



Appeal Decision

Site visit made on 30 November 2022

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2023

Appeal Ref: APP/G5180/D/21/3289055

10 Derwent Drive, Petts Wood, Orpington BR5 1EW

- 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 Mr Basant Mertia against the decision of the Council of the London Borough of Bromley.
 - The application, Ref DC/21/03719/HHPA, dated 19 August 2021, was refused by notice dated 28 September 2021.
 - The development proposed is described on the application form as: Ground floor rear extension, floor plan redesign and all associated works.
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Decision

1. The appeal is allowed and prior approval is 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) (the Order) for: Single storey rear extension, extending beyond the rear wall of the original house by 6.00m, for which the maximum height would be 3.50m, and for which the height of the eaves would be 2.42m, at 10 Derwent Drive, Petts Wood, Orpington BR5 1EW, in accordance with the application, Ref DC/21/03719/HHPA, dated 19 August 2021, and the details submitted with it, including plan nos. B99825 – 03 – 1100 A, 1101 A, 1200 A, 1201 A, 1300 A, 3100 B, 3101 A, 3200 A, 3201 A, 3300 A, 3500 A, pursuant to Article 3(1) and Schedule 2, Part 1, Class A, paragraph A.4(2) and subject to the standard conditions set out in paragraph A.3 of the above Order.

Application for Costs

2. An application for costs was made by Mr Basant Mertia against the Council of the London Borough of Bromley. This application is the subject of a separate Decision.

Preliminary Matters

3. I have dealt with other appeals on this site. These are the subject of separate Decisions, Ref APP/G5180/X/21/3283102 and APP/G5180/W/21/3287713.
4. A different description appears on the decision notice to that used on the original application form. On the appeal form the appellant has confirmed that either description is acceptable. As it is clear that the description used on the decision notice is acceptable to both main parties and as it more precisely

describes what is proposed, I have used that in my decision, omitting superfluous words.

5. 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 Order), planning permission is granted for the enlargement of a dwellinghouse subject to limitations and conditions.
6. 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 – or that the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with the conditions, limitations or restrictions that are applicable to such permitted development.
7. Paragraph A.4(7) to Part 1 requires the local planning authority to assess the impact of the proposed development on the amenity of all adjoining premises, taking into account any representations received.

Main Issue

8. The Council's decision states that the proposed extension by reason of its proximity to the boundary with No 12 Derwent Drive, its depth and height, would be harmful to the amenities of this neighbouring dwelling. But in this respect the decision notice does not identify precisely what would be affected.
9. From a review of the Council's statement, it would appear that the Council's concerns relate to outlook, light and privacy, all in respect of the living conditions of occupiers of No 12, which is the only adjoining premises. I have determined the appeal on this basis.
10. Nothing has been provided to indicate that the proposed development would not otherwise be granted planning permission by Article 3, Schedule 2, Part 1, Class A of the Order and I have no reason to think it would not be either.
11. In light of the above, I consider that the main issue in this appeal is the impact of the proposed development on the amenity of adjoining properties, with particular regard to the outlook, light and privacy enjoyed by occupants of No 12.

Reasons

12. I have reviewed all the photographs and drawings provided by each of the parties for this appeal. With these in mind, as part of my assessment of this case, I inspected No 12 at my site visit, including its garden, conservatory, living room and kitchen. These are sited at the rear of No 12. In particular, I stood in its living room and looked out into the garden, through its conservatory, to judge the effect of the proposed development on the outlook from No 12.
13. The existing rear extensions at No 10 extend some 5.7m from the original rear wall of that dwelling, into the garden. They include a high flank wall close to the boundary with No 12. The information provided indicates that this flank wall is currently 2.67m high at its lowest part and rises up to 2.9m.

14. The proposal is to replace this arrangement with an extension with a lower flank wall of 2.42m high that would extend 6.00m from the original rear wall of the dwelling. The roof of the proposed extension would pitch away from the boundary. As a matter of my planning judgement, this change would have no material effect on the outlook enjoyed from No 12.
15. In my view, the marginal increase in depth would be offset by the reduction in the maximum height of the existing flank wall. I have the same view in respect of the effect on outlook from the rear garden of No 12. I am satisfied therefore that the proposed extension would not be dominant, intrusive or oppressive, as has been suggested in representations received.
16. The evidence provided suggests that the Council's concerns in respect of light were motivated by an assessment from a computer programme called 'Find My Shadow'. But the results of this have not been provided.
17. As a result of the proposed change in depth and height of the rear extension, described above, as well as the proposal to pitch its roof away from the boundary, as a matter of my planning judgement, any effect on light for No 12 would not be significant. This is particularly the case for sunlight, given that the rear of No 12 is broadly north-facing. My site inspection assisted me in reaching this view.
18. Nevertheless, for this appeal the appellant has provided a professionally produced daylight and sunlight report which the Council refers to as 'in-depth'. The report incorporates an assessment of the effect of the proposal on daylight, sunlight and overshadowing for No 12, based on a recognised methodology, set out in the report, which draws on appropriate up-to-date guidance from the Building Research Establishment (BRE).
19. The Council has raised no concerns about the methodology or conclusions of the report and nothing I have been provided with gives me any reason to doubt its veracity either. I have carefully reviewed the numerical results in the report and there is no evidence of any failure of the usual tests for daylight, sunlight or overshadowing.
20. Overall, the results of the report indicate that occupants of No 12 would be better-off as a consequence of the appeal development. I do not find this surprising given the proposed reduction in the height of development closest to the boundary with No 12. However, representations received contain detailed criticisms of the report that I have considered below.
21. Concern in respect of the '45 degree test' from the relevant BRE guide reflects a misunderstanding of the relevance of this test where a more detailed assessment has been undertaken, such as that set out in the appellant's daylight and sunlight report. Moreover, the concern relates to an internalised window. In other words, the relevant neighbour has already built a conservatory extension across their own window and this will inevitably have had some effect on the amount of daylight which can enter their own living room behind that window opening.
22. Concern about the Vertical Sky Component (VSC) figure for the same neighbouring living room window reflects a misunderstanding of the VSC test. According to the appellant's report, the relevant window already has a VSC of 23.7%. But as a result of the appeal development this would improve to

- 24.2%. This is a positive effect. It does not demonstrate any loss of light for No 12.
23. In respect of concerns about measurements of No 12 and its layout, it is not necessary to obtain access to a neighbouring property to measure it accurately to produce a reliable daylight and sunlight report. Measurements can be accurately taken with laser technology from neighbouring land, or drawings and photographs, and room uses and layouts can be determined from existing records and external observations.
24. My attention has been drawn to planning permission having been granted for a rear dormer extension which, according to the Council, if implemented may contribute to 'further overshadowing'. But this permission is not before me in this appeal and so it makes no difference to my assessment of the effect of the appeal development in this case.
25. The concern regarding privacy is focussed on the effect as a result of rooflights proposed on the flank roof slope facing No 12. From the drawings proposed, it is obvious that the lowest part of these rooflights would be positioned above the eaves height of the proposed extension and this is approximately 2.42m from ground level.
26. Based on all of the information available to me, including my inspection of the site, it is inconceivable that these rooflights could result in a loss of privacy for occupants of No 12 as they are simply too high up for occupants of the appeal dwelling to gain views out into No 12 or its garden. Therefore, there is no reason for these rooflights to be obscure-glazed, fixed shut or removed from the scheme altogether.
27. My attention has been drawn to condition A.3.(b) of the Order, in respect of the requirement for upper-floor windows on a side elevation to be obscure-glazed. But as a proposal for a single storey extension, the rooflights proposed are plainly not for an upper-floor window, irrespective of their height. So there is no requirement for them to be obscure-glazed.
28. I do not accept it is at all likely that a mezzanine floor or elevated level would be inserted into the proposed extension, as the drawings show the floor to ceiling height available would not be sufficient for the internal space to be subdivided in this way and an elevated level created internally would create unusable space beneath it, nullifying the benefit of the extension.
29. I have taken into account the suggestion that the proposed rooflights could result in a loss of privacy for the occupants of No 12 if No 12 were enlarged by way of a rear dormer window extension. But no such extension currently exists and even if it did, based on the drawings provided and as a matter of my planning judgement, any overlooking would, at worst, be at only a very oblique angle. In other words, it would not be sufficient to warrant a refusal of the application.
30. Representations received refer to amenity issues other than those addressed above and I have had regard to these under the general umbrella of amenity. They include nuisance and intrusiveness, as matters that are said to disturb tranquillity and enjoyment.
31. Specific reference has been made to nuisance from light and noise, particularly from the rooflights proposed. But as a matter of my planning judgement, any

such effect would be limited and would not be materially different to any such effect from any existing window on an adjoining residential property in a suburban area such as this. This is particularly the case as, in respect of light, the rooflights proposed face upwards and not towards windows in No 12. In other words, it would not be of such a magnitude to justify dismissing the appeal and further details of the rooflights, including of acoustic insulation are not necessary.

32. Concern has been raised that there is insufficient space to accommodate the eaves overhang and rainwater goods of the extension, which will result in encroachment onto the adjoining property and damage from rainwater. But this is not what the drawings provided show and the appellant has said that the flank wall will be designed and built in a way to ensure that the water running off the roof runs into gutters and onto draining pipes owned and maintained by the appellant. I have no reason to believe this would not be the case. So further details, beyond those already shown on the drawings, are not necessary in respect of this matter. In any event, encroachment and damage are matters controlled under other legislation.
33. According to representations received, the rooflights facing No 12 could inhibit future expansion of that property. But no scheme for No 12 has been provided to substantiate this concern and, in any event, the rooflights proposed would face upwards to gain light from the sky and mutual overlooking at close quarters would not occur, given my earlier comments about the height of the rooflights above ground.
34. Other applications have been made on the site. But there is no limit to the number of different applications that an applicant may make, whether simultaneous or not, or to the number of permissions covering the same site. So other applications or permissions are not a basis for refusal of this application.
35. Representations received state that the proposals are incompatible with other applications and do not correspond with each other, such that it would not be possible to construct them together in accordance with the details of the approved plans. Be this as it may, what would be granted by this application is only for this proposal, as described on its drawings. If a different development were implemented, that does not benefit from planning permission, it would be open to the Council to consider the expediency of planning enforcement action.
36. Moreover, if the implementation of one permission, in accordance with its terms and conditions, would make it physically impossible to implement another permission, in accordance with its terms and conditions, then it is likely the second permission could not be lawfully implemented in any event.
37. My attention has been drawn to the National Planning Policy Framework, development plan policies and supplementary planning guidance. But there is nothing in the Order to indicate that these are relevant to the assessment required under paragraph A.4(7) of the Order.
38. I appreciate that objections to the proposal may be addressed if the proposal were to be modified. But this would not be the proposal before me and in light of the above I see no reason to object to the proposal either.

39. Concern raised in respect of damage which it is said could occur from the removal of a chimney breast in the appeal property. But this is a private matter and not a reason to resist the appeal development.
40. Taking all of the above into account I conclude that the impact of the proposed development on the amenity of adjoining properties, with particular regard to the outlook, light and privacy enjoyed by occupants of No 12, is acceptable.

Conclusion

41. For the reasons given above, I conclude that the appeal should be allowed and prior approval should be granted, subject to the standard conditions set out in paragraph A.3 of the Order. No other conditions have been suggested that are necessary.

L Perkins

INSPECTOR