



Appeal Decision

Site visit made on 20 February 2024

by G Sibley MPLAN MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 May 2024

Appeal Ref: APP/P4605/W/23/3329474

47 Highbury Road, Moseley and Kings Heath, Birmingham B14 7QN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Tara Quinlann against the decision of Birmingham City Council.
 - The application Ref is 2023/03825/PA.
 - The development proposed is 6m ground floor rear extension – 4 no. skylights on proposed extension roof – materiality closely resembling existing dwelling materiality.
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Decision

1. The appeal is allowed and planning permission is granted for 6m ground floor rear extension – 4 no. skylights on proposed extension roof – materiality closely resembling existing dwelling materiality at 47 Highbury Road, Moseley and Kings Heath, Birmingham B14 7QN in accordance with the terms of the application, Ref 2023/03825/PA, 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: 05-01-23-01; 05-01-23-05; 05-01-23-06; and 05-01-23-07.
 - 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.

Preliminary Matters

2. Following the refusal of the application the appellant submitted a Householder Prior Approval notice. The Council confirmed that no prior approval is required for a single storey rear extension to 47 Highbury Road¹ and it indicated that the works proposed would be permitted development. The appellant asked for this decision and the associated documentation to be taken into consideration in the determination of this appeal. It was determined that for this information to be taken into consideration that the appeal would have to be progressed as part of the Written Representation procedure. This allowed the Council and interested parties to provide comments on this new evidence. Accordingly, I am satisfied that the parties have not been prejudiced by this approach.
3. Since the application was determined, the Government published a revised version of the National Planning Policy Framework (the Framework) in December 2023. Since the revised Framework does not materially alter the

¹ 2023/07027/PA 17 November 2023

national policy approach in respect of the issues raised in this appeal it has not been necessary to consult the main parties.

Main Issue

4. The main issue is the effect of the proposal upon the living conditions of the occupiers of 49 Highbury Road with regard to outlook as well as light.

Reasons

5. No 47 is a terraced property with a rear two storey outrigger and No 49 is similarly designed. Between the two outriggers are narrow patio areas for each property that are divided by a close boarded fence. The proposed single storey extension would infill this patio area next to the outrigger and would extend along the shared boundary. The existing fence between the two properties is a fence of standard height but this reduces in height after around a couple of metres.
6. There is a ground floor window in the rear elevation of No 49 that is perpendicular to the flank wall of the proposed extension and there is another window as well as the glazing within the rear door that faces towards what would be the flank wall of the extension. The outlook from the rear window is over the garden to the rear and is partly enclosed by the two, two storey outriggers either side of it, although the setback of these partially limits the tunnelling effect of them from this room.
7. The purpose of adhering to the 45-degree code set out in the 45 Degree Code Supplementary Planning Guidance (45 Degree Code SPG) is to ensure development does not cause harm to neighbouring occupiers' light and outlook. New building work should be designed so as to not cross the appropriate 45-degree line drawn from the nearest front or rear window of adjoining properties. The 45 Degree Code SPG also acknowledges that it should be applied with some flexibility, on a case-by-case basis, taking account of local context.
8. It is acknowledged by the appellant that the proposed extension would breach this 45-degree line drawn from the nearest rear ground floor window. However, it is also acknowledged by the Council that this 45-degree line is already breached by the existing two storey outrigger.
9. The proposed extension would introduce a brick wall along the shared boundary with No 49 very close to the rear ground floor window that would be appreciably taller than the existing boundary fence but would extend around 6m along this shared boundary. This would introduce a taller boundary wall a significant distance along the shared boundary beyond the rear of the two-storey outrigger. The flank wall of the extension would be located very close to the rear window and given the proposed height and depth of it; the extension would intensify the existing tunnelling effect between the two two-storey outriggers. This would further enclose the outlook from the rear ground floor room and the proposed development would result in a significant degree and sense of enclosure.
10. The amount of light that can reach No 49 is already limited by the two, two storey outriggers which given their size and location blocks light during parts of the day. The proposed single storey extension would be sited next to the two-storey outrigger and would have a mono pitched roof. Given the lower height of

the extension, some of the light that would be blocked by the extension is already blocked by the two-storey outrigger. However, the siting, height and depth of the extension would result in a reduction in the amount of light that would reach the rear of the building compared to the existing situation. This would affect the rear window which provides the main source of natural light for this room. The extension would reduce the amount of light that would reach the rear of the property during parts of the day and the affected room would become more overshadowed as a result of the proposed development.

11. Overall, the scale and siting of the proposed extension would enclose the outlook from the neighbouring property and reduce the amount of light that would reach the house. This would harm the occupiers of No 49's living conditions although the harm would be partly negated by the fact that the 45-degree code is already impinged by the existing two storey outrigger. However, this would not overcome the harm I have identified.
12. Given my concerns with some of the fundamental design principles of the scheme, I am not satisfied planning conditions could mitigate the harm.
13. Therefore, the siting and scale of the proposed extension would harm the living conditions of the occupiers of No 49 with regard to outlook and light. Accordingly, the proposal would not comply with Policy PG3 of the Birmingham Development Plan or Policies DM2 and DM10 of the Development Management in Birmingham Development Plan Document. These seek, amongst other matters, that development will need to ensure adequate outlook and daylight to dwellings. It also does not accord with the 45 Degree Code SPG. The proposal would also not be in accordance with the Framework, insofar as it seeks to ensure developments create places with a high standard of amenity for existing and future users.

Planning Balance

14. The appellant has provided the plans that were submitted with the prior approval application referred to in the Preliminary Matters. That extension would be very similar in height and depth to that proposed. The prior approval extension would not include the wrap around to the rear but when viewed from inside the neighbouring property that would not be evident. That part of the extension would generally only be visible when viewing it from the end of the garden, far away from the house itself.
15. It is evident that the appellant intends to build an extension at this property based on the planning history for this site, as well as the steps taken to go through the prior approval process. There would not appear to be anything that would physically prevent either extension being built. Additionally, the two extensions would be sited in effectively the same location and as such it would not be physically possible for both schemes to be implemented. As such there is a greater than a theoretical possibility that the development might take place.
16. When viewed from inside No 49 the two extensions would be fundamentally the same as they are both proposed to be a very similar height and depth along the shared boundary. The main difference would be the wrap around proposed to the rear of the appeal extension, but as noted this would not necessarily be visible from inside No 49.

17. Based on the evidence before me, I consider that the difference in impact of the proposed extension when compared to the prior approval scheme would be negligible in terms of outlook as well as light. The effect of the two schemes, on the living conditions of the occupiers of No 49, would consequently be the same.
18. Extensions built under the Town and Country Planning (General Permitted Development) (England) Order 2015 may not accord with advice within the 45 Degree Code SPG and are subject to different legislation and regulations. However, given that it was confirmed by the Council that no prior approval is required to build the fallback scheme, the appellant could build that extension regardless of the outcome of this appeal. Consequently, I attribute substantial weight in favour of the scheme to the theoretical possibility of the fallback being implemented.
19. The proposal would provide a larger living accommodation for the appellant and their family which would be a benefit of the scheme but given the limited scale of the proposal I attribute limited weight to this in favour of the development.
20. Whilst the harm caused to the living conditions of the neighbouring occupiers would be equal for both schemes this planning appeal must be determined in accordance with the development plan unless material considerations indicate otherwise. As concluded above the proposal would conflict with the aforementioned policies within the development plan. Consequently, I attribute significant weight to this conflict with the development plan which weighs against the proposal.
21. However, despite the conflict with the policies of the development plan, in light of the weight given to the fallback scheme as well as the stated benefits of the proposal, these material considerations outweigh the conflict with some parts of the development plan and thus indicate that the appeal should be determined other than in accordance with the it.

Conditions

22. Further to the statutory commencement condition a condition requiring the development is carried out in accordance with the approved plans is necessary in the interest of certainty.
23. A condition requiring the surface materials shall match those used in the existing building is necessary in the interest of the character and appearance of the host dwelling and the area.

Conclusion

24. The proposed development would conflict with the development plan, but the material considerations indicate that a decision should be made other than in accordance with it. Therefore, for the reasons given above, I conclude that the appeal should be allowed.

G Sibley

INSPECTOR