



Appeal Decision

Site visit made on 14 February 2022

by Katie McDonald MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 February 2022

Appeal Ref: APP/M0655/D/21/3289219

85 Gainsborough Road, Latchford, Warrington WA4 6BP

- 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 G Bosward against the decision of Warrington Borough Council.
 - The application Ref 2021/40473, dated 4 November 2021, was refused by notice dated 10 December 2021.
 - The development proposed is a single storey rear extension.
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Decision

1. The appeal is allowed and prior approval is deemed to be granted under the provisions of 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) for a single storey rear extension at 85 Gainsborough Road, Latchford, Warrington WA4 6BP in accordance with the application Ref 2021/40473, made on 4 November 2021, and the details submitted with it (including plan nos 116/21/2 and 116/21/LP), pursuant to Article 3(1) and Schedule 2, Part 1, Class A, paragraph A.4(2).

Preliminary Matters

2. Under Article 3(1) and Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended, planning permission is granted for the enlargement of a dwellinghouse subject to limitations and conditions.
3. Where an application is made for a determination as to whether prior approval is required for development which exceeds the limits in paragraph A.1(f) but is allowed by paragraph A.1(g) to Part 1, paragraph A.4(3) provides that the local planning authority may refuse the application where it considers that the proposed development does not comply with the conditions, limitations or restrictions that are applicable to such permitted development. Paragraph A.4(7) to Part 1 requires the local planning authority to assess the impact of the proposed development on the amenity of any adjoining premises, considering any representations received.

Main Issue

4. This is the effect of the proposed development on the amenity of adjoining premises, with specific reference to the effect upon the occupiers of the attached dwelling, 83 Gainsborough Road.

Reasons

5. The property is a semi detached bungalow. The proposal is for a single storey rear extension, projecting around 3.6m from the rear wall. It would be about 2.7m to the eaves, continuing the existing eaves height, with a dual pitched roof, built to a height of approximately 4m.
6. The rear wall of No 83 contains a kitchen window, door, and patio doors. The kitchen window is located nearest to the shared boundary. Although it appears that the back 2 rooms of No 83 have been modified to create one room acting as a kitchen diner, the window most affected by the proposal would be a window that serves the kitchen, containing a kitchen sink below.
7. The House Extensions Supplementary Planning Document (June 2021) (SPD) details that the application of the 45 degree code is applicable to habitable rooms in neighbouring dwellings. In the SPD, a separate kitchen is not normally classed as a habitable room, but a kitchen diner is.
8. The projection of the proposal would break the 45 degree code when applied from No 83's kitchen window. However, most extensions along this boundary would break it because of the location of the window near to the boundary, and it is important to note that had No 83 not created a kitchen diner, this window would not be classed as habitable, and the application of the 45 degree code would not apply.
9. Furthermore, the appellant details an extension projecting up to 3m from the rear wall could be erected under permitted development rights. I have no reason to doubt that should the appeal be dismissed; the appellant would erect a development under permitted development given their desire for additional living space. This is a realistic fallback position, and a 0.6m greater projection would not be significantly more harmful in terms of outlook from the kitchen window. The SPD also allows for this as an exception.
10. Moreover, the eaves would be located on the boundary, reducing the effect as this would be the lowest point. There is also a substantial and relatively tall boundary treatment already in situ, and I disagree with the Council that the eaves would be significantly higher than the fence.
11. In terms of overshadowing, because of the single storey height and orientation, the effect of the proposal would still allow for adequate daylight and sunlight to penetrate the neighbouring dwelling.
12. Therefore, whilst strict application of the guidance would indicate noncompliance with the 45 degree code, a pragmatic and rational approach is necessary in this instance. Given the existing circumstances and the fallback position, the failure to meet the code does not result in the proposal having a harmfully overbearing effect upon the living conditions of the neighbouring occupiers.
13. Lastly, given the intervening distance between the appeal dwelling and properties to the rear, there would be no adverse effect upon the living conditions of those occupiers.
14. Consequently, the proposal would have an acceptable effect upon the amenity of the adjoining premises. This would be compliant with Policy QE6 of the Local

Plan Core Strategy (July 2014) which seeks to support development that would not lead to an adverse impact on the amenity of adjoining occupiers.

15. It would also comply overall with the guidance contained in the SPD, which seeks to ensure that extensions do not cause unacceptable harm to neighbouring amenity. There would also be compliance with the National Planning Policy Framework, which seeks to create places with a high standard of amenity for existing users.

Conclusion

16. For the reasons given above, I conclude that the appeal should be allowed and prior approval should be granted.

Katie McDonald

INSPECTOR