



Appeal Decision

Site visit made on 23 November 2021

by Benjamin Clarke BA (Hons.) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd December 2021

Appeal Ref: APP/C3105/D/21/3278792

43 Kingsway, Banbury, Oxfordshire OX16 9NX

- 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 Nirmaljit Singh Bal against Cherwell District Council.
 - The application Ref 21/01199/HPA, is dated 1 April 2021.
 - The development proposed is the demolition of existing extension and rebuild extension with a dual pitched roof. Max. ridge height 3790mm; max. eaves height 2750mm; and max. depth 4100mm
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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) (the GPDO), 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. 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 it.

Main Issue

4. The main issue is the effect of the development upon the living conditions of the occupiers of 45 Kingsway, with particular reference to outlook and light.

Reasons

5. The appeal site consists of a dwelling attached to No. 45. However, the appellant's dwelling has been constructed to a different design in that it projects further into the rear garden than the rear elevation of the neighbouring dwelling at No. 45. This means that the appellant's dwelling has a more elongated form.

6. The appeal proposal would result in an extension to the appellant's dwelling and would replace an existing, flat roofed extension. However, the scale and layout of the proposed development would result in an increase in the built form in proximity to the shared boundary between the appellant's property and No. 45 due to the proposed extension's overall greater height.
7. By reason of the positioning of the development, combined with its height and depth, the proposed extension would result in a significant enclosing effect upon the rear elevation windows and garden of the neighbouring dwelling. This would result in a diminished level of outlook to the occupiers of No. 45.
8. Due to the layout of the neighbouring property, and the fact that the rear garden represents the only space in which private outdoors recreation might take place, the loss of outlook to the occupiers of the neighbouring properties would result in a notable erosion of living conditions.
9. In addition, owing to the height and massing of the proposed extension, the development would also result in a loss of light to the occupiers of the neighbouring property. In particular, the development would result in an enclosing effect to the ground floor window nearest to the proposed extension's location. This would mean that the users of this room would experience a loss of light.
10. The orientation of the neighbouring property is such that the proposed development would only result in a loss of light for a limited period of the day. However, the loss would be so significant during these time that the living conditions of the occupiers of the neighbouring properties would be substantially eroded.
11. These effects would occur irrespective of the fact that the submitted plans show that the proposed extension would not include any features, such as a roof lantern.
12. The proposed development would feature an eaves height lower than the overall height of the existing extension. However, the overall height of the proposed development would be greater than the existing extension. In addition, development would take place closer to the shared boundary with No. 45. These effects would occur irrespective of the proposed design of the development's guttering and the precise position of the shared party wall.
13. The development, in this regard, would conflict with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1 (2015); and Policy C30 of the Cherwell Local Plan (1996). Amongst other matters, these seek to ensure that proposals consider the amenity of both existing and future developments.
14. I therefore conclude that the proposed development would have an adverse effect upon the living conditions of the occupiers of No. 45 owing to a loss of light and outlook.

Other Matters

15. I acknowledge concerns raised by the appellant regarding the manner in which the application was determined by the Council. However, in assessing this appeal, I have limited my considerations to the planning matters before me.

Conclusion

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

Benjamin Clarke

INSPECTOR