



Appeal Decision

Site visit made on 14 June 2023

by K L Robbie BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th July 2023

Appeal Ref: APP/M5450/D/22/3313290

41 Kenton Gardens, Harrow HA3 8DE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr Chetan Raghwani against the decision of the Council of the London Borough of Harrow.
 - The application Ref P/3317/22/PRIOR, dated 16 September 2022, was refused by notice dated 31 October 2022.
 - The development proposed is a single storey rear extension: 6.00 metres deep, 4.00 metres maximum height and 3.00 metres high to the eaves.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. At the time of my site visit I observed a small single storey build out on the rear elevation of the appeal property. Initially neither party had addressed this element of the building in their submissions. However, views of both parties were sought on its status. The Council did not reply. The appellant provided several appeal decisions relating to this matter together with their opinion on the status of it. I have determined the appeal accordingly in the manner set out below.

Main Issue

3. The main issue is whether the proposed development would be permitted development under Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).

Reasons

4. The appeal property is a semi-detached two storey house on Kenton Gardens. The dwellings on this side of the road have long back gardens which slope gently away from the rear of the houses. The proposed development is for a single storey flat roofed extension, 6 metres in length which would extend the full width of the main part of the appeal property.
5. In refusing prior approval, the Council's Decision Notice states "*The proposed single storey rear extension, by reason of excavation shown on the submitted plans, would constitute a development which would not comply with the tolerances of Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended*".

6. As a result of the slope of the garden there is an existing raised patio at the rear of the appeal property. This would be removed to facilitate the building of the proposed extension. The result would be that there would be an internal step down into the extension. Although the ground may be required to be levelled to take account of the slope, there is no limitation contained within Class A which would preclude levelling or excavation taking place to facilitate the building of such an extension. The technical guidance¹ makes it clear that *'references to height (for example, the heights of the eaves on a house extension) is the height measured from ground level. (Note, 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.)'* Furthermore, from the plans before me, no significant excavation other than those required for foundations would be required to construct the proposed extension. Therefore, in this respect the proposal would not fall foul of the limitations imposed by the Order.
7. However, development is also not permitted by Schedule 2, Part 1 Class A of the GPDO (the Order) if 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 dwellinghouse². There is no doubt that the proposed extension would have a width greater than half the width of the original dwellinghouse, being the full width of the house itself.
8. The appeal property has a small single storey projection on the rear elevation. I have not been provided with any substantive evidence that this is not an original element of the property. From my observations, it has the same pebble dashed finish as the rest of the appeal property and small projections very similar size and design appear to be common features to the rear of other properties in the street, where they have not been extended in a similar manner to that sought by the proposal before me. In my view this strongly suggests that the side elevation of the projection forms part of the original dwellinghouse rather than a subsequent enlargement of the appeal property, and in the absence of evidence to the contrary I shall take it that this as so.
9. Although the projection is small, the 'Permitted Development Rights for Householders -Technical Guidance (MHCLG September 2019) indicates that a wall forming a side elevation of a house will be any wall (my emphasis) that cannot be identified as being a front wall or a rear wall. Whether a wall is a side elevation is a question of fact, applied to the words of the GPDO, rather than judgment. Moreover, the Technical Guidance makes it clear that even very small side walls can potentially constitute a 'side wall' for the purposes of the GPDO and contains diagrams to this effect.
10. I acknowledge that the projection would be demolished as part of the proposal, however, for the purposes of the Order it is nonetheless capable of forming a side wall for the purposes of paragraph A.1(j). Therefore, it is a wall forming a side elevation of the original dwelling house for the purposes of Schedule 2, Part 1, Class A.1(j) of the GPDO.

¹ Permitted Development Rights for Householder Technical Guidance September 2019

² Paragraph A.1(j).

11. The appellant has supplied a range of appeal decisions which have come to an alternative conclusion on this matter, all of which pre-date the publication of the Technical Guidance. I have considered these carefully in coming to my own decision. I do not have the full details of any of the cases referred to which would unequivocally suggest that their situation is directly comparable to that of the one before me. The appellant suggests that if a passer-by was asked to identify the side elevations of the property, they would not identify the wall in dispute as one. However, it would also be unreasonable to expect that a passer-by would be aware of the limitations of permitted development set out in the Order.
12. Therefore, I conclude that the proposed extension would extend beyond a side elevation of original house and would be more than half the width of the original dwellinghouse, the appeal scheme would, therefore, not comply with the definition of permitted development set by the Order.

Other Matters

13. The appeal is subject to an objection made by the occupiers of No. 43 Kenton Gardens. The contents of this objection were not detailed or considered in the Council's officer report. However, given that I have concluded that the proposal is not permitted development it is unnecessary for me to make a determination on the effect on the living conditions of occupiers of No. 43 or any other property close by.

Conclusion

14. For the reasons set out above and having considered all matters raised I conclude that the proposal would not fall within the definition of permitted development set out in Class A of Part 1 of Schedule of the Town and Country Planning (General Permitted Development) (England) Order 2015 and the appeal is dismissed.

K L Robbie

INSPECTOR