

Appeal Decision

Site visit made on 27 August 2024

by T Bennett BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 September 2024

Appeal Ref: APP/A0665/D/24/3343000

Oakfield, Waste Lane, Kelsall, Northwich CW6 0PE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) 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 Mark McNamee against the decision of Cheshire West and Chester Council.
 - The application Ref is 23/03851/PAA.
 - The development proposed is the erection of additional storey above existing dwelling.
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Decision

1. The appeal is allowed and prior approval is deemed to be granted under the provisions of Article 3(1) and Schedule 2, Part 1, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the erection of additional storey above existing dwelling at Oakfield, Waste Lane, Kelsall, Northwich CW6 0PE in accordance with the application ref 23/03851/PAA, made on 05 December 2023, and the details submitted with it (including Site Location Plan 23015 (Su) 001 Rev A and drawing 23015 (PL) 055 Rev C), pursuant to Article 3(1) and Schedule 2, Part 1, Class AA, paragraphs AA.2 (2) and (3).

Preliminary Matters

2. The application form did not describe the proposed development. I have therefore taken the description of development from the decision notice, which also matches that used in the appeal form as this accurately describes the development.
3. The appellant has submitted amended plans as part of the appeal, changing several obscure glazed windows to clear glazing on the first-floor. The procedural guide for planning appeals advises that the appeal process should not be used to evolve a scheme as it is important that what is considered by the Inspector at appeal is essentially the same scheme that was considered by the local planning authority and by interested parties at the application stage.
4. Established case law states that, in considering whether, or not, to accept amendments to a proposal during the appeal process, it must be considered whether the proposed change involves a "substantial difference" or a

"fundamental change" to the application and whether the proposed amendments would cause unlawful procedural unfairness to anyone involved in the appeal.

5. The amendments would represent a substantial difference to the proposal, when compared to those upon which the Council made its decision. The use of obscure glazing is a material matter affecting the determination of this appeal. The changes have not been consulted upon. I find that neither part of the necessary test set out in the relevant case law has been satisfied and so I will not accept the amendments.
6. 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 (GPDO 2015), planning permission is granted for the enlargement of a dwellinghouse by the construction of additional storeys, subject to limitations and conditions set out in paragraphs AA.1 and AA.2.
7. The conditions under paragraph AA.2 (3)(a) states that before development the developer must apply to the local planning authority for prior approval as to – (i) the impact on the amenity of any adjoining premises including overlooking, privacy and the loss of light and (ii) the external appearance of the dwellinghouse, including the design and architectural features of (aa) the principal elevation of the dwellinghouse, and (bb) any side elevation of the dwellinghouse that fronts a highway.
8. The Council found that the proposal would comply with the conditions and limitations set out at paragraph AA.1 of Class AA, such that it would fall within the scope of permitted development rights, subject to the consideration of relevant matters of prior approval. On the evidence before me I see no reason to take a different view.
9. The Council has, however, raised concerns in respect of the effect of the development upon the amenity of the adjoining premises with regards to privacy and the external appearance of the dwellinghouse.

Main Issues

10. The main issues are whether the proposal would accord with the provisions of Part 1, Class AA, with particular regard to the effect of the proposal on:
 - the external appearance of the dwellinghouse and;
 - the amenity of neighbouring residents with regards to privacy.

Reasons

External appearance

11. Oakfields is a detached bungalow of an unusual asymmetrical design, with a mix of fenestration sizes and shapes on each elevation and an offset pitched roof ridge. It is not readily visible from Waste Lane, set back within its plot behind mature vegetated boundaries. Properties in the vicinity of the appeal site are typically two-storey large, detached properties and vary in style, size and materials.

12. The proposed design and architectural features would replicate those of the existing dwelling. It would use matching materials and retain the overall existing roof form and pitch. This would ensure that the additional storey would not result in the dwelling having an unacceptable external appearance.
13. Whilst the use of a high level obscure glazed window in a bedroom is not desirable due to it constraining outlook, my assessment is limited to the external appearance of the dwellinghouse on the principal elevation. As such, given the various shapes and sizes of windows on the existing dwelling, the proposed first-floor fenestration arrangement would be reflective of the overall design of the dwelling and I find the use of obscure glazing would not harmfully alter the overall external appearance of the dwelling. Furthermore, given the surrounding site context and its location within the plot, the design would not appear harmfully at odds within the wider locality.
14. Considering the above, I am satisfied that there would not be a harmful impact on the external appearance of the dwellinghouse.

Privacy

15. The front and rear elevations of the appeal property are located in close proximity to the boundaries of the adjoining properties, Forest Side and Birch Hill.
16. The garden of Birch Hill is located to the rear of Oakfield and is of a substantial size, with mature vegetation located close to the boundary with Oakfield. The first-floor rear bedroom windows of the proposal would directly face the garden of Birch Hill and the mature vegetation. However, as the windows would be high level and obscure glazed, any overlooking into the garden would be extremely limited. Furthermore, given the extensive garden at Birch Hill, the proposal would not be readily visible from the rear elevation of this property where the proposal would be located at an oblique angle. As such, I find that any perceived overlooking would be very limited and would not have a detrimental impact on the amenity of the occupiers.
17. The first-floor windows on the front elevation of the appeal property would be close to, but set back from the shared boundary with Forest Side. They would face tall mature vegetation along this boundary, towards the bottom end of Forest Side's large garden. I am mindful that the vegetation could die or be removed. However, even if this were the case, any views would be directed towards the very rear of the large garden at the furthest point away from its rear elevation. Due to the separation distance, the oblique angle at which it would be viewed and the use of obscure glazing, any views would be limited. For these same reasons I consider any perceived overlooking would also be limited and it would not have a detrimental impact on the amenity of the occupiers of this property.
18. Considering the above, I am satisfied that there would not be a harmful impact on the amenity of the adjoining premises with regards to privacy.

Conditions

19. The Council provided a list of suggested conditions in the event that the appeal is allowed. Given I have listed the submitted plans in my decision and paragraph AA.3 (14) of Schedule 2, Part 1 of the GPDO 2015 requires

development to be carried out in accordance with the details submitted, the Council's suggested details condition is unnecessary.

20. The suggested conditions requiring the development to be completed within 3 years from the prior approval date, matching exterior materials and the submission of a construction management report, all duplicate the standard conditions outlined in paragraph AA.2 of the GPDO 2015. As such, imposing them again is unnecessary.
21. That said, in order for the proposal to benefit from the permitted development rights set out in the GPDO 2015, all of the standard conditions set out at paragraphs AA.2 (2) and AA.2 (3)(b)-(e) must be complied with.

Conclusion

22. For the reasons given above, I conclude that the appeal should be allowed and prior approval should be granted.

Tom Bennett

INSPECTOR