
Appeal Decision

Site visit made on 1 March 2022 by G Sibley MPLAN MRTPI

Decision by L McKay MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 May 2022

Appeal Ref: APP/P4605/D/21/3287131

115 St. Andrews Road, Nechells, Birmingham B9 4LW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Evans Consulting Engineers Limited against the decision of Birmingham City Council.
 - The application Ref 2021/05961/PA, dated 1 July 2021, was refused by notice dated 22 October 2021.
 - The development proposed is erection of two storey rear extension and installation of windows to side.
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Decision

1. The appeal is dismissed insofar as it relates to the erection of two storey rear extension.
2. The appeal is allowed insofar as it relates to the installation of windows to side only and planning permission is granted for installation of windows to side at 115 St. Andrews Road, Nechells, Birmingham B9 4LW in accordance with the terms of the application, Ref 2021/05961/PA, dated 1 July 2021, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans only insofar as they relate to the installation of windows to side: Topographical and Coverage Plan DWG No B21008/ECEL/DRG/BU/110 Rev F; Proposed Elevations DWG No B21008/ECEL/DRG/BU/117 Rev C; Proposed Ground Floor Plan DWG No B21008/ECEL/DRG/BU/113 Rev A; and Proposed First Floor Plan DWG No B21008/ECEL/DRG/BU/114 Rev C.
 - 3) The materials used in the construction of the windows hereby approved shall match the materials used in the existing windows.

Appeal Procedure

3. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Preliminary Matters

4. The appellant submitted late evidence in relation to the original planning application for 115 St Andrews Road and the surrounding dwellings. As this was only made available to them following the submission of the appeal, I consider

this amounted to an exceptional circumstance and accepted it. The Council was given the opportunity to comment on this late evidence and I am therefore satisfied that it has not been prejudiced by accepting this late evidence.

5. The description of the development on the application form states that the first floor of the proposed extension would be 3 metres (m) deep and the ground floor 4m deep, however during the determination of the application amended plans were submitted, showing the first floor as 4m deep. Submissions indicate this change was subject to publicity and that the Council's decision was made on the basis of those amended plans. Therefore, in the header above I have used the description of development from the Council's decision notice, as this more accurately describes the development proposed.
6. The Development Management in Birmingham Development Plan Document (DMB) (2021) was adopted after the appeal was submitted and supersedes the policies referred to in the decision notice from the Birmingham Unitary Development Plan (adopted 1993). I have been provided with the DMB policy relevant to this appeal and both parties have been given the opportunity to comment on the change in policy context.

Main Issue

7. The effect of the proposed development upon the living conditions of the occupiers of 117 St. Andrews Road with regard to outlook and light.

Reasons for the Recommendation

8. No 115 is a two-storey semi-detached property stepped back from the attached property. Thus, its rear elevation projects beyond that of No 117. The closest first floor window of No 117 is a bathroom, so is not a habitable room. The second window, a bedroom, is set well away from the proposed extension and has an open outlook to the rear, over the garden. At ground floor there are two windows and a part-glazed door on the rear elevation, all serving the same habitable room.
9. The Council's guidance "The 45° Code" seeks to ensure that two storey extensions are designed so as not to breach a line drawn at 45 degrees from the quarter point of the nearest ground floor window to a habitable room, in the interests of the outlook and daylight of the neighbouring occupiers. The Council advises that the proposal would breach this 45-degree line in respect of both the ground and first floor windows of No 117, which is not disputed by the appellant. Nevertheless, it is necessary to consider whether that breach would result in any harmful effects on the living conditions of the occupiers of No 117.
10. The existing flank wall of No 115 restricts the outlook from the ground floor windows of No 117 to some extent but given its limited depth and the relatively open outlook elsewhere across the garden, it does not have a significant impact on the outlook from that room. The proposal would extend this blank wall considerably further along this boundary, dominating and significantly diminishing the outlook from the nearest window and creating a substantial and harmful sense of enclosure.
11. Because of the depth and height of the proposed extension relative to the ground floor windows, the daylight the ground floor room would receive would be reduced. However, as the proposed extension would be to the north of No 117 there would be no adverse impact on sunlight. Nevertheless, in

combination, this loss of daylight and outlook would create a significantly less pleasant and useable space for the occupiers of No 117, and harmfully affect their living conditions.

12. Despite its depth, the proposed extension would be seen at an angle from the first-floor bedroom, so the outlook from this window would not be significantly reduced. Due to the orientation, sunlight to this room would not be adversely affected and, because of the lower ridgeline relative to the main roof, the proposal would not result in a harmful loss of daylight to this room.
13. The proposal includes three new windows on the flank wall of the dwelling. These windows would face the flank wall of No 113 and would not overlook the rear garden of that property. Additionally, given the oblique angle and separation distance between these windows and the window on the flank wall of No 113 there would be no intervisibility between them. Consequently, this element of the proposal would not lead to a loss of privacy for the occupiers of No 113. Given their location and size, they would not harm the appearance of the property provided they used matching materials, which could be secured by condition.
14. Consequently, the proposed two storey rear extension would harm the living conditions of the occupiers of No 117 with regard to outlook and light. It would therefore be contrary to Policy PG3 of the Birmingham Development Plan 2031 (adopted 2017) and Policy DM2 of the DMB, which expect proposals to respond to site conditions and not result in unacceptable adverse impacts on the amenity of occupiers and neighbours. Furthermore, it would conflict with the Places for Living Supplementary Planning Guidance (2001), Extending Your Home Supplementary Planning Document (2007) and paragraph 130 f) of the National Planning Policy Framework (Framework) which all seek to safeguard the living conditions of neighbouring occupiers.
15. The proposed new side windows would accord with the above policies and guidance and would not harm the living conditions of the occupiers of No 117. This element of the proposal is clearly severable from the proposed extension; therefore, I can issue a split decision. In respect of this element, in addition to the materials condition previously mentioned, conditions regarding implementation and compliance with the approved plans are necessary in the interests of certainty.

Other Matters

16. The staggered building line along this section of St Andrews Road has resulted in No 113 projecting significantly further to the rear than No 115, creating a large flank wall along the shared boundary which the appellant raises concerns about. However, it appears that No 113 may not have been built in accordance with plans permitted in 1992, and therefore it is far from certain that the Council allowed this relationship. Nevertheless, if there had been a breach of planning control it is likely that the buildings would now be immune from enforcement action. In any case, that permission predates the current development plan and supplementary guidance, and therefore would have been considered in a different policy context to that now before me. Each case must be assessed on their own merits and the relationship between Nos 113 and 115 does not justify a proposal which would lead to harm to another neighbouring occupiers' living conditions.

17. The extension would create larger living accommodation for the occupant's family, in particular additional space for their children. This would be a private benefit however, and it has not been demonstrated that it could not be achieved in another, less harmful form. Therefore, I afford it limited weight. The appellant advises that the occupiers of No 117 support the proposal, however no evidence to that effect has been submitted to me, therefore I can give it very little weight. These factors do not outweigh the harm the proposal would cause to the living conditions of the neighbouring occupants.
18. A single storey rear extension of the same depth might be able to be built as permitted development but would need to follow the prior approval process, where amenity might stand to be considered. Even if allowed through that process, such a development would be significantly lower in height than the appeal proposal and therefore would not have a comparable impact on the living conditions of No 117 in respect of outlook and light. Therefore, this potential fallback position would not justify the appeal proposal.
19. While I recognise that the appellant has significant concerns in respect of the Council's handling of the planning application, it is not my role to consider these matters in determining this appeal, which I have considered on its own merits and the evidence before me.

Conclusion and Recommendation

20. The proposed development insofar as it relates to the two-storey rear extension would not accord with the development plan as a whole. In contrast the proposed installation of windows to the side of the dwelling would be acceptable and would accord with the development plan. I therefore recommend issuing a split decision. There are no material considerations that justify determining the appeal other than in accordance with the development plan and I recommend that the appeal should be dismissed insofar as it relates to the two storey rear extension and allowed insofar as it relates to the installation of windows to side.

G Sibley

APPEAL PLANNING OFFICER

Inspector's Decision

21. I have considered all the submitted evidence and the Appeal Planning Officer's report and, on that basis, I agree with the recommendation and shall dismiss the appeal insofar as it relates to the erection of a two -storey rear extension and shall allow the appeal insofar as it relates to the installation of windows to side.

L McKay

INSPECTOR