



Appeal Decision

Site visit made on 16 June 2021

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 July 2021

Appeal Ref: APP/Q1445/W/21/3268238

Shanklin Court, 132 Hangleton Road, Hove BN3 7SB

- 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 Mr Jeremy Davies against the decision of Brighton & Hove City Council.
 - The application Ref BH2020/02965, dated 14 October 2020, was refused by notice dated 24 December 2020.
 - The development proposed is the construction of two additional storeys on the existing detached block of flats to create eight new flats.
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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 the construction of two additional storeys on the existing detached block of flats to create eight new flats at Shanklin Court, 132 Hangleton Road, Hove BN3 7SB in accordance with the terms of the application, Ref BH2020/02965, dated 14 October 2020, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The description of development used in the banner heading has been taken from the covering letter submitted with the application. The Council's decision notice uses a different wording but there is nothing in writing to indicate that this has been agreed with the appellant.
3. The decision notice header states that this is a determination under Schedule 2, Part 3, Class O of the Order, whereas in fact the application was submitted under Schedule 2, Part 20, Class A which permits new dwellinghouses on detached blocks of flats. It is evident from the reason for refusal that the Council made its decision against the correct regulations and therefore the error on the decision notice does not affect my determination of the appeal.
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 can therefore only have regard to the policies of the development plan insofar as they are material to the matters for which prior approval is sought. I note, however, that the Council has not cited any policies, neither have any been provided to assist my consideration of the appeal.

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 paragraph¹. Having assessed the application, the Council is content that the development is acceptable in all respects, except in relation to the external appearance of the building. Based on the information before me, I have no reason to take a different view.
8. I shall focus on the main issue in dispute which is whether the development would be acceptable in relation to the external appearance of the building. Issues raised by interested parties will be addressed later in my decision.

Reasons

9. Shanklin Court is prominently positioned on the corner of Hangleton Way and Hangleton Gardens. It comprises a purpose-built eight-storey block of flats, with garages at lower ground floor level and seven storeys of residential accommodation above that, below a flat roof. The topmost storey is set back within the roof of the main building, giving this floor a smaller overall footprint.
10. The proposal is to continue this smaller footprint upwards by the construction of two further storeys. The Council contends that the resultant building would be visually unbalanced and top heavy. However, in my view the design would read as a continuation of the existing form and massing, with the three uppermost storeys being stepped back to create a secondary, subservient block.
11. The new storeys would be constructed using materials to match the host building, comprising multi-stock brick and white boarding. The windows would be white framed to match those existing, some with decorative panels beneath, similar to the storeys below. The general positioning of windows would align with those on lower floors, and this would help to maintain visual continuity. Insofar as there would be any minor differences in the casement arrangement or opening method, these would not stand out to the casual observer or passer-by. The Council has objected to the proposal for lintels separating each floor but these would not detract from the overall appearance of the building.

¹ These matters are: (a) transport and highways impacts of the development; (b) air traffic and defence asset impacts of the development; (c) contamination risks in relation to the building; (d) flooding risks in relation to the building; (e) the external appearance of the building; (f) the provision of adequate natural light in all habitable rooms of the new dwellinghouses; (g) impact on the amenity of the existing building and neighbouring premises including overlooking, privacy and the loss of light; and (h) whether because of the siting of the building, the development will impact on a protected view identified in the Directions Relating to Protected Vistas dated 15 March 2012 issued by the Secretary of State.

12. I note that the appeal submission includes 3D images which were not available to the local planning authority at the application stage. These images confirm my view that the new storeys would be assimilated into the building without appearing incongruous, as is being alleged.
13. Residents have raised concerns over the visual impact of the extra building height, including in views from the South Downs. For the purposes of my consideration of whether prior approval should be granted, the assessment is limited to the external appearance of the building rather than its effect on the wider area. The principle of upward extension of up to two 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. Inasmuch as the proposal would transform an eight-storey building into a ten-storey one, this has to be interpreted as not inconsistent with the street scene for the purposes of this prior approval.
14. I conclude that the external appearance of the building would be acceptable when viewed by itself. There would be no conflict with the Framework insofar as it seeks good design and the creation of high quality buildings and places.

Other Matters

15. The site benefits from six garages serving twenty-eight flats. The plans show three further parking spaces for the eight flats being proposed. This level of provision accords with the Council's maximum parking standards. Taking into account the limited trip generation from a scheme of this modest scale, the proposed cycle parking provision and the opportunities for future occupiers to use public transport, I concur with the Highway Authority that a refusal of prior approval on transport and highways impacts would not be justified. The Framework makes clear at paragraph 109 that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. The proposal falls short of meeting this threshold.
16. The new flats would have windows facing towards Ryde Court and Sandown Court, and also dwellings on Hangleton Way and Hangleton Gardens. However, the views from those windows would be substantively similar to those already available from existing flats. There would be no additional overlooking or material reduction in privacy. Loss of view for the neighbours is not a relevant matter for consideration as they would maintain an acceptable outlook.
17. The application is accompanied by a Daylight, Sunlight and Overshadowing Assessment, carried out in accordance with BRE guidance², which concludes that the impact on daylight and sunlight for affected windows in neighbouring properties would be negligible. The report also concludes that overshadowing of gardens and outdoor amenity space would be insignificant. The Council does not contest the findings of the assessment, and I have not been presented with any technical evidence to lead me to a different conclusion.
18. Residents and local councillors raise various other concerns in relation to matters such as compliance with the Building Regulations, refuse and recycling storage, mobile phone and other plant situated on the roof, structural and subsidence issues, previous roof repairs funded by residents, noise and

² Building Research Establishment (BRE) "Site layout planning for daylight and sunlight" Second Edition (2011)

disruption, overlooking of the nearby school, property values, housing need and disabled access. Construction impacts are addressed within the regulations by requiring the developer to submit a report for the management of the construction of the development. However, none of the other issues can be addressed under this prior approval application. Only those matters set out in Paragraph A.2 of the regulations can be considered.

19. Fire safety impacts relating to the external wall construction of the existing building were introduced as a prior approval matter by the Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 4) Order 2020. However, transitional arrangements mean that they can only be considered under applications submitted after 30 December 2020. The application before me was submitted before that date. Therefore, fire safety is not a matter I can take into account when determining this appeal.
20. Paragraph A.1(d) of Part 20, Class A of the 2015 Order states that development is not permitted if the additional storeys are constructed other than on the principal part of the building. Although one interested party has stated that the top floor was added in the 1970s, this would not disqualify the proposal as permitted development, as I still consider it to be a principal part of the building.

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 standard conditions set out in Paragraph A.2 of that Class. Paragraph B.(18) of Schedule 2, Part 20, Class A stipulates that other conditions may be imposed where they are reasonably related to the subject matter of the prior approval.
22. The Council's suggested condition in respect of materials is related to the external appearance of the building and I consider it to be reasonable and necessary to secure harmonious architectural treatment. I have also attached a condition to ensure provision of the new parking spaces prior to first occupation of the development, with suitable construction to prevent flooding on the highway. To encourage use of sustainable transport modes, a further condition is required to ensure the provision of secure and covered cycle storage in accordance with details which shall be first submitted to and approved in writing by the local planning authority.

Conclusion

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

Robert Parker

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development must be completed within a period of 3 years starting with the date prior approval is granted.
- 2) 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.
- 3) The developer must notify the local planning authority of the completion of the development as soon as reasonably practicable after completion in writing including the name of the developer, address or location of the development and date of completion.
- 4) 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 Planning (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.
- 5) No development other than demolition shall take place until samples of all materials to be used in the construction of the external surfaces of the development have been submitted to and approved in writing by the local planning authority, including: a) samples of all brick, boarding and lintels; b) product specifications from the supplier of the proposed windows; and c) a 1:20 scale plan and cross section of the green roof, including depth of substrate, the seed mix, and a maintenance and irrigation programme. Development shall be carried out in accordance with the approved details.
- 6) The development shall not be occupied until the new parking spaces shown on the approved plans have been laid out and properly consolidated and surfaced, with provision made to ensure that surface water does not drain onto the public highway. The parking spaces shall be retained thereafter for use in connection with the development.
- 7) Notwithstanding the submitted details, prior to the first occupation of the development details of secure and covered cycle parking facilities for the occupants of, and visitors to, the development shall have been submitted to and approved in writing by the local planning authority. The approved facilities shall be fully implemented and made available for use prior to the first occupation of the development and shall thereafter be retained for use at all times.

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