

## **SECTION '2' – Applications meriting special consideration**

**Application No :** 15/03804/FULL6

**Ward:**  
**Shortlands**

**Address :** 90 Malmains Way Beckenham BR3 6SF

**OS Grid Ref:** E: 538837 N: 167746

**Applicant :** Dr Sivalingam Sivathanan

**Objections :** YES

### **Description of Development:**

First floor front, side, rear extension.

Key designations:

Area of Special Residential Character  
Biggin Hill Safeguarding Birds  
Biggin Hill Safeguarding Area  
London City Airport Safeguarding  
Open Space Deficiency  
Smoke Control SCA 21  
Smoke Control SCA 9

### **Proposal**

The application property is a detached dwelling, designed with a front gable feature and a pitched 'catslide' roof orientated away from the north-western site boundary.

The application proposes a first floor front/side/rear extension. The existing front gable feature would be replicated at the opposite side of the house and this gable would have a width of 3.41metres. The flank wall of this gable would extend rearwards for 9.72m towards the first floor rear element of the proposal, which would project by 0.83m towards the boundary with No. 88 Malmains Way.

The first floor rear extension would have a depth of 4.5m and a width of 4.24m.

The first floor flank elevation of the extension would incorporate windows serving a landing area, en-suite and walk in wardrobe.

The existing ground floor retains 1.1m separation to the boundary. The first floor extension would retain 1.93m to the flank boundary at the front, the rear element of the extension being flush with the existing ground floor and retaining 1.1m separation to the boundary.

The application is supported by a Design and Access statement, in addition to a covering letter which states with regards to the current proposal:

"Following the successful Appeal Decision dated 14th July 2015, it has been found that all previous drawings for this property were incorrect in showing the actual size of the existing building, and therefore the proposed extensions were larger than actually required or practical."

The proposed rear element of the extension which is annotated 'bedroom 5' has a width of 4.24m. The permitted extension had a width of 4.75m. The projection of this element beyond the extended first floor flank wall has been reduced from 1.32m to 0.83m. In respect of the separation to the boundary, the separation at the rear, at 1.1m is as previously proposed and permitted, and the separation between the flank elevation of first floor extension in a central position and towards the front of the extension has reduced from 2.42m to 1.93m.

The covering letter was accompanied by a letter dated 22nd June 2015 from a chartered building surveyor which provided the applicant with advice in response to a previous Committee report (in respect of application 15/00546 which was refused planning permission). The letter states, inter alia, that the guidance within the BRE Second Edition 2011 is not mandatory and needs to be applied flexibly, that there is no guidance within the BRE with regard to outlook or right to a view, and that the acceptability of a scheme or adverse effect is subjective. The daylight and sunlight report which was reported to Committee in respect of 15/00546 also related to 14/04076, which was subsequently allowed on appeal.

## **Location**

The property is located at the south-eastern end of Malmain Way close to the junction with Bushey Way. The street is characterised by detached dwellings of varied design mostly dating from the 1920-50's set within an attractive tree-lined setting. The property falls within Park Langley Area of Special Residential Character (ASRC) and is described within the Unitary Development Plan (UDP) as follows:

"...built sporadically between the 1920's and 1950's, whilst not of the same exceptional standard [as the Conservation Area] has the character of a garden estate given by the high quality and appearance of the hedges, walls, fences, and front gardens. The area, which comprises almost exclusively large detached two storey family homes on generous plots ...represents a coherent, continuous and easily identifiable area, which has maintained its character and unity intact."

## **Consultations**

### **Comments from Local Residents**

Nearby owners/occupiers were notified of the application and representations were received which may be summarised as follows:

- o The application is similar to a previous scheme which was dismissed at appeal, with the latest plan reverting back to plan no. 2K13/02/2/1
- o Instead of setting the extension in from the boundary where it is opposite the kitchen window at No. 88, the plan has a straight flank elevation, which

- appears to bring the new build closer to the kitchen window which was the main area of concern at Committee and of 4 previous appeal Inspectors
- o The decrease in area is not 7m<sup>2</sup> but 0.75m<sup>2</sup>.
  - o The measurements of the latest plan have been manipulated, with the measurements of the existing rooms and the location of the boundary not tallying with the previous plan.
  - o The extended house would dominate No. 88
  - o The daylight/sunlight issue has not been resolved and would be worsened by the proposed extension coming closer to the kitchen window
  - o Loss of light and detrimental to living conditions
  - o The windows at No. 88 were there long before No. 90 was built
  - o Other neighbours in the locality have been required to step in their extensions from the boundary, even where they would not have the same amount of impact as the current scheme.

Comments were also received from the Park Langley Residents' Association, stating that the proposal is very similar to 13/03290 which was dismissed on appeal. The proposal would still result in a loss of light to the occupants of 88 Malms Way. The proposed development would square off the house and would add nothing to the aesthetics of the area.

### **Planning Considerations**

The application falls to be determined in accordance with the following policies of the Unitary Development Plan:

In considering the application the main policies are H10, H8 and BE1 of the Unitary Development Plan.

Policy H10 concerns Areas of Special Residential Character, applications in these areas will be required to respect and complement the established and individual qualities of the area.

Policy H8 concerns residential extensions and requires the design and layout of proposals to complement the scale and form of the host dwelling, respect spaces and gaps between buildings where contribute to the character of an area.

Policy BE1 requires a high standard of design in new development generally, and seeks to protect the amenities of the occupants of neighbouring properties.

Supplementary Planning Guidance relevant to the determination of the application includes:

Supplementary Planning Guidance 1: General Design Principles  
Supplementary Planning Guidance 2: Residential Design Guidance.

Policy 7.4 of the London Plan is of particular relevance, relating to Local Character.

### **Planning History**

The application property has been subject to a number of previous planning applications, as detailed in the section below, as well as a number of appeals, including 5 schemes which were dismissed at appeal. Under reference 14/04076 planning permission was granted on appeal. The applicant's agent has stated that the plans which were considered under previous applications inaccurately represented the size of the host dwelling, as a consequence of which the rear projecting element of the proposals has been reduced in width, although the separation to the boundary has been retained in respect of this element, and the separation between the first floor flank element of the proposal has been reduced.

The planning history is summarised as follows.

03/01919: Planning permission GRANTED for a single storey side/rear extension and single storey rear extension for conservatory

10/02118 Planning permission REFUSED for a first floor side extension. Planning permission was refused on the grounds that the proposal, which extended for the full width of the ground floor, would have had a detrimental impact on the amenities of the neighbouring residential dwelling, and would have been harmful to the character and appearance of the ASRC.

A subsequent appeal against the refusal of planning permission was dismissed.

11/03032 Planning permission REFUSED for a first floor side and rear extension which incorporated the stepping in of part of the first floor side element from the ground floor flank elevation below. Permission was refused on the grounds of the impact of the proposal on residential amenities of the neighbouring property in addition to the appearance of the host dwelling and the character and appearance of the ASRC.

A subsequent appeal against the refusal of planning permission was dismissed.

13/00771 Planning permission was REFUSED for a first floor side and rear extension. This application again incorporated the setting back from the ground floor flank elevation of the first floor side extension. Permission was refused on the grounds that the proposed extension would be detrimental to the amenities of the occupiers of No. 88, resulting in a loss of light.

The subsequent appeal against the refusal of planning permission was dismissed.

13/03290 Planning permission REFUSED for a first floor front/side and rear extension which retained a separation to the flank boundary at first floor level of 2.15m, with the rear element of the extension flush with the first floor element. Permission was refused on the grounds that the extension would be detrimental to the amenities of the occupiers of No. 88 resulting on a loss of light.

A subsequent appeal against the refusal of planning permission was dismissed, with the Inspector noting that the central section of the extension would have been closer to the kitchen than the scheme shown on the concurrent appeal regarding

13/003395, and that the proposal would result in an unacceptable loss of light to the kitchen of No. 88 and would be harmful to the living conditions of the occupants of that property. The lack of information to enable the effects on outlook to be adequately assessed added weight to the conclusion that the appeal should be dismissed.

13/03395 First floor side and rear extension. Planning permission was REFUSED for a scheme which included a staggered building line, with a separation of 2.15m from the shared boundary at the front, increasing to 2.9m in the central section, and 1.1m at the rear. The application was supported by a daylight and sunlight report and it was recommended that permission be granted. Permission was refused on the grounds of the impact of the proposal on the neighbouring property at No. 88.

A subsequent appeal against the refusal of permission was dismissed, with the Inspector reasoning that while the Council decision notice only referred to loss of light, and that impact was in itself unacceptable, the raised concerns regarding outlook, commented on by neighbours and previous Inspectors, was material. The Inspector concluded: "Even if I had concluded that the loss of daylight was within acceptable limits, I would have requested additional information in relation to the effects on outlook. In the absence of such information I could not have satisfied myself that the development would not be harmful to the amenity of the neighbours at No. 88, particularly given that the proposed extension would occupy the full depth of the existing house, as did the previous proposals."

14/04076 Planning permission was REFUSED for a first floor side and rear extension on the grounds that:

"The proposed extension would result in an unacceptable reduction in the light received by the adjacent kitchen window at the neighbouring property, No. 88 Malmaison Way. In addition, the extension would appear as an overbearing and visually intrusive feature, which would result in a loss of outlook from this window. The proposal is therefore contrary to Policy BE1 of the Council's Unitary Development Plan."

An appeal against the Council's refusal of planning permission was allowed. The Inspector acknowledged that the outlook from the side window of No. 88 would be affected by the proposed extensions, but concluded that the outlook would not be unduly restricted in an urban or suburban context. The Inspector took the view that the internal layout of the neighbouring house "has not made the most of the potential outlook towards its own garden," and stated that "it would not be right for a side window at Number 88 to have an overriding effect, in principle, of preventing desirable improvements to the neighbouring house."

The development granted planning permission on appeal has not been implemented, and would provide a fall-back position for the extension of the application dwelling. However, the grant of planning permission was subject to condition 2 which required that the development should be carried out in accordance with the approved drawings, including 2K13/02/2/4. It is not clear to

what extent the inaccuracies in the permitted plan would prevent implementation of the permitted scheme.

15/00546 Planning permission was REFUSED for a first floor side and rear extension on the grounds of the impact of the proposal on the light to the neighbouring kitchen window, in addition to the overbearing and visually intrusive appearance of the extension when viewed from the neighbouring window.

The application was supported by a daylight and sunlight report dated 26th January 2015 which referred to proposals shown on plans 2K13/02/2/5 (15/00546) and 2K13/02/2/4 (14/04076)

An appeal against the refusal of planning permission was withdrawn after the Inspector allowed the appeal which related to plan 2K13/02/2/4 under reference 14/04076.

## **Conclusions**

The main issues relating to the application are the effect that it would have on the character of the area and the impact that it would have on the amenities of the occupants of surrounding residential properties particularly the loss of light to the neighbouring property at No.88, and the impact on the outlook from the kitchen window of this property.

The planning history of the site is a material planning consideration in the determination of this application, including the appeal history of the site.

The current application differs from that which was allowed on appeal (ref. 14/04076) in that rather than providing a separation between the first floor side extension and the party boundary of 2.42m, a separation of 1.93m would be provided. The relationship between the proposed rear bedroom extension and the boundary remains as permitted, with 1.1m space retained to the boundary. The width of the proposed first floor study has been increased from 3.28m to 3.55m, while the width of bedroom 5 has been reduced from 4.75m to 4.24m.

Appeals were dismissed for first floor extensions at the host property where a greater side separation to the boundary was provided, notably application ref. 13/00771 which was also similar in terms of the layout of the extension relative to the party boundary. In that application, a side space of 2.15m to the boundary was shown to be provided for the stepped in first floor side element of the extensions proposed. It should be noted that that application, and subsequent appeal, was not supported by the daylight and sunlight report submitted in relation to applications refs. 14/04076 and 15/00546.

In assessing the appeal reference 14/04076, the Inspector in afforded less weight to the significance of the ground floor flank window at No. 88 than the previous appeal Inspectors. The Inspector considered that the proposed development in that case would have had a satisfactory impact on the amenities of the occupants at No. 88, and placed significant weight on the submitted daylight and sunlight report findings. In concluding that the development would be acceptable, the Inspector

stated that "the loss of light would not be so serious, in the context of the urban setting and the flank location of the window in question, as to justify a refusal of planning permission." With regards to the loss of outlook, the Inspector referred to "an urban or suburban context", stating that the effect of the proposals on the outlook from the window at No.88 would not be so serious as to warrant the refusal of planning permission.

The Inspector agreed that the room served by the flank window is a habitable room, well-used and in important element of the house. However, he concluded:

"I have also noted that the internal layout of the house (as it seems to have evolved over the years) has not made the most of the potential outlook towards its own garden. Moreover, I am convinced that it would not be right for a side window at No. 88 to have an overriding effect, in principle, of preventing desirable improvements to the neighbouring house."

The additional information submitted (the daylight and sunlight survey) was taken into account, and the Inspector stated that he afforded greater weight to the "effect of the internal layout of the house at No. 88 and its relationship with its side boundary. Moreover, I am particularly conscious of the urban location of the site and I accept that reasonable expectations of light and outlook from a flank window in such a location are not likely to be the same as would be the case for principal windows."

This application has been submitted with a supporting letter dated 22nd June 2015 entitled "Daylight and Sunlight Report". The report was submitted in response to the Committee Report and refusal of planning permission under 15/00546 and states that an adequate quantum of daylight would remain, and that this would provide adequate internal illuminance. While the reduction in the VSC level of the window would be discernible to the human eye, the impact would not be unacceptable. The report continues, to refer to extent to which the development would accord with the BRE Second Edition 2011 and emphasises that there is no guidance in the BRE Second Edition 2011 with regard to outlook and no one has a right to a view. Whether an impact is considered acceptable is subjective.

It should be noted that this report was prepared to specifically relate to the development proposed under refs. 15/00546 and 14/04076, both of which proposed a more significant retention of space adjacent to the boundary in proximity to the neighbouring flank window.

The current proposal would effectively provide a lesser separation to the boundary at the front/side of the flank elevation than the permitted scheme. It is necessary to consider whether the previous Inspector's reasoning with regards to the weight afforded to the impact of development on the flank facing window, which provides the principal daylight/sunlight to and outlook from the kitchen at the neighbouring dwelling remains pertinent. Similarly, it is necessary to consider whether the most recent appeal decision overrides that of the Inspector in the appeal relating to 13/00771 which while similar to the current proposal, provided a more generous separation to the flank boundary, taking into account the provision in the previous case (and referred to in the current application) of a daylight and sunlight report.

The applicant has not specified to what extent the daylight and sunlight report submitted in relation to reference 14/04076 would remain accurate in respect of the current application's closer proximity to the party boundary.

The increase in width of the extension at the front, and commensurate encroachment towards the boundary, is reasonably modest, at a little under 0.5m. However, the relationship between the host dwelling and the neighbouring property which was erected some years prior to the erection of No. 90, is sensitive. The sensitivity of the relationship is evidenced by the extensive planning history and the finely balanced yet subtly contradictory appeal decisions relating to the development of the host dwelling and the weight afforded to the flank window at No. 88.

While it is acknowledged that in some more densely developed areas, a lower expectation is reasonable with regards to flank outlook, in the case of the host dwelling, and the neighbouring property, they lie within an ASRC which is notably suburban in its character, described as a garden estate in the ASRC description. The limited outlook acceptable in an urban area is not considered relevant to an appraisal of the extent to which the amenities of the occupants of the neighbouring property should be afforded weight.

The applicant has submitted a letter supplied in relation to the daylight and sunlight report, following the refusal of permission for application ref. 15/00546, which highlights the approach taken in assessment of the impact of development on daylight and sunlight, citing the BRE Second Edition, 2011. It is stated that the guidance in the document is not mandatory and needs to be applied flexibly. The amount of daylight available should be considered rather than solely the amount lost. It further emphasises that the sunlight to the flank window would exceed the minimum even if that development was to be implemented; again, it is considered by the surveyor that it is not the loss of daylight and sunlight that is significant so much as the quantum of light that remains.

The letter additionally concedes that with regards to outlook, assessment of impact is entirely subjective, referring to further diagrams to support the analysis of sky view remaining. These diagrams have not been submitted with this application, and, in that they relate to the previous applications for permission each of which provided a more generous separation to the flank boundary towards the centre/front of the extensions, would not be directly relevant to the assessment of this proposal. The principles of the BRE Second Edition 2011 are noted.

As the primary window to the neighbouring kitchen, which is noted to be well-used and 'the hub of the home', it is considered that significant weight should be afforded to the outlook from the window, as well as to the impact of the proposed development on the daylight and sunlight to the room.

On balance, it is considered that the proposal would have a greater impact than not only the past dismissed proposals which were not supported by a daylight and sunlight report, but also the most recent permitted proposal which was. While relatively modest, the 0.49m reduction in separation shown to be provided between



the first floor flank elevation and the boundary would have an appreciably greater adverse impact on the residential amenities of the neighbouring property, leading to an unacceptable loss of daylight/sunlight to the sole window to the kitchen and an overbearing impact on outlook from that window.

The application has not been accompanied by a daylight and sunlight report tailored specifically for the development currently proposed. Reference has been made, however, to the previous report which highlighted not only the extent to which the assessment of impact on outlook is subjective, but also that consideration should be made of the quantum light remaining, rather than concentrating on the light that is lost.

The flank facing window at No. 88 serves an important room within the house, which is habitable, serves a well-used kitchen and is well-lit by daylight and sunlight. Members may consider that the reduction in separation between the flank facing elevation of the extension and the boundary would result in a more appreciably adverse impact than that which was allowed at appeal, and replicates more closely past proposals where appeals against the Council's refusal were dismissed. The extension would have an overbearing impact, increasing the sense of enclosure and diminishing the outlook from the neighbouring property to an unacceptable degree. The proposal would also reduce the daylight/sunlight to the window, which is the sole window to the kitchen, and would therefore have an unacceptable impact on the amenity of the occupants of the property.

In terms of the impact of the proposal on the visual amenities of the street scene, it is noted that in previous cases, the principle of a first floor extension to the property at this location has been considered to have an acceptable impact on the character and appearance of the ASRC. It is not considered that this proposal would have a significant adverse impact on the character and appearance of the ASRC, taking into account the existing planning permission, and the relationship between the proposed front gable and the existing front gable on the other side of the property.

## **RECOMMENDATION: APPLICATION BE REFUSED**

**The reasons for refusal are:**

- 1 The proposed extension by reason of its proximity to the boundary would result in an unacceptable reduction in the light received by the adjacent kitchen window at the neighbouring property, 88 Malmaims Way, in addition to which the extension would appear as an overbearing and visually intrusive feature which would result in an unacceptable loss of outlook. The proposal is thereby contrary to Policy BE1 of the Unitary Development Plan.**