



Appeal Decision

Site visit made on 16 September 2024

by A Hickey MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 October 2024

Appeal Ref: APP/B0230/D/24/3342916

2 Lighthorne Rise, Luton LU3 3XG

- 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 A Raza against the decision of Luton Borough Council.
 - The application Ref is 24/00006/PAUPDW.
 - The development proposed is removal of the existing roof and construction of the new first floor structure and volume with pitched roofs to match the existing.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development cited in the application form differs to that contained within the decision notice. There is no evidence that this change was formally agreed. In the interests of clarity, I rely upon the description as included in the application form for the purposes of the heading above.
3. Development plan policies and the National Planning Policy Framework can be considered relevant in prior approval cases, but only insofar as they relate to the development and prior approval matters. I have proceeded on this basis.
4. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (hereafter, 'the GPDO') under Schedule 2, Part 1, Class AA grants permission for the enlargement of a dwellinghouse consisting of the construction of one additional storey, where the existing dwellinghouse consists of one storey.
5. 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.
6. 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 GPDO. 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.

7. The Council also consider that the proposal would fail to comply with the condition set out at paragraph AA.2(2)(c). This requires the roof pitch of the principal part of the dwellinghouse following the development must be the same as the roof pitch of the existing dwellinghouse. Nonetheless, the Council also went onto consider whether to grant prior approval for the matters set out at paragraph AA.2(3)(a).
8. However, should a proposal fail 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

9. Given the above, the main issues in this case are:
 - Whether the development would amount to permitted development, having regard to the conditions at paragraph AA.2(2)(b) and AA.2(2)(c) of the GPDO; and
 - 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

10. The proposed elevations (6638-25) and proposed floorplans (6638-24) submitted by the appellant clearly indicate three new windows within the side elevation of the proposed additional storey facing Leamington Road. 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 GPDO.
11. The existing bungalow has a dual-pitched gable end roof. The drawings noted above show that the proposed roof above the additional storey would be hipped. The roof pitch of the proposal would, therefore, fail to match the pitch of the principal part of the existing dwelling. Consequently, the roof pitch of the principal part of the dwellinghouse following the development would not be the same as the roof pitch of the existing dwellinghouse and the proposal would fail to comply with the terms of paragraph AA.2(2)(c) of the GPDO.
12. 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.

Other Matters

13. It is noted the appellant has designed the appeal scheme to avoid any detrimental harm to the amenity of any neighbouring occupiers. It is also stated that there is some variety in the design of nearby properties, and various forms of development have been granted within the area.

Nonetheless, the scheme fails to accord with the above-mentioned conditions in Schedule 2, Part 1, Class AA of the GPDO.

Conclusion

14. For the reasons above and having had regard to all other matters raised the proposal is not permitted development under Schedule 2, Part 1, Class AA of the Order and the appeal is dismissed.

A Hickey

INSPECTOR