
Appeal Decision

Site visit made on 3 May 2022 by G Sibley MPLAN MRTPI

Decision by L McKay MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 July 2022

Appeal Ref: APP/P4605/D/21/3286578

8 Norfolk Road, Erdington, Birmingham B23 6NA

- 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 Miss Lynette O'Connor against the decision of Birmingham City Council.
 - The application Ref 2021/07482/PA, dated 25 August 2021, was refused by notice dated 4 October 2021.
 - The development proposed is single storey rear extension.
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Decision

1. The appeal is dismissed.

Appeal Procedure

2. 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

3. 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 (the GPDO), planning permission is granted for the enlargement of a dwellinghouse subject to limitations and conditions. The Council has not raised any concern that the proposal does not comply with the limitations of Class A.
4. An interested party has suggested that together with an existing outbuilding the proposal would exceed the depth of development allowed by the GPDO. However, as it is not attached to the dwelling, the outbuilding should not be included in this measurement. Accordingly, from the evidence before me the proposal would comply with the limitations of Class A.
5. Paragraph A.4(7) to Part 1 requires that where an objection is received, the local planning authority must assess the impact of the proposed development on the amenity of any adjoining premises, taking into account any representations received.
6. The appellant submitted a revised plan with the appeal which would reduce the width of the extension. While I appreciate that it may have been the appellant's intention to have a narrower extension originally, that was not what was submitted to the Council. The amended plan would be materially different to

the scheme that was considered by the Council and which was consulted on as part of the prior approval process.

7. I am mindful of the Wheatcroft Principles derived from *Bernard Wheatcroft Ltd v SSE (1982)* and the guidance in section M.2 of the Procedural Guide: Planning Appeals – England that the appeal process should not be used to evolve a scheme. It is my firm view, in the interests of fairness, that this appeal must be determined on the basis of the plans submitted to the Council and upon which it based its decision and not the suggested amendments. To do otherwise could prejudice unacceptably the interests of interested people who have not been consulted on the amended plans and who may have observations to make. I have therefore considered the appeal on the basis of the plans submitted to the Council.
8. The Development Management in Birmingham Development Plan Document (DMB) (adopted 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, altered 2005). 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

9. The effect of the proposed development upon the living conditions of the occupiers of 10 Norfolk Road with regard to outlook and light.

Reasons for the Recommendation

10. No 8 is a semi-detached property with a two-storey rear outrigger and No 10 is a similarly designed dwelling. The two properties are not physically connected and share an alleyway between the dwellings. There is a window in the rear wall of each property as well as a window on the flank wall of the rear outrigger that faces the opposite window. The proposal would infill the gap between the outrigger and the shared boundary.
11. The Council's guidance "The 45° Code" (2006) seeks to ensure that rear extensions are designed so as to not 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 the nearest habitable room at No 10.
12. No 10 has a dining room window in the rear elevation and a kitchen window in the outrigger facing towards No 8. The outriggers of Nos 8 and 10 enclose the outlook from these windows to some degree and limit daylight and sunlight reaching them to a limited part of the day.
13. The proposed extension would extend out towards the shared boundary. Given that this would be a single storey extension set back from the boundary, the proposal would only lead to a limited loss of daylight and sunlight to the dining room, compared to what it currently receives. Consequently, this would not result in a harmful loss of daylight or sunlight to this room. Nevertheless, because the extension would be taller than the existing shared boundary wall and would extend up to 4 metres in height at the top of the roof, the proposal would further enclose the already restricted outlook from the rear dining room

window. Combined, this would create a substantial and harmful sense of enclosure for the occupiers of No 10.

14. The proposal would not extend beyond the rear of the two-storey outrigger and would be lower than it, so would only lead to a very limited reduction in sunlight reaching the flank kitchen window. However, the top of the flank wall of the proposed extension would be a similar height as the kitchen window and would be built very close to it. This would lead to a detrimental loss of daylight reaching this room compared to what the room currently receives, and this would create a less pleasant and usable space for the occupiers of No 10.
15. The outlook from the kitchen window is already enclosed by the existing two storey rear outrigger but the proposed extension would be significantly closer to it. This would leave a very limited gap between the window and the blank flank wall of the extension. Whilst it would be single storey, the introduction of a large blank elevation close to and taller than the shared boundary would significantly diminish the outlook from the kitchen window and would create a substantial and harmful sense of enclosure.
16. I appreciate that better living accommodation is sought at No 8, and larger extensions may be permitted provided they are compliant with the GPDO, however this is subject to amenity considerations where an objection is received. Consequently, compliance with the size limitations of the GPDO does not mean that a proposal will automatically be acceptable.
17. The proposal, by reason of its overall scale, and in particular its height, depth and siting, would have an unacceptably harmful effect on the living conditions of the occupiers of No 10 with regard to both outlook and light. Consequently, the proposal would conflict with paragraph 130 f) of the National Planning Policy Framework insofar as it states that developments should create places with a high standard of amenity for existing and future users. On that basis I am satisfied that it would be reasonable and proportionate to refuse prior approval.
18. Policy DM2 of the DMB and Policy PG3 of the Birmingham Development Plan (adopted 2017), the Places for Living Supplementary Planning Guidance and the Extending your Home Supplementary Planning Document seek to protect living conditions. The GPDO does not make provision for development plan policies to be considered in prior approval applications and appeals, and therefore these have not been determinative here. However, given my findings above, the proposal would conflict with these policies and guidance insofar as they seek to ensure development will not result in unacceptable adverse impacts on the amenity of occupiers and neighbours.

Other Matters

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. For the reasons given above and having had regard to all other matters raised, I recommend that the appeal should be dismissed.

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.

L McKay

INSPECTOR