



Appeal Decision

Site visit made on 15 February 2022

by Graham Wyatt BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th March 2022

Appeal Ref: APP/N5090/D/21/3279834

35 Bellevue Road, Friern Barnet, London N11 3ER

- 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 of the Town and Country Planning (General Permitted Development) (Order) England 2015 (as amended).
 - The appeal is made by Ms Kathryn Mazure-Hudson against the decision of London Borough of Barnet.
 - The application Ref 21/2184/PNH, dated 18 April 2021, was refused by notice dated 28 May 2021.
 - The development proposed is described as a “full width 6 metre single storey rear extension”.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) under Article 3, Schedule 2, Part 1, Class A, in paragraph A.4.(3) state that the local planning authority may refuse an application where, in the opinion of the authority, (a) the proposed development does not comply with, or (b) the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, the conditions, limitations or restrictions applicable to the development permitted by Class A.
3. The Council’s decision notice states that the development would fail to meet the limitations as set out at Schedule 2, Part 1, Class A.1.(j) of the GPDO as the proposed extension would extend beyond a wall featuring a side elevation and would have a subsequent width greater than half the width of the original dwelling house. In addition, the proposal would include alterations to basement level which falls outside the scope of the GPDO and notwithstanding the details of the eaves height as stated on the application forms, when measured on the proposed plans, they would exceed 3.0m in height.

Main Issue

4. Therefore, the main issue is whether the proposal would constitute permitted development under Schedule 2, Part 1, Class A of the GPDO, with particular regard to whether it would:
 - extend beyond a wall forming a side elevation of the original dwelling house and have a width greater than half the width of the original dwelling house,
 - include alterations to a basement, and,

- the height of the eaves would exceed 3.0m

Reasons

Whether the Proposal Would Extend Beyond a Side Elevation of the Dwelling

5. As the appeal site forms a mid-terrace dwelling, Part 1, Class A.1.(g) of the GPDO allows a rear extension provided it does not extend beyond the rear wall of the original dwelling house by more than 6.0m. In this instance, the parties agree that the proposal would comply with this particular element of the GPDO.
6. However, Part 1, Class A.1.(j)(iii) of the GPDO states that development is not permitted where the enlarged part of the dwelling house would extend beyond a wall forming a side elevation of the original dwelling house and would have a width greater than half the width of the original dwelling house. Page 22 of the Department for Communities and Local Government: Permitted development rights for householders, Technical Guidance 2019 (TG) states that a "*wall forming a side elevation of a house will be any wall that cannot be identified as being a front wall or a rear wall*" and gives examples within a diagram. It also clearly advises at the bottom of page 22 and the top of page 23, that any extension beyond any side wall can only be half the width of the original house.
7. Neither the GDPO nor the TG support the assertion that paragraph A.1.(j)(iii) is intended only to relate to the main side elevation in the case of a detached or semi-detached dwelling and not to be construed to apply to any other side elevation of a dwelling's rear projection as in this case to a terraced house. In terms of a potential conflict with the other parts of the GDPO referred to, it is necessary that the proposal accords with all relevant limitations that are applicable, included in this case those specified in paragraph A.1.(j)(iii).
8. In this instance, the existing dwelling benefits from a two storey outrigger which contains a kitchen at ground floor and a bathroom at first floor. The proposal would extend some 3.6m from this outrigger on the southern elevation and to 6.0m on its northern elevation to create a full width, single storey extension. However, the development as detailed on drawing 20-617-PL2-110 clearly shows that the proposed extension would extend beyond the wall forming the side elevation of the original dwelling house. As the proposal would exceed half the width of the original dwelling house, it is not development that is permitted by Schedule 2, Part 1, Class A.1.j(iii) of the GPDO.

Does the Proposal Include Alterations to the Basement?

9. The Council state that as the submitted plans show a proposed basement addition, the proposal would fall outside the scope of development permitted by Part 1, Class A of the GPDO. However, it is clear from the submitted plans, which illustrate the existing and proposed basement, that no alterations to this particular element of the dwelling are proposed. Indeed, the submitted plans detailing the proposed extension explicitly state that there would be "No Change" to the basement. Thus, on this matter, I conclude that no alterations to the basement are proposed as part of the development.

The Height of the Eaves

10. The Council state that the height of the eaves of the proposed extension, when measured on the submitted plans, exceed 3.0m. Therefore, the proposal would fail to comply with Part 1, Class A.1.(i) of the GPDO. The appellant maintains that, when using the scale that has been provided on the submitted plans, the eaves measure exactly 3.0m.

11. In this instance, it is evident that the appellant's drawings are clearly marked with the eaves which would reach a height of 3.0m. I have no evidence before me to demonstrate how the Council reached a figure that exceeds 3.0m. Thus, although not a defining matter as the proposal is not development permitted by the GPDO for the reason set out above, based on the evidence before me, I am not persuaded that it is the intention of the eaves of the extension to exceed 3.0m in height.

Other Matters

12. The appellant comments that the practical application of the guidance is a "*wasteful process to achieve a full width 6 metre extension*". In support of this stance, the appellant details how two 'half width' extension could be developed, leaving a gap between the two elements which would require planning permission to infill. The appellant has also provided examples of developments that have occurred for this type of extension.
13. Whilst I acknowledge the technicalities and foibles of the GPDO, it is nonetheless a consistent procedure whereby development is either permitted by it, or as in this case, not permitted by it. Moreover, whether appellant considers the TG, or the indeed the GDPO, to be flawed and wastes a local planning authority's resources, it is nonetheless the procedure by which permitted development is tested against.
14. It is not within my remit to question the veracity of the guidance nor the terms of development permitted by the GPDO. Furthermore, although the drawing within the TG depicts a semi-detached property, the TG is guidance and is not a statutory instrument like the GPDO itself. As such, the starting point shall always be the wording of the GPDO which is unequivocal that, for a single storey extension under Part 1, Class A, should it extend beyond the side elevation of the original property in question and exceed half its width, it cannot benefit from the rights granted by it. Speculation relating to the intentions of the legislation is also not relevant when making an assessment against the actual provisions set out within the GPDO.

Conclusion

15. For these reasons, I conclude that the proposal would represent an enlargement of the dwelling house which would extend beyond a wall forming a side elevation of the original dwelling house and which would have a width greater than half the width of the original dwelling house. The proposal would therefore not accord with paragraph A.1.(j)(iii) of the GDPO and would not be permitted development. Consequently, the appeal should be dismissed.

Graham Wyatt

INSPECTOR