



Appeal Decision

Site visit made on 15 August 2023

by L Hughes BA (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 September 2023

Appeal Ref: APP/T4210/D/23/3319920

6 Mowbray Avenue, Prestwich, Bury M25 0LP

- 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 Lobenstein against the decision of Bury Metropolitan Borough Council.
 - The application Ref 69341/FUL, dated 10 February 2023, was refused by notice dated 30 March 2023.
 - The development proposed is First floor rear extension. Raise ridge. Front and rear dormers.
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Decision

1. The appeal is allowed and planning permission is granted for First floor rear extension. Raise ridge. Front and rear dormers at 6 Mowbray Avenue, Prestwich, Bury M25 0LP in accordance with the terms of the application, Ref 69341/FUL, dated 10 February 2023, 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:
 - Location and Block Plan (Dwg No. 001)
 - Existing 1st and 2nd Floor Plans (Dwg No. 002, Revision 1)
 - Proposed Ground, 1st and 2nd Floor Plans; Existing Elevations (Dwg No. 003, Revision 1)
 - Existing and Proposed Site Plan (Dwg No. 004)
 - Existing and Proposed 3D Visuals (Dwg No. 005, Revision 1)
 - Proposed Front and Right-Side Elevations (Dwg No. 006, Revision 1)
 3. The external materials to be used in the development hereby permitted shall be in strict accordance with those specified in the application.

Main Issues

2. The main issues are:
 - a) the effect of the development on the character and appearance of the area;and

b) whether if any harm is caused in respect of issue a), such harm is outweighed by the personal and health circumstances relating to the occupiers of the appeal dwelling.

Reasons

Character and appearance

3. The appeal site comprises a two-storey semi-detached dwelling on the corner of Mowbray Avenue and Richmond Avenue. The surrounding area is mainly residential in character, and largely consists of two-storey dwellings with traditional pitched roofs, and projecting gable bays with small pitched roofs over.
4. Guidance from the Council's Supplementary Planning Document 6 - Alterations and Extensions to Residential Properties (SPD 6) states that proposals for dormer and roof extensions should preserve the character of the street scene, especially when dormers on existing neighbouring properties are absent. The proposal includes a hip to gable roof extension, and a large box dormer along the side and rear of the property. Due to the prominent positioning of the appeal site on a corner plot, the box dormer would be visible from public vantage points along both Mowbray Avenue and Richmond Avenue. The roof slopes along Mowbray Avenue and Richmond Avenue are predominantly unbroken, which gives a sense of cohesiveness. The position, scale and shape of the box dormer, along with the raising of the roof ridge height, would disrupt the pattern of the largely unbroken roof line and pitched gables that make a distinctive contribution to the character of the local area.
5. The proposal would also include a front roof dormer. This dormer would be smaller than the rear dormer, and would have a pitched roof, echoing the pitched projecting gable bay. However, the addition of the front dormer, when considered alongside the large rear dormer and roof extension, would add to the over dominance of the proposal on both the host property and the street scene and would lead to a lack of symmetry with the adjoining semi-detached property.
6. With regard to the effect of the proposed development on the character and appearance of the area, I therefore conclude that the proposal would be contrary to saved policies H2/3 and EN1/2 of the Bury Unitary Development Plan 1997, and guidance from the Council's SPD 6, which seek to ensure that proposals do not have an unacceptable adverse effect on the character and appearance of the original building and surrounding area.

Personal circumstances and the planning balance

7. I have carefully considered the reasons why the appellant has applied for planning permission to extend the property and have taken into account support from the Council's Disability Service. Due to existing health conditions, the appellant's children would benefit from having improved accommodation and further bedrooms. Given the sensitive nature of the health information supplied to me as part of the appeal, it would not be appropriate for me to outline the specific health issues of the individuals concerned.
8. I have had due regard to the Public Sector Equality Duty contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of

opportunity and foster good relations between people who share a protected characteristic and people who do not share it. I have also had regard to rights conveyed within the Human Rights Act. As the evidence indicates that my decision could have an adverse impact on the appellant's children, rights under Article 8 are engaged, including the Article 3(1) rights of the children, and the best interests of the children are a primary consideration.

9. In this case, the best interests of the children would be to have improved living conditions, which will help to ensure that health issues are not worsened. I have, therefore, given great weight to their best interests, which have been kept at the forefront of my mind, and assessed whether an adverse impact of any decision on the interests of the child is justified and proportionate.
10. In weighing the personal circumstances in this balance, this has to be considered against the harm that the proposal would have on the character and appearance of the area. I have found that the proposal would cause material harm to the character and appearance of the surrounding area, in conflict with saved policies H2/3 and EN1/2 of the Bury Unitary Development Plan 1997. This carries significant weight against a grant of planning permission.
11. In favour of the appeal, I have found that the proposal would allow for more living space which would benefit the appellant, his wife and children, and would help to ensure that health issues are not worsened. I also attach significant weight to these considerations.
12. On balance, I am satisfied that the harm which would be caused by the development is outweighed by the health considerations in this case.
13. Dismissing the appeal would interfere with the appellant's rights under Article 8, since the consequence might be that the family would have poor living conditions and worsened health issues. However, it is a qualified right, and interference may be justified where that is lawful and in the public interest. The concept of proportionality is crucial. The interference would be in accordance with the law and in pursuance of a well-established and legitimate aim, the protection of the character and appearance of the built environment. However, given the circumstances overall, I find that allowing the appeal would be proportionate and necessary, and in the best interests of the children. The protection of the public interest cannot be achieved by means that are less interfering with their rights under Article 8.
14. Since the appellant's family includes people with disabilities, they share the protected characteristic of disability for the purposes of the Public Sector Equality Duty (PSED). Given the foregoing, it is necessary and proportionate to permit the development in order to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.

Conditions

15. I have had regard to the national Planning Policy Guidance on conditions. In addition to the standard condition which limits the lifespan of the planning permission I have specified the approved plans for the avoidance of doubt. A condition relating to materials is necessary to ensure that the appearance of the development would be satisfactory.

Conclusion

16. On balance, for the reasons given above, I conclude that the appeal should be allowed.

L Hughes BA (Hons) MTP MRPI

INSPECTOR