



Appeal Decision

Site visit made on 16 February 2023

by Chris Forreth BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 June 2023

Appeal Ref: APP/D1835/D/22/3305724

Rose Villa, Nunnery Lane, Worcester WR5 1RG

- 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 Class AA of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Jabran Khalid against the decision of Worcester City Council.
 - The application Ref 22/00515/PRA, dated 14 June 2022, was refused by notice dated 26 July 2022.
 - The development proposed is prior approval application for the construction of an upward extension to provide one additional storey above existing dwellinghouse.
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Decision

1. The appeal is allowed and planning permission is granted for Prior Approval application for the construction of an upward extension to provide one additional storey above existing dwellinghouse. at Rose Villa, Nunnery Lane, Worcester WR5 1RG in accordance with the terms of the application, Ref 22/00515/PRA, dated 14 June 2022, and subject to the following condition:
 - 1) The extension hereby permitted shall not be occupied until the windows on the rear elevation (at first floor level) have been fitted with obscured glazing, and no part of those windows that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before the window is installed and once installed the window design and obscured glazing shall be retained thereafter.

Applications for costs

2. An application for costs was made by Mr Jabran Khalid against Worcester City Council. This application is the subject of a separate decision.

Preliminary Matters

3. The description of the appeal proposal has been taken from the Councils decision notice as it is more concise than that on the application form. I also note that the appellant has adopted this description on their appeal form.
4. Class AA of Schedule 2 Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) allows the enlargement of a dwellinghouse consisting of the construction of one additional storey, where the existing dwellinghouse consists of one storey.

5. As detailed within the GPDO, development under Class AA is permitted subject to the condition that before beginning the development, the developer must apply to the Local Planning Authority for prior approval. The provisions of the GPDO require the Local Planning Authority to assess the development proposed solely on the basis of a limited number of considerations. The Council has raised concerns in respect of the effect of the development on the living conditions of the occupiers of 45 and 47 Spetchley Road. This is therefore the main focus in my decision.

Main Issue

6. The main issue is whether prior approval should be given, having particular regard to the effect of the development on the living conditions of the occupiers of 45 and 47 Spetchley Road.

Reasons

7. The appeal property is currently a bungalow with a hipped roof. It is located to the rear of 45 Spetchley Road and fronts onto Nunnery Lane. The appeal proposal would result in the addition of a first floor with a hipped roof.
8. As noted by the appellant, the appeal site is north of No.45 and north-west of 47 Spetchley Road. Given its position in relation to sunrise through to sunset, the proposal would not have any impact in respect of loss of sunlight to each of these properties.
9. That said, the garden of No.47 is long and the rear boundary of the appeal site is adjacent to part of the side of the garden of No.47. The proposal would therefore result in some overshadowing to parts of this garden at various points during the day. However, in my view, this would not result in any significant harm given the length of the garden and the position of the appeal property.
10. Turning to the potential impact on daylight, the Council consider that the proposal would adversely affect daylight to both Nos 45 and 47. It has referred to the 25 degree code, which the Council uses to assess such impacts as set out in the South Worcestershire Design Guide Supplementary Planning Document (2018) (SWDG).
11. As part of the appeal submissions, the appellant has provided a plan showing the appeal proposal and a 25 degree line from No.45. This shows that the proposal very clearly accords with the 25 degree code if the separation distance is 14.1 metres between the respective properties.
12. However, the Council contend that the distance between the respective properties is around 13 metres. Even if this is the case, it is abundantly clear that the proposal would still accord with the 25 degree code by a significant margin. Whilst the conservatory at No.45 is closer to the appeal property (at around 9.5 metres), it is significant that this is located at a point which is largely in line with the rear garden of the appeal property. Therefore, any breach of the 25-degree guide from the conservatory would be minimal.
13. Taking the above into account, given the juxtaposition between the appeal property and Nos 45 and 47, it is clear to me that the proposal would not result in any significant loss of daylight to the properties themselves.

14. In respect of the impact to the private amenity space at No.45, I consider that the relationship between the appeal property and the garden of No.45 is fairly typical and the effect of a first floor over the existing bungalow would not have an unacceptable impact on daylight to the garden area of No.45. Similarly, I consider that the proposal would not have a significant impact on the garden area of No.47 either.
15. The Council have also raised concerns over outlook from No.45. Whilst the proposal would undoubtedly have a greater impact on outlook than the existing situation, the proposal is not of a scale or proximity which would give rise to a harmful impact.
16. In addition to all of the above, both the Council and the occupiers of neighbouring properties have set out concerns over the potential loss of privacy, or the perception of such.
17. The appeal proposal has first floor windows to both the front and rear elevations. Whilst I consider that the windows to the property frontage which look over Nunnery Lane do not give rise to any concern, the rear facing windows are in proximity to the boundary with the garden of No.47.
18. However, the plans indicate that all three windows facing the garden of No.47 would be obscurely glazed. Given this, along with restrictions on the parts of the windows which could be opened, there would not be any loss of privacy as a result of the development. This could be controlled through a suitably worded planning condition.
19. In coming to that conclusion, I acknowledge that this would result in a bedroom which would have obscure glazing which would result in a very poor living environment for anyone using it as a habitable room. However, it is necessary to have the above restrictions and I am conscious that this type of prior approval process does not allow for considerations of the living conditions of the occupiers of the appeal dwelling to be taken into account in the decision making process.
20. I have also had regard to the perception of overlooking as a result of the windows. Whilst the presence of the windows would undoubtedly be noticed, and that could have some negative impact to users of the garden of No.47 in particular, I consider that this is not a sufficient reason to withhold prior approval for the development before me.
21. In summary, the proposal would not have an unacceptable impact on the living conditions of the occupiers of 45 or 47 Spetchley Road. The proposal would also accord with Policy SWDP 21 of the South Worcestershire Development Plan (2016) which amongst other matters ensures that proposals should provide an adequate level of privacy, outlook, sunlight and daylight and should not be unduly overbearing. It would also accord with the guidance contained in the SWDG.

Other Matters

22. I have also had regard to the other issues raised in the neighbour representations on the application, including matters such as the amount of proposals at the site, the health and well-being of the occupiers of neighbouring properties, vehicle access and parking issues, green space and tree matters, the roof pitch of the proposal, the impact of the proposal on the

streetscene and whether the existing bungalow is capable of supporting the additional floor of accommodation. However, none of the issues raised provide for a compelling reason why prior approval should not be granted.

Conditions

23. The GPDO states that prior approval may be granted unconditionally or subject to conditions reasonably related to the impact of the proposed development on the amenity of any adjoining premises. It is not necessary to impose conditions relating to the timescales for implementation of the development or the materials of the development as these are matters covered within the conditions of the GPDO.
24. As I have already identified above, it is necessary to impose a condition relating to the windows in the rear elevation to protect the privacy of the occupiers of No.47.
25. Whilst not explicitly requested by the Council in its suggested conditions, I note that the Council's arboricultural consultant has indicated that an arboricultural impact assessment, method statement and tree protection plan should be submitted.
26. However, tree protection measures are not one of the matters of prior approval and as such it is not possible to attach a condition relating to tree protection measures. That said, it must be noted that any damage to the trees, including root damage or damage as a result of the storage of construction materials compacting the soil, should be avoided.

Conclusion

27. For the reasons detailed above, and having regard to all other matters raised, I conclude that the appeal should be allowed, and prior approval should be granted.

Chris Forrett

INSPECTOR