



Appeal Decision

Site visit made on 9 August 2021

by L Wilson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 August 2021

Appeal Ref: APP/Z4718/D/21/3274774

3 Windmill Hill Lane, Emley, Huddersfield HD8 9TA

- 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 AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("GPDO").
 - The appeal is made by Mr C Buckley against the decision of Kirklees Metropolitan Council.
 - The application Ref 2021/90834, dated 26 February 2021, was refused by notice dated 27 April 2021.
 - The development proposed is prior approval for enlargement of dwellinghouse by erection of additional storey.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. For clarity, I have taken the description of development in the heading above from the Council's decision notice and the appeal form as they provide a clearer description of the proposal.
3. Schedule 2, Part 1, Class AA of the GPDO permits the enlargement of a one storey dwellinghouse consisting of the construction of one additional storey, immediately above the topmost storey of the dwellinghouse, together with any engineering operations reasonably necessary for the purpose of that construction. This is subject to limitations and conditions.
4. Paragraph AA.2(3)(a) of the GPDO is clear that before beginning the development, the developer must apply to the local planning authority for prior approval as to the matters within the grounds of assessment which are listed.
5. The Council refused to grant prior approval due to the proposal's impact upon the amenity of an adjoining premises as set out in paragraph AA.2(3)(a)(i).

Main Issue

6. The main issue is the effect of the proposed development on the amenity of 1 Windmill Hill Lane and 28 Westfield Lane (AA.2(3)(a)(i)).

Reasons

7. 1 Windmill Hill Lane and 28 Westfield Lane (the neighbouring dwelling) appear to operate as one property and its side elevation is close to the side boundary

of the appeal site. This contains windows, which face the appeal site, with some siting closer to the appeal site than others.

8. I agree with the main parties that the scheme is acceptable in terms of overlooking, privacy and the loss of light. However, the use of the word 'including' within paragraph AA.2(3)(a)(i) means that this is not a closed list and other factors can be considered.
9. The proposed development would result in an additional storey which would result in a significant increase in bulk to the appeal dwelling. I note that the roof pitch would not alter but the proposed height would increase the massing of the existing bungalow.
10. Limited information has been submitted regarding the use of the first-floor windows of the neighbouring dwelling and whether the rooms are served by other windows. Given the neighbouring dwelling has windows in relatively close proximity to the appeal dwelling and the proposed increase in height, the outlook from the neighbouring dwelling would be considerably compromised. Accordingly, based on the evidence submitted, the proposal would have an overbearing and oppressive impact upon the occupiers of the neighbouring dwelling's first-floor windows which face the appeal site.
11. The neighbouring dwelling's garden is adjacent to the appeal site and is of a reasonable size. I observed on my site visit that the existing boundary treatment, including hedging, largely screens the appeal site from garden level. Given the size of the garden and existing boundary treatment I am satisfied that the development would not adversely affect the garden of the neighbouring dwelling to a degree that would warrant prior approval being refused.
12. Although I have found that the proposal would not result in harmful impacts with respect to the garden area of the neighbouring dwelling, this would not outweigh the harm identified with respect to the outlook from the first-floor windows. Therefore, I find that the proposal would have an unacceptable impact on the amenity of the neighbouring dwelling and would not comply with paragraph AA.2(3)(a)(i) of the GPDO.

Other Matters

13. The appellant states that the delegated report covers matters that are not material to this case, such as the impact on the Green Belt. This matter is not relevant to the determination of the appeal which must be solely decided using the legislation within the GPDO.

Conclusion

14. The proposal would not comply with paragraph AA.2(3)(a)(i) of the GPDO and therefore prior approval cannot be given for the proposal. Consequently, for the reasons given above, the appeal should be dismissed.

L M Wilson

INSPECTOR