



Appeal Decision

Site visit made on 6 March 2023

by L Wilson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 March 2023

Appeal Ref: APP/M0655/D/22/3309741

16 Millbank, Lymm WA13 9DG

- 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 AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
 - The appeal is made by Mr Malcom Clarkson against the decision of Warrington Borough Council.
 - The application Ref 2022/41986, dated 1 August 2022, was refused by notice dated 29 September 2022.
 - The development proposed is erection of an additional storey to an existing detached dwelling.
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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 AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the erection of an additional storey to an existing detached dwelling at 16 Millbank, Lymm WA13 9DG in accordance with the application Ref 2022/41986, dated 1 August 2022, and the details submitted with it, including plan Nos: Site location plan (22-068 (EXT)49), Proposed ground floor plan (22-068 (PNT)10), Proposed attic floor and roof plan (22-068 (PNT)11), Proposed elevations (22-068 (PNT)21), Proposed elevations (22-068 (PNT)22), Proposed site section (22-068 (PNT)31), Proposed sections (22-068 (PNT)32) and Proposed site/block plan (22-068 (PNT)44), and subject to the standard conditions set out in sub-paragraphs AA.2.(2) and AA.2.(3) of the GPDO.

Preliminary Matters

2. Objection comments have referred to Policies QE6, QE7 and QE8 of the Council's Local Plan Core Strategy (2014) (CS). AA.3.(12) of the GPDO requires the local planning authority to (a) take into account any representations made to them and (b) have regard to the National Planning Policy Framework in so far as relevant to the subject matter of the prior approval, as if the application were a planning application.
3. The principle of development is established through the grant of permission by the GPDO, and I am required to assess the proposal as a prior approval application as set out within the parameters of the GPDO. Regard can be given to development plan policies insofar as they are material considerations, however they are not in themselves determinative.

Main Issues

4. The main issues are:

- whether the proposed development would constitute permitted development under Schedule 2, Part 1, Class AA of the GPDO, having regard to limitation AA.1.(h); and
- if permitted development, whether prior approval should be granted considering the conditions set out in paragraph AA.2. of the GPDO.

Reasons

Permitted development

5. Schedule 2, Part 1, Class AA of the GPDO permits the enlargement of a dwellinghouse consisting of the construction of (a) up to two additional storeys, where the existing dwellinghouse consists of two or more storeys; or (b) one additional storey, where the existing dwellinghouse consists of one storey, immediately above the topmost storey of the dwellinghouse, together with any engineering operations reasonably necessary for the purpose of that construction. There are limitations set by AA.1 which, if not met, mean that such development is not permitted by the GPDO.
6. One of the limitations whereby development is not permitted by Class A is where (h) the floor to ceiling height of any additional storey, measured internally, would exceed the lower of (i) 3 metres; or (ii) the floor to ceiling height, measured internally, of any storey of the principal part of the existing dwellinghouse.
7. No 16 is a detached bungalow, with dormer windows and a conservatory to the rear. There are land level differences within the appeal site. The Council set out that the proposal does not comply with limitation AA.1.(h)(ii) because the floor to ceiling height of the proposed first floor will be in excess of the floor to ceiling height of the ground floor. They consider that whilst the ground floor is a lower part of the dwelling, given the sloping nature of the land, it is fundamentally a part of the dwelling house and constitutes a storey for the purposes of interpreting the legislation. Therefore, they assert that the proposed first floor addition would have a floor to ceiling height of 2.4m which would be in excess of the 2.1m floor to ceiling height of the ground floor.
8. Paragraph AA4.(1) of the GPDO clarifies that, for the purposes of Class AA, "principal part", in relation to a dwellinghouse, means the main part of the dwellinghouse excluding any front, side or rear extension of a lower height, whether this forms part of the original dwellinghouse or is a subsequent addition. Furthermore, paragraph AA4.(2) states that, in Class AA, references to a "storey" do not include (a) any storey below ground level.
9. In addition, as highlighted by the appellant, the permitted development rights for householders: technical guidance (2019) states that in references to height, ground level is the surface of the ground immediately adjacent to the building in question...Where ground level is not uniform (for example if the ground is sloping), then the ground level is the highest part of the surface of the ground next to the building. I am mindful though that the technical guidance does not refer to Class AA cases, but I see no reason why this should not apply to Schedule 2, Part 1, Class AA.

10. The lower ground basement void (stated to be 2.1m by the Council) has a window and external door. However, in my view, the lower ground floor basement void is not fundamentally part of the dwellinghouse and is not a principal part of the dwellinghouse. This is because the lower ground floor basement void is used for storage, has no internal staircase, does not form a habitable room and is below ground level. The submitted site sections and existing elevations demonstrate that the ground is sloping across the site, and I noted this on my site visit. The highest part of the surface of the ground next to the building is that at the left-hand side of the front elevation, by the driveway. Consequently, the lower ground basement void is not a storey for the purposes of Class AA.
11. For these reasons, the floor to ceiling height of the proposed first floor, measured internally, would not exceed the floor to ceiling height, measured internally, of any storey of the principal part of the existing dwellinghouse. Thus, the scheme would comply with limitation AA.1.(h). I also have no reason to consider that the scheme fails when considered against the other limitations set out in AA.1. Accordingly, on this main issue, I conclude that the proposed development would be 'permitted development' under Schedule 2, Part 1, Class AA of the GPDO.

Prior approval

12. Paragraph AA.2. of the GPDO states that development is permitted by Class AA subject to a number of conditions. The Council considered the proposal against AA.2.(2) and did not raise any doubt regarding compliance with those conditions, and I see no reason to disagree.
13. The GPDO states that before beginning the development the developer must apply to the local planning authority for prior approval as to the matters within the grounds of assessment which are listed within AA.2.(3)(a)(i) to (iv). Objection comments have raised concerns in relation to these conditions and I have taken into account their concerns in considering these matters below.
14. The objections highlight that no planning or design statement has been submitted to support the appellant's assessment in section 5 of the application form. Having regard to the requirements of the GPDO, sufficient information has been provided to establish whether the proposal complies with the GPDO, and this has not been raised as an issue by the Council.

Amenity of adjoining premises

15. Paragraph AA.2.(3)(a)(i) of the GPDO relates to impact on the amenity of adjoining premises including overlooking, privacy and the loss of light. Concern has been raised regarding loss of privacy, sunlight, daylight, and overlooking (including garden), dominance, overshadowing, outlook and protective view of the green nature.
16. The proposal would increase the scale and massing of the dwelling, which would be visible from the neighbouring properties. Section 5 of the application form sets out the distance to neighbouring properties and location of windows. Due to the topography of the area, neighbouring dwellings are situated on different land levels. Dwellings in the locality have reasonably sized gardens. Therefore, there is a reasonable gap between the proposed additional storey

and neighbouring dwellings which are situated towards the north, east and south. Furthermore, there is mature vegetation towards No 16's boundaries.

17. Taking into account the siting of No 16, the proposed additional storey and neighbouring properties, as well as land levels, location of windows, and scale, position, proportions and materials of the additional storey I am satisfied that the proposal would not be overly dominant or have an unacceptable overbearing or oppressive impact on the neighbouring occupiers' windows, or gardens, which face the appeal site.
18. The proposal includes windows to the front and rear elevations. There are no immediate neighbours to the west of the site. Due to the siting of the neighbouring properties, intervening mature vegetation, location of the proposed windows and distance between these windows and neighbouring properties (including their gardens), the front elevation windows would not result in unacceptable loss of privacy or overlooking.
19. Having regard to the position of the sun, land levels, height of mature vegetation, distance to the neighbouring properties windows, height of the scheme, I am satisfied that the proposal would not reduce levels of light to an extent that would unduly reduce light reaching habitable rooms of neighbouring dwellings. The scheme would not result in unreasonable overshadowing and would not have an unacceptable effect on neighbouring properties, including their gardens.
20. For the reasons given above, the proposal would respect the living conditions of existing neighbouring residential occupiers. The proposed development would not have an unacceptable impact on the amenity of adjoining premises (AA.2.(3)(a)(i)). The provisions of the development plan, so far as they are relevant, have been considered. Having regard to the parameters set out within the GPDO, the scheme would not conflict with the aims of Policy QE6 of the CS.

External appearance

21. Paragraph AA.2.(3)(a)(ii) relates to the external appearance of the dwellinghouse. Concern has been raised in relation to the design being out of keeping (including the height of neighbouring bungalows), and materials and finish in a conservation area. It has also been stated that Slitten Gorge is a green heritage site, and the proposed development would detract from its natural beauty.
22. As stated above, No 16 is a detached bungalow with dormer windows and a conservatory to the rear. The appeal site is adjacent to the Lymm Conservation Area and the Coach House, which is a Grade II listed building.
23. I observed on my site visit that this part of the CA is characterised by primarily two-storey redbrick dwellings, Slitten Brook, the canal and a range of commercial and retail units along The Cross which includes attractive, characterful buildings built on the pavement edge.
24. The Coach House is a two-storey, red brick dwelling which was formerly the coach-house and coachman's house to Danebank House, and has been much altered. The Coach House sits higher than the appeal site. The Council's questionnaire sets out that the proposed development would not affect the setting of a listed building.

25. It has been highlighted that other extended bungalows in the vicinity are smaller in height. Nonetheless, the external appearance of dwellings within the locality varies. The height, scale, massing and design of dwellings is not consistent. In addition, due to the topography of the area, neighbouring dwellings are situated on different land levels. This results in there being a lack of consistency in the character and appearance of dwellings in the locality. Furthermore, No 16 is not conspicuous from public vantage points due to its location down a private driveway and the site is well screened by mature vegetation.
26. There are some similarities between Nos 15 and 16 as they are both bungalows with dormer windows. It has been highlighted that they were erected at a similar time and built as a pair of bungalows. However, there are clear differences between these properties, including that No 15 has two small dormers to the front elevation as well as a front facing gable.
27. The proposal would undoubtedly increase the height of the dwelling and would result in the property no longer appearing as a bungalow. It would also alter its appearance in terms of No 15. Nonetheless, the scheme complies with the parameters set out in the GPDO in terms of the height allowed. The GPDO expressly intends to enable the enlargement of existing dwellinghouses by the construction of additional storeys. The materials to be used would be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse. Furthermore, the roof pitch of the principal part of the proposed extended dwellinghouse would be the same as the roof pitch of the existing dwellinghouse.
28. Taking into account the varied character and appearance of nearby dwellings, the development would not lead to a dwelling with an unacceptable external appearance. The proposal would harmonise with the scale, proportions and materials of buildings in the surrounding area. The design and architectural features of the proposed development would not be out of keeping. The proposal would be of a scale and appearance that would be in keeping with the surrounding dwellings and would not cause harm to the locality, including Slitten Brook.
29. I am satisfied that the proposed development would preserve the character and appearance of the Lymm Conservation Area, including its setting, and the setting of the Coach House. The additional storey would have a neutral effect on the significance of the designated heritage assets. This is because the external appearance would be acceptable, distance between the additional storey and the listed building, mature vegetation (which helps to screen the appeal site) and mixed character of the area. Thus, the external appearance of the dwellinghouse would not cause harm to the nearby designated heritage assets.
30. Consequently, the proposed development would not have an unacceptable impact on the external appearance of the dwellinghouse within the terms of GPDO paragraph AA.2.(3)(a)(ii). The provisions of the development plan, so far as they are relevant, have been considered. Having regard to the parameters set out within the GPDO, the scheme would not conflict with the aims of Policy QE7 and QE8 of the CS.

AA.2.(3)(a)(iii) and (iv)

31. Based on the information presented, the proposal would be acceptable in terms of air traffic and defence assets (AA.2.(3)(a)(iii)) and protected views (AA.2.(3)(a)(iv)).

Conclusion on whether or not prior approval should be granted

32. I find that the proposal would comply with the conditions specified in AA.2.(2) and (3) of the GPDO. Therefore, on this main issue, I conclude that prior approval should be granted.

Other Matters

33. Concerns have been raised in relation to Millbank as it is a single adopted road, and therefore there are health and safety concerns for pedestrians, and the construction would increase the volume and size of traffic, and cause damage to the private road. In order to comply with paragraph AA.2.(3)(b) of the GPDO, before beginning the development, the developer must provide the local planning authority with a report for the management of the construction of the development. Thus, I am satisfied that this concern would adequately be addressed by the GPDO.

Conditions

34. The GPDO states that prior approval may be granted unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. The Council does not consider any conditions are necessary, including the standard conditions. I agree and consider the imposition of the standard conditions to be unnecessary as they duplicate the conditions required under the GPDO. Based on the evidence submitted, I do not consider that there are any conditions reasonably related which should be attached.
35. Paragraph AA.2.(2)(a) requires that the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse. In addition, I have set out within my formal decision that the scheme shall be carried out in accordance with the details submitted including the plans.
36. The developer is required to provide the local planning authority with a report for the management of the construction of the development in order to comply with paragraph AA.2.(3)(b) of the GPDO. The completion of the development within a period of 3 years starting with the date prior approval is granted is a requirement of paragraph AA.2.(3)(c) of the GPDO. The developer is required to notify the local planning authority of the completion of the development in order to comply with AA.2.(3)(d) and (e) of the GPDO.

Conclusion

37. For the reasons given above the appeal should be allowed, and prior approval should be granted.
38. Permission granted under Article 3(1) and Schedule 2, Part 1, Class AA of the GPDO is subject to the conditions that the development must be completed within a period of 3 years starting with the date prior approval is granted and that the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse.

Furthermore, before beginning the development, the developer must provide the local planning authority with a report for the management of the construction of the development, and the developer must notify the local planning authority of the completion of the development as soon as reasonably practicable after completion.

L Wilson

INSPECTOR