

Appeal Decision

Site Visit made on 8 June 2021 by S Witherley CIHCM MRTPI

Decision by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 August 2021

Appeal Ref: APP/E5900/D/21/3271042

16 Turner Street, London E1 2AS

- 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, Schedule 2, Part 1, Class AA of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
 - The appeal is made by Mr Tahir Akbar against the decision of London Borough of Tower Hamlets.
 - The application Ref PA/21/00205, dated 6 January 2021, was refused by notice dated 3 March 2021.
 - The development proposed is notification of prior approval under schedule 2, part 1, Class AA Town And Country Planning (general permitted development order) 2020 for the construction of one additional storey immediately above the topmost storey of the dwellinghouse, which would extend the existing eaves height by 2.7m, for which the proposed eaves height would be 10.9m, and for which the maximum height would be 12.8m.
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Decision

1. The appeal is allowed and planning permission is granted for notification of prior approval under schedule 2, part 1, Class AA Town And Country Planning (general permitted development order) 2020 for the construction of one additional storey immediately above the topmost storey of the dwellinghouse, which would extend the existing eaves height by 2.7m, for which the proposed eaves height would be 10.9m, and for which the maximum height would be 12.8m, at 16 Turner Street, London, E1 2AS, in accordance with the terms of the application, Ref PA/21/00205, dated 6 January 2021, and the plans submitted with it.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Preliminary Matters

3. The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) as amended, was amended on 31 August 2020 to introduce Class AA to Part 1 of Schedule 2, setting out permitted development rights for development consisting of works for the construction of up to two additional storeys on an existing dwellinghouse that consists of two or more storeys, or for one additional storey on an existing single storey dwellinghouse, together with any reasonably necessary engineering operations.

4. As detailed within the GPDO¹, development under Class AA is permitted subject to the condition that before beginning the development, the developer must apply to the Local Planning Authority for prior approval. The Local Planning Authority may refuse the application where it considers that the proposal does not comply with the limitations or restrictions that are applicable to such permitted development.
5. The provisions of the GPDO require the Local Planning Authority to assess the development proposed solely on the basis of a limited number of considerations.
6. Development plan policies and the National Planning Policy Framework (the Framework) can be considered relevant in prior approval cases, but only insofar as they relate to the development and prior approval matters. I have proceeded on this basis.
7. The Government published on 20 July 2021 a revised version of the National Planning Policy Framework (the Framework). Accordingly, and in light of the reference made to the previous iteration of the Framework within the submitted evidence, the parties have been provided with a further opportunity to make submissions in respect of the publication.
8. There are separate appeals at the neighbouring properties No. 12 and No. 14 Turner Street. These seek the same type of development under the Prior Approval process and have been refused by the Council for similar same reasons. Whilst each appeal raises similar issues, they have been assessed and determined individually.

Main Issues

9. The main issues are whether the proposal would accord with the provisions of Part 1, Class AA, with particular regard to it being a dwellinghouse and retaining to be a dwellinghouse and 2) its design and architectural features on the external appearance of the appeal property.

Reasons

10. No. 16 Turner Street is a three-storey property which sits at the end of a terrace row with two other similar properties. Access is via the ground floor level which is set down from street level.
11. It sits in an area where there is a large proportion of tall terraced buildings with some exceeding four and five storeys. The height of buildings along with the terrace forms and street layout are defining features throughout Turner Street and the surrounding area.
12. The site sits close to the Myrdle Street Conservation Area (CA). The significance of which is derived from the layout, form and architecture detail of the buildings within it. Two of the defining features throughout the CA is the height of the buildings and the various roof top developments that can be seen throughout.

¹ Part 1, Class AA, paragraph AA.2(3)

Dwellinghouse

13. Development is not permitted under the Prior Approval if it does not meet with a number of criteria. The Council considered the proposal met with all requirements under AA.1 and all but one of the criteria under AA.2. They state that the proposal failed to meet with AA.2 (2) (d) which requires following the development the dwellinghouse must be used as a dwellinghouse within the meaning of Class C3 of the Schedule to the Use Classes Order and for no other purpose, except to the extent that the other purpose is ancillary to the primary use as a dwellinghouse.
14. The Council state that insufficient evidence has been provided by the appellant which proves that the existing house is used as a C3 dwellinghouse or that following its completion it would be used solely as a C3 dwellinghouse. They have stated that the submitted plans demonstrate that the proposal would provide 9 bedrooms that could be used by up to 14 people which could constitute as a large HMO.
15. The appellant attests that the existing use of the property is a C3 dwellinghouse and that following the development it would remain as such. Following my site visit there was nothing that indicated the property was used for any other purpose than a C3 dwellinghouse. My visit was clearly a snapshot in time and my conclusion in this respect does not represent a definitive assessment on the lawful use of the property. It would be for the appellant to satisfy himself that the property is in lawful use as a dwellinghouse before proceeding with any work. However, the Council has not presented any evidence of its own that would lead me to doubt the appellant's version of events and I have taken the application at face value on the evidence presented.
16. I agree with the appellant that any future proposal to create a nine-bedroom HMO would require planning permission in its own right. However, as I have noted above, there is no indication from the drawings and evidence before me that is what is being proposed. The application is to be considered on its own individual merits and the evidence presented, not on assumptions and the apparent lack of unknown or unspecified evidence.
17. Furthermore, 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. If, following conversion, the Council was of the view that there was any breach of those terms, or had any evidence that the original property was not a dwellinghouse, it would be open to consider enforcement proceedings at that time. However, no evidence has been presented by the Council in relation to the existing use and comments on the intended use appear to be assertion. Therefore, I consider that sufficient information has been provided by the appellant and I have considered the proposal at face value on the basis of the information presented.
18. On this main issue I consider that the appeal site is a dwellinghouse and the development complies with all requirements as set out in Part 2(d) in Schedule 2, Part 1, Class AA.2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) AA1 and AA2, and the relevant conditions, limitations and restrictions.

Design

19. Notwithstanding the Council's concern regarding the proposal's visual prominence and detriment to the surrounding area, I find that the GDPO wording suggests a comparatively narrow assessment as to the external appearance of the dwellinghouse itself, including the design and architectural features. Nevertheless, whilst the wording of the GPDO refers to the external appearance of the dwellinghouse, it does not specifically exclude consideration of the wider area either.
20. The proposal would create an additional floor of accommodation which would be constructed in similar materials, it would not have a window in any wall or roof slope forming a side elevation and the roof pitch of the principal part would be the same as the existing. Its overall height would not be excessive and as such it would not appear as an incongruous feature upon the property or within the surrounding area for that matter.
21. Considering the design and architectural features from the front and side elevations I find the proposal to be acceptable in terms of its external appearance.
22. It is therefore considered that the proposal meets with all the requirements as set out and does not conflict with the requirements of Part 3(a)(ii) in Schedule 2, Part 1, Class AA.2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended). The proposal would not therefore be in conflict with the aims of policies S.DH1 and D.DH2 of the Tower Hamlets Local Plan 2031 (2020).

Conditions

23. I have not imposed the Council's suggested time limit condition for the completion of the development of the works as this is routinely required by the GPDO, unless otherwise stated. The appellant should therefore complete the development within 3 years starting from the prior approval date. Furthermore, I have not imposed a plans condition, as the GPDO provides that development must be carried out in accordance with the details approved. A construction management plan is also a requirement of the GPDO, therefore there is no need to impose this as a separate condition either.

Conclusion and Recommendation

24. For the reasons given above and having had regard to all other matters raised, I recommend that the appeal should be allowed.

S Witherley

APPEAL PLANNING OFFICER

Inspector's Decision

25. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is allowed.

Chris Preston

INSPECTOR