



Appeal Decision

Site visit made on 9 June 2021

by J Ayres BA Hons, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 06 JULY 2021

Appeal Ref: APP/Q1445/W/21/3267608

Kings Gate, 111 The Drive, Hove BN3 6FU

- 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 Anstone Properties Ltd against the decision of Brighton & Hove City Council.
 - The application Ref BH2020/03170, dated 2 November 2020, was refused by notice dated 11 December 2020.
 - The development proposed is Prior Approval for the erection of an additional two storeys to provide 10no self contained flats (C3).
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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 Prior Approval for the erection of an additional two storeys to provide 10no self contained flats (C3) at Kings Gate, 111 The Drive, Hove BN3 6FU in accordance with the application BH2020/03170, dated 2 November 2020, and the plans submitted with it.

Preliminary Matters

2. 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.
3. 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.
4. 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

5. 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 reasons based on the evidence to disagree with that assessment.
6. 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

7. The application site lies to the south of Old Shoreham Road, at the junction of Old Shoreham Road and The Drive, Hove. It comprises a four storey purpose built block of residential flats which fronts The Drive and Old Shoreham Road. The building comprises red brick with brown hanging tile details, projecting bays, UPVC windows and a flat roof. A set of steps, accessible off The Drive, lead to the front entrance.
8. The proposal would result in an additional two storeys being erected on top of the appeal property. The first additional storey would be built directly above the existing storey and appear as a continuation to the building. The proposed materials would match the brickwork and tile hanging of the floors below. The fenestration pattern would align with and reflect the existing arrangement of the building.
9. The second additional storey would sit above this and be set in at either end, the materials would be lighter in detail to contrast with the existing tile hanging and face brickwork of the floors below. The proposed contrasting materials would allow the second storey to visually appear set back from the main building.
10. Having regard to the similar design and materials of the first additional storey when compared to the existing building, albeit with a greater use of tile hanging rather than brick, and the set back of the top floor with a variation in design to create interest and create a subservient element, I consider the external appearance of the proposed building would be acceptable, when taken by itself.
11. I note that an additional storey was permitted to facilitate an additional six flats under BH2014/00075 and this has been built, which in the Council's view extends the building to its limits. The building is a prominent building because of the additional storey previously constructed. However, that storey utilised materials in keeping with the building, which would be replicated within the appeal scheme. The upper storey would then be purposefully different as described above. I am satisfied that whilst the resulting building would be a significant structure, with a sympathetic approach to materials and massing the additional storeys would sit comfortably within the building itself and would not appear as an overdevelopment of the building.
12. The Council has put in their evidence that the increase in the height of the building would be harmful to the wider area, harm which was also identified

previously by an Inspector determining an appeal on the site¹. To be clear, the previous appeal decision was for a refusal of planning permission, and in that case the Inspector was bound to assess whether the proposal would comply with the policies in the development plan. This appeal relates to an application made under Paragraph A.2 of Part 20, Class A of the 2015 Order, and therefore it is necessary for me to approach the decision in accordance with the 2015 Order, which I have made clear in my preliminary matters.

13. The Council makes reference to paragraphs 118 and 127 of the 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). It is therefore put to me that the wider character should be assessed.
14. When reading Part 20, Class A.2(1)(e) of the 2015 Order it is specific in referring to the external appearance of the building. I note that the 2015 Order does not permit an assessment of the impact that such external appearance may have, which may give one greater scope to consider the effect or impact of the external appearance of the building on the wider area. Therefore, in 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.
15. 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.
16. Whilst I have acknowledge that the proposal would result in a building of significant height being included within the street scene, which would be noticeably larger than its neighbours, it is unavoidable that in some circumstances development permitted by the 2015 Order will result in more substantial variations to the wider area. The introduction of the permitted development right supports the Government's objective of significantly boosting the supply of homes as set out in paragraph 59 of the Framework.
17. 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 QD14 of the Brighton and Hove Local Plan and CP12 of the Brighton and Hove City Plan Part One which amongst other things require that development is well designed in relation to the property and uses materials sympathetic to the parent building.

¹ APP/Q1445/W/20/3255322

Other Matters

18. I note that no parking is proposed for the development. However, the evidence suggests that there is capacity to accommodate additional parking within the Controlled Parking Zone. The top floor of the building is of recent construction (2014/15) and entirely in residential use, so is considered unlikely to contain asbestos or other contaminants. The proposal would not involve breaking ground, so no contamination risks would arise from the use of the wider site or neighbouring uses. The site is situated within National Flood Zone 1, which represents the lowest risk of flood.
19. The applicant has provided floor plans and elevational drawings which show that all habitable room would be served by windows capable of providing adequate natural light. There are no notable obstructions (buildings, trees etc) surrounding the site of a height which would impinge on natural light provision.
20. The side elevation of no. 70 Old Shoreham Road facing Kings Gate does not house any windows serving primary habitable rooms which would be impacted by the proposed increase in height. North facing windows at 107-109 The Drive, due to the positioning to the south of Kings Gate and by reason of the degree of separation, would not suffer any significant loss of light or overshadowing, nor would the existing outlook be compromised.

Conditions

21. 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

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

J Ayres

INSPECTOR