



Appeal Decision

Site Visit made on 12 July 2021

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 August 2021

Appeal Ref: APP/E5900/W/21/3266679

Park View Court, 215 Devons Road, London E3 3AN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 20, Class AA, AA.2.(1) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr S Church (Cliveden Land Ltd) against the decision of the Council of the London Borough of Tower Hamlets.
 - The application Ref PA/20/02189, dated 14 October 2020, was refused by notice dated 24 December 2020.
 - The development proposed is described as, "Proposed roof extension to provide for 5x2 bed apartments, 1x1 bed apartment on one additional floor to the building."
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Under Article 3(1) and Class AA of Part 20 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) planning permission is granted for new dwellinghouses on detached buildings in commercial or mixed use, subject to limitations and conditions. Class AA has been amended by The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 4) Order 2020. However, that amendment does not take effect where a prior approval application has been submitted before 30 December 2020. Therefore, that amendment does not apply to this appeal.
3. Paragraph AA.2.(1) of Class AA sets out that developers must apply for prior approval for a range of matters. The Council refused to grant prior approval as to the provision of adequate natural light in all habitable rooms of the new dwellinghouses (AA.2.(f)). At the appeal stage, the appellant submitted a supplementary report (David Maycox & Co (DM&Co) (January 2021)) relating to AA.2.(f). The appeal procedure provided an opportunity for the parties to comment on that report. I have taken account of all the evidence submitted in relation to AA.2.(f) in my determination of this appeal.
4. Additionally, some of the occupiers of Park View Court raised matters relating to the impact of the proposal on the amenity of the existing building, including overlooking, privacy and the loss of light (AA.2.(g)). The appeal procedure provided an opportunity for the main parties to comment on these matters. I have taken account of all the evidence submitted in relation to AA.2.(g) in my determination of this appeal.

5. The appellant's Final Comments included a new Daylight and Sunlight Report. As this constituted new material evidence, the Council and the occupiers of Flats 47, 48 and 49 of Park View Court were provided with an opportunity to comment on that report. I have taken the comments received into account in my determination of this appeal.

Main Issues

6. The main issues are the effect of the appeal proposal with respect to:
- the impact on the amenity of the existing building, including overlooking, privacy and the loss of light (AA.2.(g)); and
 - the provision of adequate natural light in all habitable rooms of the new dwellinghouses (AA.2.(f)).

Reasons

Amenity of the existing building (AA.2.(g))

7. The appeal site comprises 2 connected residential blocks, containing a number of flats. The proposal for a single-storey extension to the topmost storey of the exiting main block would provide 6 additional residential units.
8. Flats 47 and 48 at Park View Court each have a balcony. The proposal would incorporate new balconies, which would oversail the balconies of Flats 47 and 48, closing the existing lightwells above.
9. A report compiled by DM&Co (June 2021) states that the proposal is Building Research Establishment (BRE) compliant regarding sunlight availability to the balcony at Flat 48. This assessment has been made in accordance with Appendix G of the BRE's publication 'Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice'.
10. Nevertheless, that report does not provide any analysis with respect to the proposal's effect on daylight to that balcony. I attended Flat 48 on my site visit and I observed that the lightwell above the balcony materially contributes to the amount of daylight received to that balcony. In the absence of convincing evidence to demonstrate otherwise, whilst the proposal's effect on sunlight may not be significant, in my view completely covering that lightwell would materially affect the level of daylight received to that balcony. Thus, I find that this aspect of the proposal would result in an unacceptable loss of daylight to the balcony of Flat 48. Although I did not attend Flat 47, based on the plans and the evidence before me, the circumstances are sufficiently similar for me to come to the same conclusion.
11. Furthermore, the DM&Co report concedes that the existing Vertical Sky Component (VSC) for each of the bedroom windows adjacent to the balcony of Flat 48 currently fail to meet the recommended criteria under the relevant BRE guidelines. The report finds that, under the proposal, the VSC for the windows of the master bedroom of Flat 48 would be 18%, at most, whereas 27% is stated as denoting adequacy in relation to the VSC. Although the DM&Co report disputes some of the figures presented in the Gothick Partners Report (2021), the resulting percentage of light lost to those windows is stated in the DM&Co report as 25%, as a minimum.

12. The DM&Co report highlights that the guidelines need to be applied sensibly and flexibly, and the appellant has referred to the dense urban context in which the building is located. I have taken these factors into account, but considering that the master bedroom at Flat 48 is already suffering from poor levels of light, a reduction in light of approximately 25% would be unacceptably harmful to amenity. Similarly, I note that the percentage of light lost under the proposal to the windows in the master bedroom for Flat 47 is given in the DM&Co report as approximately 32% for one window and approximately 30% for another window, with a resulting VSC stated as approximately 13% and approximately 12% for each window (set against 27%, as denoting adequacy), which in my view would also not be acceptable in terms of amenity.
13. The DM&Co report also concedes that the proposal would fail to meet the BRE's recommended values during the annual probable sunlight hours (APSH), although during the winter months the recommended values would be met. The report states that the APSH would be reduced by greater than 0.8 times its former value at the windows serving the bedrooms of Flats 47 and 48. Again, whilst the DM&Co report disputes some of the figures present in the Gothick Partners Report, the DM&Co report states that the percentage loss in relation to the APSH would be at least 32% for the master bedroom of Flat 48 and at least 42% for the master bedroom of Flat 47.
14. The DM&Co report quotes the BRE guidelines which states that bedrooms are less important and that the guidelines need to be applied sensibly and flexibly. This is recognised, but in this case the degree of the loss of sunlight demonstrated to the master bedrooms of Flats 47 and 48 would be significant, and therefore unacceptably harmful to amenity.
15. Another balcony and a new flat would be positioned above Flat 49, via the proposal. The DM&Co report states that, with respect to sunlight availability, the proposed development would be to the north of the terrace at Flat 49, and therefore the terrace would not be affected. Considering the path of the sun, this conclusion is reasonable. Also, as that terrace is quite wide and deep, the proposal would be unlikely to materially affect the levels of daylight received to it. As the new balcony would not oversail the terrace and the new flat would be set-back behind that balcony, the level of light received to the living room at Flat 49 would not be materially affected by the proposal.
16. The DM&Co report includes analysis relating to the window serving the smaller bedroom of Flat 49 (with the window referenced as 'W84'). However, no analysis has been provided as to the effect of the proposal on the master bedroom at Flat 49. I observed on my site visit that there are 2 walls which protrude beyond the window that serves the master bedroom, which reduce the light received to it. The proposed development would be situated above the longer of the 2 protruding walls and accordingly it would have the potential to reduce the light received to the window. Considering the already poor levels of light received to that window, and in the absence of evidence to indicate otherwise, I can only conclude that the proposal would have a materially detrimental effect on the light received to that window. Thus, based on the evidence before me, I find that the proposal would likely have an unacceptable effect on the amenity of Flat 49, with respect to loss of light.
17. Although the DM&Co report finds that the proposal complies with the BRE guidelines in terms of the 'No Sky Line' assessment, little evidence has been

provided to demonstrate how this finding would overcome the negative effects identified above.

18. With respect to any potential overlooking and privacy impacts, I note that as Park View Court has a courtyard-centred layout, a significant degree of overlooking already exists. In this context, the new balconies would be located directly above the existing balconies of Flats 47 and 48. As such, the increase in the level of overlooking and the likely privacy impacts would not be significant in relation to those flats.
19. Flat 49 has a fairly large terrace area, and although the proposed new balcony would not oversail the terrace, a potential for overlooking the terrace from the new balcony would be created. In this respect, as it is quite a deep terrace which would allow for direct views into it from above, the potential for overlooking would be quite pronounced. Nevertheless, I observed that another terrace is situated adjacent to Flat 49, and that inter-visibility exists between the terrace at Flat 49 and the balcony at Flat 48. Taking this context into account, I consider that the increase in the level of overlooking and the likely privacy impacts with respect to Flat 49 would not be materially harmful.
20. Whilst there would be the potential for overlooking into the window of the master bedroom at Flat 49 from the living room windows of the flat which would be placed above Flat 49 via the proposal, any views would be from oblique angles. As such, the level of overlooking and the potential loss of privacy would not be materially harmful in that respect.
21. Although I have found that the proposal would not result in harmful impacts with respect to overlooking and privacy, this would not off-set the harm already identified with respect to loss of light. Therefore, taking all of the above into account, I find that proposal would have an unacceptable impact on the amenity of the existing building, including loss of light (AA.2.(g)).

Natural light in all habitable rooms (AA.2.(f))

22. I have had regard to the submitted DM&Co report (January 2021). The new flats would be situated on the top floor of the building. The plans show that the new flats would have a sufficient number of windows, with the main living areas each having a particularly generously-sized window. As such, I have no reason to doubt the conclusions of that report, that the average daylight factor to all the habitable rooms of the proposed flats would be very substantially above the values recommended by the BRE and the relevant British Standard. Therefore, I find that the proposal would have an acceptable effect with respect to the provision of adequate natural light in all habitable rooms of the new dwellinghouses (AA.2.(f)).

Conclusion

23. Although I have found that the proposal would comply with AA.2.(f) of Class AA of Part 20 of Schedule 2 of the GPDO, as the proposal would not comply with AA.2.(g), prior approval cannot be given for the proposal. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

Alexander O'Doherty

INSPECTOR