



Appeal Decision

Site visit made on 21 June 2023

by A Veevers BA(Hons) DipBCon MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 July 2023

Appeal Ref: APP/T5720/D/22/3312756

23 Dorien Road, Raynes Park, Merton, London SW20 8EL

- 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 Ms MacPhail against the decision of the Council of the London Borough of Merton.
 - The application Ref 22/P3199, dated 27 October 2022, was refused by notice dated 1 December 2022.
 - The development proposed is a single storey 5m rear extension.
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Decision

1. The appeal is dismissed.

Procedural 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 GPDO), planning permission is granted for the enlargement of a dwellinghouse subject to limitations and conditions.
3. Paragraph A.4 (7) of Class A requires that, where any owner or occupier of an adjoining premises objects to a larger rear extension, the Local Planning Authority must assess the impact of the proposal on the amenity of any adjoining premises. In this case, objections were received from occupants of both properties adjoining the appeal site.
4. The Council consider that the proposal would be unduly dominant and intrusive, resulting in a sense of enclosure for neighbouring occupiers and it is on this basis that the Council refused the application. The Council has not alleged that the proposal fails to comply with any other effect on the amenity of neighbouring occupiers nor any other condition, limitation or restriction potentially applicable to the proposal, and I shall consider the appeal accordingly.
5. In refusing the application, the Council cited policies of the Merton Sites and Policies Plan 2014. However, the principle of the development is established by the 2015 Order. The prior approval provisions do not require regard to be had to the development plan. I can therefore only have regard to the policies of the development plan insofar as they are material to the matters for which prior approval is sought.

Main Issue

6. The main issue is the effect of the proposal on the living conditions of neighbouring occupiers at 21 and 25 Dorien Road (No.21 and No.25), having particular regard to outlook and sense of enclosure.

Reasons

7. The appeal site is a mid-terraced house with a narrow rear garden of modest length located within a residential area of similar properties. The rear garden of the appeal site and neighbouring properties is separated by boundary fencing.
8. The proposal seeks to erect a rear extension at the site, replacing that currently present. Parties agree this would be of dimensions that meet the requirements of Schedule 2, Part 1, Class A, Paragraph A.1 (g) of the GPDO.
9. The proposed extension would project 5m from the main rear facing elevation of the appeal dwelling. Given the proposed height above the existing boundary fence and considerable depth, the proposal would present a sizeable structure along the boundary with No.21.
10. There is a single storey extension at No.21 that extends across part of the width of the rear elevation. It is unclear from the evidence before me whether the glazed door on the rear elevation of this extension and the glazed door on the rear elevation of the original dwelling serve the same room. Nevertheless, the glazed door on the rear elevation of the original dwelling is close to the boundary with the appeal site. Even if it is not the only aperture that would provide an outlook for occupants of the room, the presence of the existing single storey extension at No.21 and the proposed development would result in a significant length of built form either side of the glazed door and would create a narrow recess between the properties. When looking out of this door towards the garden, the proposal would significantly reduce the neighbour's outlook and result in an unacceptable impact on their amenity.
11. I recognise that the appellant has sought to limit the height of the proposal through the flat roof design, and I saw at my site visit, the height of the existing fence along the boundary. Nonetheless, as a result of the depth and proximity of the additional built form along the boundary, combined with the tunnel effect created by the existing single storey extension at No.21, the proposal would unacceptably dominate the outlook for occupiers of No.21 and create an undue sense of enclosure. This would be further exacerbated by the southerly aspect of the proposed extension.
12. I consider these issues would not be replicated at No.25. A single storey extension at the rear of No.25 extends the full width of the property. Although the proposed development includes a parapet wall along the boundary, it would not project significantly above or beyond the extension at No. 25. The northerly aspect of the proposal combined with the length of the existing garden at No.25, would also ensure the proposal does not appear unduly prominent or intrusive when seen in the outlook from the garden and rear-facing rooms. As such, I consider that it would not create an unacceptable sense of enclosure for occupiers of No.25.
13. For the above reasons, while I find the proposal would not unacceptably harm the living conditions of occupiers of No. 25 with particular regard to outlook and sense of enclosure, the proposed development would fail to provide

acceptable living conditions for the occupiers of No.21 having regard to outlook and sense of enclosure. Consequently, in so far it is relevant, it would be contrary to Policy DM D2 of the Merton Sites and Policies Plan 2014 (MSPP) which seeks, amongst other things, to ensure an appropriate quality of living conditions.

Other Considerations

14. The Appellant has drawn my attention to a certificate of lawfulness dated 24 October 2022¹. This certifies the erection of a single storey rear extension to the appeal property would represent permitted development. The appellant claims that this scheme provides a realistic 'fallback' position should the appeal be dismissed. I consider this to be a material consideration in that there is more than a theoretical possibility of the development being carried out, particularly in the event of the appeal being dismissed given the appellant's stated need for the additional living space.
15. However, the certificate of lawfulness development ('fallback') would not be as large as the appeal scheme. The 'fallback' scheme would incorporate the existing single storey rear extension at the appeal property and extend the width towards No.21 with an extension which would project 3m beyond the rear wall of the original dwellinghouse. In contrast, the appeal scheme would extend 5m beyond the rear wall of the original dwellinghouse across the full width of the property. This represents an additional 2m length of built form along the boundaries with No.21 and No.25 which would not be marginal in the context of this appeal site. I consider the effect of the larger extension on the living conditions of occupants of No. 21 to be more harmful.
16. Consequently, the existence of the 'fallback' development would not justify the harm arising from the development in this case.
17. The Appellant has also provided a copy of a floor plan submitted for an application for prior approval at the appeal site which was recently refused by the Council². I have not been provided with the elevations or decision notice for this scheme. Nevertheless, the floor plan and evidence submitted by both parties indicates a single storey extension across the width of the rear elevation that would extend rearwards by 6m which was refused for the same reasons as the appeal scheme.
18. I acknowledge the effort by the appellant to address the reason for refusal of the previous application for prior approval by reducing the depth of the proposed extension to 5m and re-designing the roof. However, for the reasons given above, I find the appeal proposal would still cause harm to the living conditions of occupiers of No.21.
19. My attention has been drawn to the existence of other examples of prior approvals and certificates of lawful development for similar sized extensions along Dorien Road. However, I have not been provided with the full details or the background of these individual examples to make robust comparisons. Although there appear to be some similarities between those decisions and the proposal before me, the factors involved relating to whether a proposal is acceptable are quintessentially matters of planning judgement. In this respect, it is likely that site-specific factors, such as the existence of, and distance to

¹ LPA Ref: 22/P2643

² LPA Ref: 22/P1915

neighbouring extensions would materially differentiate those examples from the appeal proposal. In any event, I am required to reach conclusions based on the individual circumstances of this appeal.

20. The absence of evidence of harm under other criteria listed in Policy DM D2 of the MSPP and that the external materials of the proposal would be similar to those of the existing house does not overcome the harm I find with regard to the main issue.

Conclusion

21. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

A Veevers

INSPECTOR