but a certificate of lawful use relating to a self-contained dwellinghouse was granted by the Council in October 2004 on the basis that the use had become established due to the passage of time. The property was given its own address in April the following year.
 11. According to the appellant the works to convert the property, including the installation of sewerage, water, and electricity connections; the insertion of a door and windows; plus the erection of an extension to house the bathroom were carried out during the 1990s and completed by 1998. In the absence of anything to the contrary, having regard to the planning history and what I was able to witness on site, I see no reason to doubt that version of events.
 12. The Order specifically refers to the date at which 'the dwellinghouse' was constructed. I am not aware of any guidance as to how that should be applied to buildings that were constructed prior to July 1948 but subsequently converted to dwellinghouses. What is clear in this case is that the original garage was not suitable for habitation prior to the works undertaken in the 1990s. There appear to have been no services and, without the extension to accommodate the bathroom, it would have been difficult to accommodate all facilities necessary for human habitation given the small scale of the single garage. There were no domestic windows and no entrance door. In that context, the works to alter and extend the property and install the services required for day to day living were substantial and involved a significant degree of what would be considered as 'construction'.
 13. Therefore, as a matter of fact and degree, on the limited evidence presented, I am of the view that the 'dwellinghouse' was constructed at some point during the 1990s on account of the works required to make it habitable at that time. There may be instances where buildings are converted into residential use with very little or no construction required, depending on the former use and the extent of pre-existing facilities. However, in this specific case I am satisfied that the dwellinghouse was constructed after 1st July 1948 and before 28th October 2018 such that the proposal complies with the terms of paragraph AA.1(c).
- ii) Whether the Proposed Windows Would be in a Wall or Roofslope Forming a Side Elevation of the Dwellinghouse*
14. First floor windows would be positioned in the elevation which faces Golders Manor Drive and the opposing elevation which faces away from the road. The Council maintains that the 'principal' elevation of the dwellinghouse is that which contains the front door and window to the living accommodation, facing the rear of Heathfield Gardens. Conversely, in its view, the elevation facing the road is now the side elevation.
 15. I accept that in many instances the elevation containing the main entrance to a property and primary living windows will often be considered the front of the house. However, the dwelling in question has a somewhat unusual arrangement. Clearly, the original arrangement of the garage was designed to

face the street so that cars could enter and leave, as is still evident in the neighbouring garage. Although architectural details are limited, the front gable still faces the street and that gable is a primary feature of the building. Whilst the door and windows were inserted as part of the conversion I am not satisfied that has altered the strong functional relationship with the street. Given the clear relationship of the building and that of the neighbouring garage to the street the visual impression is very much that the gable end fronts onto Golders Manor Drive. Two similar single garages also front the street directly opposite.

16. Thus, on balance, I am of the view that the entrance door and living room window remain at the side of the property and that the proposed windows would be in what should be considered the front and rear. Accordingly, the proposal would not contravene the condition at paragraph AA.2(2)(b) of the Order.

iii) Prior Approval Matters

External Appearance

17. Golders Manor Drive forms part of a wider estate of early 20th century "metroland" housing, with characteristic Arts and Crafts influence in the hipped roofs, mock timber gabled bays, prominent chimneys and wide use of roughcast render. Those design characteristics, allied to the generous rear gardens, creates an attractive and spacious feel.
18. As noted, the former garage at the appeal site sits next to another single garage. Two similar garages are located on the opposite side of the road. Aside from these ancillary structures, no dwellings front the street at this end of Golders Manor Drive. That would appear to be a deliberately planned arrangement with the garages and side garden walls of the end properties of Heathfield Gardens and Western Avenue form the boundary with the street.
19. Despite the extensions and change of use, the dwellinghouse at the appeal site maintains the outward appearance of an ancillary outbuilding, in keeping with the spacious feel of the area. That relationship would change significantly if an additional storey were added. The structure would be significantly taller than surrounding garages. Given the limited ground floor footprint, the building would also have an unbalanced appearance being overly tall in relation to its limited width, somewhat akin to a watchtower. The design would fail to reflect the substantial and well-balanced proportions of surrounding dwellings, nor would it sit comfortably against the modest height and scale of adjacent outbuildings. It would look extremely incongruous as a result.
20. Consequently, the external appearance would cause harm to the character of the wider area and represents poor design. The appellant maintains that the Order does not require an assessment of the impact on the wider area but specifically is limited to consideration of the principal elevation and any side elevation that faces the highway. I find it difficult to make an assessment of the external appearance of the dwellinghouse, or the merits of the principal elevation without reference to the context within which the proposal is situated. Two similar schemes may be acceptable or otherwise in different locations, depending on the nature of the surroundings.

21. Paragraph AA.2(3)(a)(ii) requires an assessment of the external appearance of the dwellinghouse *including* the principal elevation and any side elevation that fronts a highway. Whilst the assessment should include those elements, the Order does not explicitly exclude consideration of the wider context. In my view such consideration does not go beyond the terms of the Order but merely forms part and parcel of consideration of my assessment of the external appearance of the dwellinghouse. I am aware that an Inspector on another site took a different view but the interpretation of the Order is not a straightforward matter, particularly in relation to newly extended development rights where associated guidance has not been issued. Consequently, I am not bound by that decision.
22. Even if I am wrong in that respect, the disproportionately tall building height in relation to the limited width would look extremely odd, even if viewed in isolation as a stand-alone structure.

Neighbouring Amenity

23. The side elevation of the extension would face towards the rear gardens of the adjacent properties at 28 and 30 Heathfield Gardens and would project substantially above the rear garden fence of those dwellings. However, given the depth of the gardens, the distance between the rear elevations of the existing properties and the side elevation of the dwelling would be sufficient to prevent any overbearing impact. In addition, the side elevation would not be particularly deep such that it would not unduly restrict the outlook from the rear of those dwellings. The adjacent dwellings at Western Avenue are slightly further away and my conclusions apply equally to those properties.
24. The front window would face the street and not directly onto neighbouring property. The rear window is proposed to be partially obscured. No internal layout plan is provided and it is not clear what room the window would serve. However, it would be possible to secure this by condition if I were minded to allow the appeal in order to maintain acceptable levels of privacy for neighbouring residents. The Council has referred to the perception of overlooking but it is not unusual for rear windows to be visible from neighbouring gardens in an urban environment and that alone is not sufficient to withhold prior approval.
25. Overall I am satisfied that the impact on the amenity of neighbouring residents would be within acceptable limits.

Other Matters

26. I acknowledge the desire for additional living space and the small size of the present unit. However, that is not explicitly a matter for consideration within the terms of the Order and, in any event, I do not consider that it outweighs the harm that would be caused by the external appearance of the scheme.
27. Reference has also been made to a previous appeal decision for an extension to the garage. No plans or details of that decision have been provided and it appears that scheme sought planning permission as opposed to prior approval. Consequently, I cannot be satisfied that there is a clear comparison and I have determined this appeal having regard to the terms of the Order and on its particular merits.

Conclusion and Recommendation

28. For the reasons given above I am satisfied that the proposal would meet the conditions and limitations of the Order in relation to the first two main issues. The impact on neighbouring amenity would also be within acceptable limits. However, I find that prior approval should not be granted on account of the external appearance of the proposal which would represent poor design of itself and cause harm to the character and appearance of the area. For those reasons, and having had regard to all other matters raised, I shall dismiss the appeal.

Chris Preston

INSPECTOR