



## Appeal Decision

Site visit made on 15 March 2021

**by Eleni Randle BSc (hons) MSc FRICS FAAV MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 25 March 2021

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**Appeal Ref: APP/J1535/D/21/3266264**

### **1 The Cedars, Buckhurst Hill, Essex, IG9 5TS**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under 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 Thomas Charlton against the decision of Epping Forest District Council.
  - The application Ref EPF/2051/20 PDE dated 16 September 2020, was refused by notice dated 3 December 2020.
  - The development proposed is prior approval for an additional storey on the existing property.
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### **Decision**

1. The appeal is allowed and prior approval granted for an additional storey on the existing property at 1 The Cedars, Buckhurst Hill, Essex, IG9 5TS in accordance with the terms of the application ref: EPF/2051/20 PDE, dated 16 September 2020, subject to the following conditions:
  - 1) The development to which this permission relates must be completed within a period of three years starting with the date prior approval is granted;
  - 2) The development hereby approved shall be carried out in accordance with the following approved plans: ELA/3 Rev A, ELA/1 Rev A and ELA/2 Rev A.
  - 3) The materials utilised in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse;
  - 4) Before beginning the development, the developer must provide the local planning authority with a report for the management of the construction of the development, which sets out the proposed development hours of operation and how any adverse impact of noise, dust, vibration and traffic on adjoining owners or occupiers will be mitigated. The development shall be carried out in accordance with the submitted details;
  - 5) The developer shall notify the local planning authority of the completion of the development, in writing, as soon as reasonably practicable after completion including the name of the developer, the address of the dwellinghouse and the date of completion;
  - 6) The Juliet railings in the third floor rear bedroom window, as shown on the approved plans, shall be maintained for the lifetime of the development and the flat roof shall not at any point be utilised as a roof terrace.

## **Procedural Matters**

2. The appeal proposal is submitted as a prior approval under Schedule 2, Part 1, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GDPO). Despite this the reason for refusal references noncompliance with five policies within the Epping Forest District Local Plan (1998) and Alterations (2006) (2008) and a further four policies within the Epping Forest District Local Plan Submission Version 2017. The Council have submitted no evidence of assessment as to the relevance of the policies stated in the refusal reason. The starting point for determination is not the Local Plan, as set out in S38(6) of the Planning and Compulsory Purchase Act 2004, as it would be with a regular householder application.
3. The proposal is to be assessed a prior approval application as set out within the parameters of the GDPO. As a prior approval there are two stages to assessment – the first being eligibility. The Council conclude that the proposal is eligible to be considered under the prior approval process and have not raised any conflict with the conditions set out in the GDPO. I have no evidence before me to conclude differently so, in that regard, the focus of this appeal will be the second stage of assessment – the prior approval merits assessment.

## **Main Issue**

4. The main issue whether the proposal would be permitted development under Schedule 2, Part 1, Class AA of the GDPO with specific regard to the conditions set out in AA.2 (3)(a) (i) to (iv) inclusive.

## **Reasons**

5. The GDPO is clear, within this type of assessment, that before beginning the development the developer must apply to the local planning authority for prior approval as to the matters within the grounds of assessment which are listed within AA.2 (3)(a)(i) to (iv) inclusive. The Council's report acknowledges these four grounds of assessment and addresses each one clearly.
6. 3(a)(i) of the GDPO relates to impact on the amenity of any adjoining premises including overlooking, privacy and the loss of light. The plans are clear that this is not a full terrace and is designed with a Juliet balcony barrier to the rear doors. The rear gardens of neighbouring properties are noted as being relatively short so, when combined with the recessed position of the proposal, direct overlooking will be limited. I find no reason to conclude differently to the Council on this matter nor do I have any evidence before me to suggest there would be any loss of privacy given this limited direct overlooking. The appeal site is at the Southern end of the row of properties but, given the proposed set back, I do not find that there would be overshadowing or loss of light as a result of the additional storey which would warrant refusal.
7. 3(a)(ii) relates to 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. Due to the location of the appeal site, on a corner plot with both The Cedars and Brook Road, both (aa) and (bb) fall to be assessed.
8. The appeal site is prominent in its location and is acknowledged to be an already substantial building. The additional storey matches the design of the

existing front elevation which I find would assist the proposal not to look at odds or out of place when viewed from the front elevation. The additional storey would add 2.2 metres to the building, however, no. 3 The Cedars is already slightly taller than the appeal site. The flank elevation, which fronts Brook Road, is noted as being set back from the road frontage and I note that house on the opposite corner of the junction is more prominent than the appeal site as a result of it being much closer to the road. The appeal site is afforded a level of screening by trees and shrubs to the South and West.

9. The conditions set out in AA.2(2)(a) and (b) of the GDPO require the materials to be of a similar appearance to those used in the construction of the exterior of the existing dwelling house and that the development must not include a window in any wall or roof slope forming a side elevation. I find the proposal, with a lack of detailing in the flank elevation, is consistent with the conditions set out in the GDPO. There would be little option to add detailing and in this case I find that anything but the proposal as submitted, particularly for the flank elevation, would draw unnecessary attention to the additional storey when taking into account the existing, plain, flank elevation.
10. Notwithstanding the Council's concern regarding visual prominence I find that the GDPO wording suggests a relatively narrow assessment as to the external appearance of the dwellinghouse itself, including the design and architectural features. Overall taking into account the design and architectural features from the front and side elevations I find the proposal to be acceptable in terms of external appearance.
11. 3(a)(iii) relates to air traffic and defence asset impacts of the development. No assets of this nature are impacted. 3(a)(iv) is not, in this case, relevant as there are no protected views identified in the Directions Relating to Protected Vistas dated 15<sup>th</sup> March 2012 issued by the Secretary of State.
12. AA.3 (12) does require the local planning authority to (a) take into account any representations made to them and (b) have regard to the National Planning Policy Framework 2019 (the Framework) in so far as relevant to the subject matter of the prior approval, as if the application were a planning application. The Council appear to have had limited regard for the Framework other than brief reference in the decision notice, however, based on the evidence before me I find the proposal consistent with its general objectives.
13. The Council do not raise any further issues with compliance with the GDPO within their submissions. I find that the proposal would comply with the conditions, limitations and restrictions specified in paragraphs AA.1 and AA.2 of the GDPO and that prior approval should be granted subject to conditions.

### **Other Matters**

14. There are a number of objections to the proposal. Comments in respect of potential use as a house in multiple occupation are noted, however, the GDPO conditions are clear that following the development the dwellinghouse must be used as a dwellinghouse within the meaning of Class C3 of the Use Classes Order and for no other purposes, except to the extent that the other purpose is ancillary to the primary use as a dwellinghouse. Use Class C3, as acknowledged by the Council, can include an element of multiple occupancy. The number of properties owned by the applicant are not matters which fall to be considered within this appeal. I have no evidence before me to suggest the

proposal would have a negative impact upon parking nor place strain on the local school as it would still be a residential unit within Use Class C3. Such matters are outside the scope of this assessment.

15. The elevational details, form and finishes are consistent with the existing dwellinghouse as is required under the GDPO as discussed earlier within this decision letter. Fear of a precedent is not sufficient to warrant refusal, each case must be assessed on its own merits. As outlined within the procedural matters at the start of this decision letter the proposal falls to be considered against the GDPO. It is not a Local Plan based assessment and this is acknowledged in the Council's neighbour notification letter from 13 October 2020. I note comments regarding lack of notification of the application, however, these are administration matters which are outside the scope of this appeal.
16. Visual impact upon Epping Forest and visual impact upon the landscape are not matters which fall to be considered within the GDPO assessment. It is a requirement of the GDPO that details of the management of the construction are submitted prior to commencement to protect the amenity of neighbouring properties during the construction phase. This, for the avoidance of doubt, can be applied as a condition. Matters relating to structural integrity are controlled, and secured, by Building Regulations and matters relating to party walls are private matters. Notwithstanding this the GDPO does allow for engineering works within the curtilage of the dwellinghouse to strengthen existing walls or existing foundations.

### **Conditions**

17. The Council have not suggested any conditions in the event this appeal is allowed. The GDPO states that prior approval may be granted unconditionally or subject to conditions reasonably relates to the subject matter of the prior approval. I have attached conditions for the avoidance of doubt for all interested and involved parties. A condition requiring completion of the development within three years to comply with the condition set out in AA.2(3)(c). A plan condition is required to define the development and a condition regarding materials is required to comply with the condition set out in AA.2(2)(a).
18. A condition requiring the developer to provide the local authority with a report for the management of the construction of the development is required to comply with the condition set out in AA.2(3)(b) and a condition requiring notifying the local authority of the completion of the development required to comply with AA.2(3)(d) and (e). I have applied a condition specifically in relation to installation of railings to the Juliet balcony, and use of the flat roof area, to protect adjoining properties from overlooking.

### **Conclusion**

19. For the reasons outlined above, and taking account all other matters raised, I conclude that the appeal should be allowed subject to conditions.

*Eleni Randle*

INSPECTOR