The Planning Inspectorate

Appeal Decision

Site visit made on 21 March 2023

by Chris Couper BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 March 2023

Appeal Ref: APP/P1940/D/22/3313725
44 Berry Lane, Mill End, Hertfordshire WD3 4DD

- 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 Ashish Patel against the decision of Three Rivers District Council.
- The application Ref 22/1509/FUL, dated 7 August 2022, was refused by notice dated 3 October 2022.
- The development proposed is described thus 'rear part 6 metre extension following a part prior approval Ref 21/2279/PDE. The prior approval extension has passed building control and work has commenced on the prior approval design. The original application was refused on the basis the council did not believe the client would build the prior approval application.'

Decision

1. The appeal is allowed and planning permission is granted for a rear part 6 metre extension at 44 Berry Lane, Mill End, Hertfordshire WD3 4DD in accordance with the terms of the application, Ref 22/1509/FUL, dated 7 August 2022, 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: PL-256.1 Location plan; PL-100.03 Block plan; and PL-253.1 Existing and proposed plans and elevations.
   3) The materials to be used in the construction of the external surfaces of the development shall match those used in the existing building.

Background and Procedural Matter

2. I have had regard to the property's planning history. That includes a determination by the Council, which is referenced by the appellant in the description of this proposal, that prior approval is not required for a single storey rear extension with a maximum depth of 6 metres, height of 2.98 metres and eaves height of 2.72 metres (Ref: 21/2279/PDE) ('the PA scheme').

3. I have considered the appellant's and the Council's representations regarding the PA scheme in my consideration of this proposal. However, in the interests of clarity, in my formal decision, I have amended the description, broadly in accordance with the Council's decision notice, to include only that element which is an act of development.

Main Issue

4. The main issue is the effect of the proposed development on the living conditions at 42 Berry Lane ('No 42'), with particular regard to outlook and the availability of natural light.

Reasons

5. Amongst other things, Policies CP1 and CP12 of the Three Rivers Core Strategy 2011 ('TRCS'), and Policy DM1 of the Three Rivers Development Management Policies Local Development Document 2013 ('TRDMP') set out that schemes will only be supported where they will not result in the loss of residential amenity, taking into account the need for adequate levels of privacy and prospect; and that they should satisfy the criteria in TRDMP Appendix 2.

6. TRDMP Appendix 2 states that, whilst applications will be assessed on their merits, extensions should consider their effect on neighbouring properties, should not result in a loss of light and outlook for neighbours, and that the maximum depth of single storey rear extensions on semi-detached dwellings should generally be 3.6 metres.

7. The host property forms one half of a two storey, semi-detached pair. Its attached neighbour at No 42 has a set of patio doors to the rear, which are set in slightly from the common boundary, and from where small steps lead down to a short, paved outdoor space.

8. The proposed extension would abut the boundary with No 42, and according to the Council it would project 6 metres beyond that property's rear face, thus contrary to the numerical advice in TRDMP Appendix 2.

9. However, it would have a limited height due to its single storey, flat roofed form, and it would slope down to a height of about 2.7 metres to the rear. Only the upper section of its side wall would be taller than the existing boundary fence. Additionally, I observed on my visit that there is a significant gap from No 42 to the next semi-detached house at 40 Berry Lane ('No 40').

10. Consequently, whilst the proposed extension would be visible to one side from No 42's patio doors, there would remain a largely uninterrupted outlook from within the room they serve, and from the adjacent outdoor space, down that property's own long rear garden and towards No 40's garden. Thus, the scheme would not have a significant overbearing impact, or result in a significant sense of enclosure for No 42's occupants.

11. Given the scheme's limited single storey height and, having regard to the sun's trajectory, as No 42 lies to the south-east of the appeal site, on the basis of the available evidence, I am satisfied that it would not result in a significant loss of natural light to those occupiers.

12. In reaching those conclusions, I note that where it would abut the boundary with No 42, the appeal proposal would have the same height, form and depth as the PA scheme. Compared to it, the appeal scheme would thus have a virtually identical impact on the occupants at No 42.

13. Whilst a Certificate of Lawfulness has not been granted for those works, the Council's delegated report notes that the foundations, as now dug, appear to be in the footprint of the PA scheme; and from my observations on site, I have no cogent reason to doubt that a start has been made on that development.

14. Consequently, whilst I accept that the PA scheme results in a rather contrived layout, with limited internal connectivity to the existing house, there is a real prospect that it would be fully implemented should the appeal scheme be refused. I therefore attribute significant weight to this as a fallback position.

15. Summing up, whilst the scheme would not fully accord with TRDMP Appendix 2, it would not impact the adjacent occupiers' living conditions to a harmful degree, and it would not therefore conflict with TRCS Policies CP1 and CP12, or with the broad thrust of TRDMP Policy DM1. Neither would it conflict with the National Planning Policy Framework requirement to ensure a high standard of amenity.

16. However, even if I am wrong on this, and there would be some limited harm to living conditions, the fallback supports my conclusion that the appeal should be allowed.

17. Turning to the matter of conditions, I have imposed the standard time limit condition and, in the interests of certainty, a condition requiring that the development be carried out in accordance with the approved plans. Additionally, in the interests of good design, a condition is necessary requiring that the scheme be faced in materials to match those in the host.

18. For the above reasons, and having regard to all other matters raised, the appeal is allowed.

Chris Couper

INSPECTOR