



Appeal Decision

Site visit made on 6 April 2021

by **Guy Davies BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 April 2021

Appeal Ref: APP/T1410/W/20/3263486

Seaforth Court, 91 Victoria Drive, Eastbourne BN20 8LA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant prior approval required under Article 3(1) and Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Seaforth Court Freehold Ltd against the decision of Eastbourne Borough Council.
 - The application 200593, dated 14 August 2020, was refused by notice dated 8 October 2020.
 - The development proposed is for a two-storey roof extension.
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for a two-storey roof extension at Seaforth Court, 91 Victoria Drive, Eastbourne, BN20 8LA in accordance with the application 200593, dated 14 August 2020, and the plans submitted with it.

Preliminary Matters

2. The description of the development used in the banner heading above has been taken from the planning statement referred to in the prior approval application form.
3. The proposal is described on the Council's decision notice as '*Prior approval under Schedule 2, Part 20, Class A of the Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020 for construction of two additional floors to create 4 self-contained dwellings*'. While these Regulations inserted Part 20 into Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the '2015 Order'), in lawful terms the proposal seeks prior approval under the 2015 Order rather than the quoted Regulations. As both main parties addressed the relevant wording in Part 20, Class A of the 2015 Order I am satisfied that the description used by the Council does not prejudice either of their cases.
4. Since the Council's decision, The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 4) Order 2020 has amended Part 20, Class A of the 2015 Order. However, transitional arrangements in the amending Order mean that its provisions do not apply to prior approval applications submitted before 30 December 2020. The amendments are therefore not applicable to this appeal.

5. Paragraph B (15) of Part 20, Class A of the 2015 Order requires the local planning authority to take into account any representations made to them as a result of consultation, and to have regard to the National Planning Policy Framework (the 'Framework'), so far as relevant to the subject matter of the prior approval, as if the application were a planning application. My determination of this appeal has been made on the same basis.
6. The principle of the development is established by the 2015 Order. The prior approval provisions do not require regard to be had to the development plan. I have therefore only had regard to the policies of the development plan in so far as they are material to the matters for which prior approval is sought.

Main Issue

7. Paragraph A.2 of Part 20, Class A of the 2015 Order requires prior approval to be sought for the matters listed in that paragraph. Having assessed the application, the Council is content that the development meets all of the matters other than that relating to the external appearance of the building. I have no evidence to disagree with that assessment and have focused on the matter in dispute.
8. The main issue is therefore whether the development would accord with the provisions of Part 20, Class A of the 2015 Order with regard to the external appearance of the building.

Reasons

9. The existing building is a modern, 3 storey block of flats with brick elevations and a flat roof. The front elevation is part tile hung and there are rendered panels in the centre of the front and side elevations giving a vertical emphasis. Fenestration is white coloured, square or rectangular large pane windows and doors.
10. In terms of the external appearance of the proposed building, the fourth floor from the ground would match the front elevation of the building with brick corners, tile hanging, and with windows of the same size, design and alignment as those in the existing building. The side and rear elevations would differ by using tile hanging rather than plain brick. The fifth, top floor would be contained in a mansard roof finished in dark grey zinc cladding with white casement windows in arched dormers. This form of roof is similar to that granted planning permission on a previous application¹, the decision for which is still extant.
11. Having regard to the similar design and materials of the fourth floor when compared to the existing building, albeit with a greater use of tile hanging rather than brick, and the similarity of the mansard roof design with the scheme previously permitted by the Council, I consider the external appearance of the proposed building would be acceptable, when taken by itself.
12. The principal objection of the Council is less about the external appearance of the building per se, but rather with the additional height and bulk making the resultant building appear as a dominant and intrusive feature in the street scene, which is characterised by mainly two storey, family houses with pitched roofs. The Council makes reference to paragraphs 118 and 127 of the

¹ 190537, granted 22 August 2019.

- Framework which support upward extensions where the development would be consistent with the prevailing height and form of neighbouring properties and the overall street scene, and is sympathetic to local character and history, including the surrounding built environment, while not preventing or discouraging appropriate innovation or change (such as increased densities).
13. For the purposes of assessing whether prior approval should be granted, I consider the assessment of the matter in dispute is limited to the external appearance of the building rather than its effect on the wider area. The Framework is only relevant so far as it relates to the subject matter of the prior approval, in this case the external appearance of the building.
 14. Even if a wider interpretation of the matter to be considered under prior approval is taken, the principle of upward extension of up to 2 storeys is established by the permitted development right in Part 20, Class A of the 2015 Order, and the matters requiring prior approval need to be interpreted in the context of that principle. The Framework and indeed development plan policies should not be applied so as to frustrate the purpose of the grant of permitted development rights through the 2015 Order in the first place.
 15. I understand the Council's concern that the increased height and bulk of the proposed building may appear incongruous in the street scene along Victoria Drive and Broomfield Street, but the permitted development right is expressly intended to allow a building to be extended up to 2 storeys. While this may result in a somewhat divergent relationship between buildings that is an inevitable consequence of the permitted development right. Acceptance of such divergence is implicit in the introduction of the permitted development right, which supports the Government's objective of significantly boosting the supply of homes². A difference of up to 2 storeys from the prevailing height and form of neighbouring properties has therefore to be interpreted as not inconsistent with the overall street scene for the purposes of this prior approval.
 16. I conclude that the external appearance of the proposed building would be acceptable when viewed by itself, and for the purposes of Part 20, Class A of the 2015 Order the increase in height and bulk would not be inconsistent with the overall street scene having regard to the support for additional homes and increased densities in the Framework. Within the context of that permitted development right, the external appearance of the building would also accord with policies B2 and D10a of the Eastbourne Core Strategy 2013 and saved policy UHT1 of the Eastbourne Borough Plan 2003, which seek good quality design.

Other Matters

17. A neighbour has raised concern at the position of the cycle rack and dust bins shown on the submitted plans and possible encroachment and/or damage to the existing slope. The permission granted under Article 3(1) and Schedule 2, Part 20, Class A of the 2015 Order does not extend to any development outside the application site and therefore would not support the cycle racks or area for bins storage from encroaching over the boundary. Work to land near a boundary that might result in subsidence is subject to separate legislation under the Party Wall etc Act 1996 and is a matter for resolution between the respective landowners.

² Paragraph 59 of the National Planning Policy Framework.

Conditions

18. Planning permission granted for development under Article 3(1) and Schedule 2, Part 20, Class A of the 2015 Order is subject to conditions set out in paragraph A.2 of that Class which specifies:

- The development must be completed within a period of 3 years starting with the date of this decision
- 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 occupiers of the building and adjoining owners or occupiers will be mitigated
- The developer must notify the local planning authority of the completion of the development as soon as practicable after completion in writing including the name of the developer, address or location of the development and date of completion
- Each new dwellinghouse is to remain in use as a dwellinghouse within the meaning of Class C3 of the Schedule to the Town and Country (Use Classes) Order 1987 (as amended) and for no other purpose, except to the extent that the other purpose is ancillary to the primary use as a dwellinghouse.

Conclusion

19. For the reasons given above I conclude that the appeal should be allowed.

Guy Davies

INSPECTOR