



Appeal Decision

Site visit made on 24 March 2023

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th April 2023

Appeal Ref: APP/N5090/D/23/3314942

8 Woolmead Avenue, Colindale, Barnet, London NW9 7BE

- 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 Y Choksy against the decision of London Borough of Barnet.
- The application Ref 22/5497/PNH, dated 14 November 2022, was refused by notice dated 14 December 2022.
- The development proposed is a single storey rear extension Single storey rear extension measuring a depth of 8 metres, maximum height of 3.84 metres and an eaves height of 3 metres.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. 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.
3. 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.

Main Issues

4. The main issues in the appeal are:
 - Whether the proposed development satisfies the requirements of the Town & Country (General Permitted Development) (England) Order 2015 with regard to being permitted development under the above Order.
 - And if so, whether planning permission is deemed to have been granted.

Reasons

Permitted development

5. The appeal property is a two-storey detached dwellinghouse. The original rear wall of the property has a projecting bay window that extends from the ground level up to and including the first-floor level. Although it has been surrounded by an existing single storey rear extension, as I observed on my site visit, it remains in situ internally. There are similar features to surrounding properties and it is not in dispute that it is an original feature of the property.
6. Paragraph A.1(j) of Class A of the Order outlines that development is not permitted by Class A if, amongst other things, the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse and would have a width greater than half the width of the original dwellinghouse.
7. The Council considered in their assessment of the application that the projecting bay window forms part of a side elevation of the original dwellinghouse, and that the extension would have a width greater than half the width of the original dwellinghouse and thus would not constitute permitted development.
8. The Permitted development rights for householders - Technical Guidance (MHCLG 2019) identifies a side elevation will be any wall that cannot be identified as being a front wall or a rear wall. It also states that that houses will often have more than two side elevation walls. The diagrams that follow within the Technical Guidance do not show the same circumstances as the current case. I therefore consider that it is a matter of planning judgement, on the facts of a particular case, what constitutes a side elevation on any dwellinghouse taking into account the guidance in the Technical Guidance.
9. It is the case that a very short and/or shallow wall could constitute a 'side wall' for the purposes of the Order. The only possible exception would be if it was found, as a matter of fact and degree, that the protrusion was too shallow to constitute a wall. A window sill, for example, would not normally constitute a side wall, but a projection in the brickwork might be identifiable as such.
10. The bay at the appeal property is three sided and is of a solid construction with glazing above. The submitted plans show that it projects around 1.1 metres from the flat section of the rear elevation. The submitted plans also show that this projection contributes, not insignificantly, to the floor area of the rooms where it is located. Although its projection is less than 90 degrees to the flat section of the rear elevation, it is greater than 45 degrees. Therefore, the side elevations of the bay are angled more towards the sides of the property than the rear. The submitted 'side elevation' plan also clearly shows the first-floor element of the bay window at the rear. Taking these factors into account, this projection, as a matter of fact and degree, forms part of the side elevation of the property and would not be a rear wall.
11. The appellant has referred to part of the Technical Guidance which outlines that the principal elevation of a property could include more than one wall facing in the same direction - for example, where there are large bay windows on the front elevation. The guidance outlines that in such cases, all such walls will form the principal elevation. This does not however appear to also include the sides of any such projection as shown in the relevant diagram. Even if this were to be the case, it is applicable only to the principal elevation and does not relate to the rear elevation or the part of the Order which is relevant to this

appeal. This part of the Guidance is not, therefore, directly relevant to the appeal proposal and I give it limited weight.

12. In the proposed development, it would extend beyond the projecting bay window, part of which forms a side elevation of the original dwellinghouse. The extension would have a width greater than half the width of the original dwellinghouse. The proposed development is therefore not permitted under Schedule 2, Part 1, Class A of the Order.

Other Matters

13. The appellant has referred to previous appeal decisions¹ whereby Inspectors have considered that the projection of a bay window would not constitute forming part of a side elevation. One of these decisions refers to a previous appeal² decision whereby an Inspector considered that the projection of a bay window *did* constitute forming part of a side elevation.
14. In the Chase Way appeal, the Inspector describes the bay window as being glazed to ground level which is different to the solid construction at the lower portion of the bay window at the appeal property. The evidence also does not outline the angle of projection. In the Lynton Mead appeal the Inspector outlines how the bay projects at approximately 45 degrees and extends about 0.8 metres. This is different to the bay window at the appeal property on both counts as outlined above.
15. Therefore, although the above appeals are similar insofar as they concern bay windows, they are however different to the bay window at the appeal property in terms of design and construction. I have had regard to these decisions; however, I have come to my own conclusion on the issue based on the individual merits of the case.
16. The appellant has also referred to a certificate of lawfulness granted at the neighbouring property. Although I do not have full details of the case, it relates to an application submitted under a separate procedure. When taken against the application subject to the appeal, an element of inconsistency may exist, however the timescales, over 7 years apart, would be reasonable to reflect a revision to decision making on such matters. It does not alter my assessment given above, and I therefore give it limited weight in the appeal.
17. The appellant outlines how they have had dialogue with various individuals on the matter who share their view that the bay window does not form a side elevation. Such anecdotal evidence is however of limited weight.
18. The appellant considers that the Council's approach in refusing consent hinders the permitted development rights of households and flies in the face of the spirit of the Order by unreasonably restricting valid permitted development rights. As I have found that the proposed development would not accord with the limitations of the Order, these matters would not be a reason to allow the appeal.
19. The fact that the Council has not legally challenged any previous appeal decisions also does not provide a reason to allow the appeal.

¹ APP/N5090/D/17/3170532 and APP/N5090/D/21/3284504

² APP/N5090/D/18/3208435

Conclusion

20. The proposed development is therefore not permitted under Schedule 2, Part 1, Class A of the Order. For the reasons given above, and having had regard to all other matters raised, it is concluded that the appeal should be dismissed.

A M Nilsson

INSPECTOR