



Appeal Decision

Site visit made on 14 November 2023 by Thomas Courtney BA(Hons) MA MRTPI

Decision by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th November 2023

Appeal Ref: APP/J1535/D/23/3326205

51 Princesfield Road, Waltham Abbey, Essex EN9 3PJ

- 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 AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr R Mohabeer against the decision of Epping Forest District Council.
 - The application Ref EPF/0833/23, dated 9 April 2023, was refused by notice dated 6 June 2023.
 - The development proposed is the enlargement of the dwelling house by construction of an additional storey.
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Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by a representative of the Inspector whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Procedural Matters

3. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (hereafter, 'the Order') grants permission for the enlargement of a dwellinghouse consisting of the construction of up to two additional storeys where the dwellinghouse already consists of two or more storeys. Paragraph AA.1(a) to (k) sets out the circumstances in which the permission granted by Class AA does not apply. The Council have not identified any conflict with the requirements of paragraph AA.1(a) to (k), nor do I have any evidence before me that would lead me to conclude differently.
4. Paragraph AA.2 sets out the conditions that apply to the permission granted by Class AA. Paragraph AA.2(3)(a) sets out the matters for which prior approval must be sought, with sub-paragraph (i) referring to the impact on the amenity of any adjoining premises, including overlooking, privacy and loss of light, whilst (ii) refers to the external appearance of the dwellinghouse including its design and architectural features of the principal elevation.
5. Where development would not comply with the conditions set out within paragraph AA.2(2) it falls outside the scope of the permitted development regime and does not benefit from the planning permission granted by virtue of Article 3(1) of the Order. In this case the Council considered that the proposal would fail to comply with the condition set out at paragraph AA.2(2)(b) that the

development must not include a window in any wall or roof slope forming a side elevation of the dwellinghouse. Nonetheless, it went onto consider whether to grant prior approval for the matters set out at paragraph AA.2(3)(a).

6. However, if a proposal fails to meet the conditions of paragraph AA.2(2) it is not necessary or appropriate to consider whether prior approval should be granted for the matters set out at paragraph AA.2(3)(a) because such prior approval can only be granted for development that falls within the scope of the permitted development right. Consequently, I shall consider whether the proposal would conform to the conditions set out in paragraph AA.2(2) in the first instance and, if that is the case, I shall then consider whether to grant prior approval having regard to the matters at paragraph AA.2(3)(a).

Main Issues

7. Therefore, the main issues in this case are:

- Whether the development would amount to permitted development, having regard to the condition at paragraph AA.2(2)(b) of the Order;
- If the appeal succeeds in relation to the first main issue, whether prior approval should be granted having regard to the external appearance of the dwellinghouse and the impact on the amenity of any adjoining premises.

Reasons for the Recommendation

8. The proposed elevations (Drawing no 51 HH 04) and proposed floorplans (Drawing no 51 HH 03) submitted by the appellant clearly indicate two new windows within the side elevation of the proposed additional storey. Consequently, the proposed development would include a window in a wall forming a side elevation of the dwellinghouse and the proposal would fail to comply with the terms of paragraph AA.2(2)(b) of the Order. Therefore, it falls outside the scope of development permitted under Class AA.
9. As a consequence of my findings above, it is not necessary to consider whether to grant prior approval with regard to paragraph AA.2(3)(a) as, even if these matters were met, this would not alter the outcome of the appeal.

Conclusion and Recommendation

10. For these reasons and having had regard to all other matters raised, I conclude that the proposal is not permitted development under Schedule 2, Part 1, Class AA of the Order and I recommend that the appeal should be dismissed.

Thomas Courtney

APPEAL PLANNING OFFICER

Inspector's Decision

11. I have considered all the submitted evidence and my representative's recommendation and on that basis the appeal is dismissed.

K Savage

INSPECTOR