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# Appeal Decision

Site visit made on 13 April 2022

**by R Jones BA(Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 5<sup>TH</sup> May 2022**

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**Appeal Ref: APP/P4605/D/22/3293177**

**1 Nutbush Drive, Birmingham B31 5SJ**

- 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 Mr Scott Crosby against the decision of Birmingham City Council.
  - The application Ref 2021/08951/PA, dated 17 October 2021, was refused by notice dated 13 December 2021.
  - The development proposed is erection of single storey rear extension.
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## Decision

1. The appeal is allowed and planning permission is granted for erection of single storey rear extension at 1 Nutbush Drive, Birmingham B31 5SJ in accordance with the terms of the application, 2021/08951/PA, dated 17 October 2021, and the plans submitted with it, 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: Existing Drawings ref. 2103/A-P-E/P1; and Proposed Drawings ref. 2103/A-P-P/P1.
  - 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.

## Preliminary Matter

2. The description of development in the banner heading above is taken from the Council's decision notice as it is a more succinct description of the proposal before me than the one given in part 4 of the planning application form.

## Main Issue

3. The main issue is the effect of the proposed single storey rear extension on the living conditions of the neighbours at No.3 Nutbush Drive, with particular regards light and outlook.

## Reasons

4. No.1 Nutbush Drive (No.1) is a two-storey semi-detached dwelling located at the junction of Nutbush Drive and Frankley Lane. An existing 2.2m close boarded timber fence topped with trellis runs along the common boundary with

- No.1's adjoined neighbour at No.3 Nutbush Drive (No.3). The proposed single storey extension would project around 4m from the existing rear elevation of No.1 along this common boundary.
5. Policy DM10 of the Development Management in Birmingham Development Plan Document (DPD) (2021) sets out standards for residential development. This includes consideration of potential impacts on existing houses, *'where development should not cross the line from an angle of 45 degrees from the nearest window providing the main source of natural light to a 'habitable room' of dwellings that could be affected.'*
  6. The nearest ground floor window on the rear elevation of No.3 is a set of patio doors that serve a living room, a habitable room. There is no disagreement between the parties that the proposed extension would breach the 45 degree angle from these patio doors, and that the breach would occur for an extension of 2m or more. There is therefore a clear technical breach of part of DPD Policy DM10. Indeed, this breach would occur should a 3m single storey rear extension be constructed pursuant to permitted development rights afforded by Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
  7. I am mindful of the guidance at paragraph 125(c) of the National Planning Policy Framework (the Framework) that when considering applications for housing, authorities should take a flexible approach in applying policies relating to daylight and sunlight as long as the resulting scheme would provide acceptable living standards. In this case, the proposed single storey extension would project a depth of 4m from the rear elevation of No.1 and has been designed with a flat roof, with a lantern skylight, at a height of around 3m. Whilst sited only just off the common boundary with No.3, the extension would not be significantly higher than the existing boundary fence and trellis, which itself is almost the height of the top cill of the patio doors. Further, the proposed extension would be orientated broadly to the north of No.3 which means the patio doors would retain good levels of light throughout the day.
  8. Therefore, whilst I accept there would inevitably be some loss of daylight resulting from the height of the extension above the boundary fence, I am not persuaded that this would cause material harm to the living conditions of the neighbours. Nor, would there be a noticeable loss of sunlight in the garden.
  9. The outlook from the patio doors of No.3 is principally towards the west, over the rear garden. Whilst the aluminium fascia on the side elevation would be visible from the patio doors for the full depth of extension, it would again not significantly extend above the boundary fence. I find the harm to outlook would therefore be negligible.
  10. Consequently, I conclude that the development has an acceptable effect on the living conditions of the occupiers of No.3 in terms of outlook and light. In these regards, the proposal accords with Policy PG3 of the Birmingham Development Plan 2031 (2017) and DPD Policy DM2 because it demonstrates high quality design and does not result in unacceptable adverse impacts on the amenity of neighbours. It would also accord with the guidance at paragraph 130 of the Framework that developments should create places with a high standard of amenity for existing and future users.

11. The extension does not fully accord with DPD Policy DM10 because it crosses the 45 degree angle taken from the nearest habitable room window on the rear elevation of the neighbour at No.3. However, the site specific considerations in this case are of sufficient strength to outweigh that non-compliance.

### **Conditions**

12. In the interests of certainty, in addition to the standard time limit for commencement of development, it is necessary to impose a condition setting out the approved drawings. I also attach a condition regarding external materials to match those existing in the interests of the character and appearance of the host dwelling.

### **Conclusion**

13. For the reasons given, I conclude that the appeal is allowed.

*R. Jones*

INSPECTOR