



Appeal Decision

Site visit made on 10 September 2021

by Tom Gilbert-Wooldridge MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 20 September 2021

Appeal Ref: APP/N5090/W/21/3269709

Blocks 7-9 Chandos Way and Blocks 1-6 Britten Close, London NW11 7HW

- 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 A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by B & C Crestpearl Ltd against the decision of the London Borough of Barnet.
 - The application Ref 20/3784/PNV, dated 12 August 2020, was refused by notice dated 18 December 2020.
 - The development proposed is a single storey rooftop extension to provide 48 additional residential dwellings.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) provides for new dwellinghouses on detached blocks of flats. Paragraph A.1 states that the development is not permitted if one or more of a number of criteria apply. Paragraph A.2 sets out a number of conditions including the requirement to apply for prior approval from the local planning authority relating to a number of matters. The Council refused to grant prior approval on the basis of harm to A.2(a) regarding transport and highway impacts, A.2(e) regarding the external appearance of the building, and A.2(g) regarding the impact on the amenity of the existing building and neighbouring premises. The Council also had concerns that the proposal would not represent permitted development.
3. The Council confirmed at the appeal stage that its concerns regarding the transport and highways impacts have been overcome by the submission of a Section 106 agreement restricting future occupants of the development from being able to access parking permits.
4. The above description of the proposal is taken from the application and appeal forms. The decision notice also makes reference to the provision of external lift shafts, 16 additional car parking spaces, and 50 cycle spaces.

Main Issues

5. The main issues are:
 - (a) whether the proposal falls within the provisions for permitted development under Schedule 2, Part 20, Class A of the GPDO; and

(b) if permitted development, whether prior approval should be granted having regard to the effect of the proposal on:

(i) the character and appearance of the buildings; and

(ii) the living conditions of the occupiers of existing properties with regard to outlook and light.

Reasons

Whether the proposal would be permitted development

6. Schedule 2, Part 20, Class A of the GPDO states that it is permitted development for development consisting of works for the construction of up to two additional storeys of new dwellinghouses immediately above the existing topmost residential storey on a building which is a purpose-built, detached block of flats, together with any or all of associated operations and works listed in paragraphs A(a) to A(d). Of relevance to this appeal are the associated works permitted under paragraph A(c) which involve the construction of appropriate and safe access to and egress from the new and existing dwellinghouse, including means of escape from fire, via additional external doors or external staircases.
7. The appeal site comprises nine blocks of purpose-built flats set within landscaped grounds and centred around two internal courtyards. Six blocks are on Britten Close and three are on Chandos Way. Each block is served by at least one stair tower located on one of the internal courtyards. The blocks are typically four storeys tall, with duplex apartments occupying the top two floors and car parking in a semi-basement. The duplexes on the rear elevation of each block generally have an open-air balcony on the upper floor that is positioned above a bedroom window on the lower floor of the duplex.
8. The proposal would involve an additional floor on top of each block with new balconies over the top of the existing upper floor balconies. The Council considers that as the proposal would be built over the upper floor balconies that it would not be immediately above the existing topmost residential storey. The appellant contends that the balcony is part of the storey and that the GPDO does not refer to the existing rooftop.
9. Whilst the upper floor balconies project above the floor below, they are contained within the footprint of each block and do not stick out beyond the foundations of the block. In many cases, there are balconies serving ground floor flats that follow exactly the same footprint three floors below the upper floor balcony. The balconies are part of the topmost storey and provide access to the living room and other parts of the duplexes. Therefore, I consider that the proposal would be immediately above the existing topmost storey and so would fall within the provisions of the GPDO on that basis.
10. The proposal would be accessed via extensions to each stair tower as well as from a glazed lift shaft attached to one stair tower on most blocks. The lift shafts would not be immediately above the existing topmost residential storey but associated works in paragraphs A(a) to A(d) are not required to be. Nevertheless, interested parties have challenged whether the lift shafts fall within the associated works permitted under paragraph A(c). They argue that only additional external doors or external staircases would benefit from the permitted development right and not external lift shafts and so the whole

appeal should be dismissed. The appellant disagrees and contends that the wording permits external doors or stairs as a means of escape from fire.

11. As I read the sentence structure of paragraph A(c), the wording "including means of escape from fire" is inserted as an example of access and egress, as denoted by the use of the commas. The wording could be removed without changing the meaning of the sentence. As a consequence, it is necessary for the construction of appropriate and safe access to and egress from the new and existing flats to be via additional external doors or external stairs.
12. It is difficult to describe a lift shaft as either an external door or an external staircase. Therefore, the lift shafts would not be covered within the parameters of paragraph A(c) or the prior approval process and the proposal as a whole would not fall within the provisions for permitted development under Schedule 2, Part 20, Class A of the GPDO. However, for completeness, I now turn to the prior approval matters that are disputed between the main parties, assessing the proposal as a whole.

Character and appearance

13. The nine blocks share a common architectural style. The external facing materials are mostly red brick, but the top two floors on each block's front elevation utilise lead cladding and are stepped back to give a distinctive mansard roof design. Occupying less than half of the front elevation, these mansard roofs are in proportion with the rest of the building and are not overly dominant. The stair towers on the front elevations are largely windowless with a strong vertical emphasis. Overall, the composition of the front elevations is balanced and distinctive.
14. The proposal would extend the mansard roof design upwards and approximately double the height of this feature. The mansard roofs would become much more dominant and give the front elevations a top heavy appearance. The lift shafts would be fully glazed to lessen the visual effect and they would maintain the existing stair towers' verticality. However, they would be large bulky projections and would interrupt the balance and rhythm of the existing towers along the front elevation. The additional glazing at the top of the stair towers would not in itself greatly upset the balance and appearance of the towers, but in combination with the other extensions would add to an overly prominent upper half of the buildings.
15. It may also be difficult to match the colour and design of the existing bricks. This would create an obvious and jarring divide between old and new especially when looking at the side and rear elevations of each block. Even if the new materials closely matched the old, it would not overcome the negative effects of the extended mansard roof design and the glazed lift shafts outlined above.
16. Class A establishes the principle of additional massing at the top of blocks of flats such as these. However, the design of the front elevation of the existing building is distinctive and in proportion. This would be lost as a result of the proposal. I am aware that the previous appeal¹ for the extension of some of the blocks was dismissed on the basis of the bulk and appearance of a more contemporary design approach. However, it does not follow that the only

¹ APP/N5090/W/19/3229368

suitable design solution therefore is to mimic the existing building as proposed, particularly when it distorts the existing composition and balance.

17. The proposal would have a negative effect on the character and appearance of the buildings. Having regard to paragraphs 130 and 134 of the National Planning Policy Framework (NPPF), the proposal would not be visually attractive and would not represent outstanding or innovative design or raise the standard of design more generally in the area.
18. In reaching this conclusion, I have also had regard to Policy CS05 of the Barnet Core Strategy 2012 (CS) and Policy DM01 of the Barnet Development Management Policies Document 2012 (DMPD). These policies seek high quality design and development that respects local context and distinctive local character. Finally, the Barnet Residential Design Guidance Supplementary Planning Document 2016 (RDG) requires development to complement or improve the character of the area through its appearance, architectural detailing, and use of materials amongst other things.

Living conditions

19. The existing stair towers project in front of windows on the front elevation of each block. These windows serve a variety of rooms including bedrooms and living rooms. Depending on the window, the stair towers create quite a deep recess and can be seen to one side when looking out from the building. The addition of lift shafts to specific stair towers would increase the amount of projection next to certain windows. The use of glazing would alleviate some of the extra bulk, but there would still be an adverse effect on outlook for some residents as a result of increased enclosure to one side. It is not clear from the previous appeal decision whether the Inspector considered the effect of lift shafts on outlook, but I have nevertheless identified harm.
20. Many of the duplex flats have kitchens on the upper floor that are only illuminated from above by a skylight. These skylights are typically obscure glazed but can be opened for ventilation. The proposal would eliminate these and other skylights on the upper floor. This would be similar to the proposal considered at the previous appeal where the Inspector concluded that the effect on living conditions in terms of daylight would be acceptable with sun pipes providing alternative illumination to the kitchen.
21. Interested parties have argued at this appeal that the previous Inspector incorrectly assumed that the kitchens were not habitable rooms as they are below the 13sqm threshold set out in the CS. It has been brought to my attention via legal opinion that the CS definition of habitable room is only applied for the purposes of affordable housing and density calculations. It is not applied in terms of policies relating to living conditions such as DMPD Policy DM01. However, the RDG, which deals with residential amenity amongst other things, uses the same habitable room definition as the CS. In any case, having seen some of the affected kitchens, they are separate rooms where occupants might spend a reasonable amount of time. Therefore, even if they are not classed as habitable rooms in planning policy terms, they form an important part of the space within each relevant flat.
22. Interested parties have also argued that the previous Inspector made assumptions about the effectiveness of the sun pipes. There is limited information submitted with this appeal in terms of how the technology works or

the levels of light it would provide in comparison to the existing skylights. The appellant's Daylight and Sunlight Study from April 2018 assessed the effect of the previous proposal but it is not apparent that the kitchen skylights were considered by that study or by the 2020 review by the lighting consultants. Therefore, it is not possible for me to conclude that the proposed sun pipes would be an adequate alternative to the kitchen skylights or that the effect on light for some residents would be acceptable.

23. The existing balconies on the upper floor of some of the duplexes are open-air which allows light to pass into adjoining living rooms. The proposal would result in these balconies being enclosed from above by balconies serving the new flats. Interested parties have expressed concern about the impact on internal light levels as a result. The aforementioned daylight and sunlight study addressed a different proposal that would not have enclosed the existing balconies, while the 2020 review contains little information on this matter. Therefore, it is possible that the proposal would also result in adverse effects for some residents in terms of light via existing balconies.
24. The proposal would have a negative effect on the living conditions of occupiers of neighbouring properties with regard to outlook, while it has not been demonstrated that it would have an acceptable effect in terms of light. In reaching this conclusion, I have had regard to NPPF paragraph 130 which, amongst other things, requires a high standard of amenity for existing and future residents. I have also had regard to CS Policy CS05 and DMPD Policy DM01 which seek high quality design and development that allows for adequate daylight, sunlight, privacy and outlook for adjoining and potential occupiers and uses. Finally, I have also had regard to the RDG which seeks to safeguard residential amenity.

Other Matters

25. NPPF paragraphs 120(d) and (e) respectively promote the development of underutilised land and buildings and support opportunities to use the airspace above existing residential premises for new homes. The NPPF also seeks to boost the supply of housing with Barnet needing to deliver a significant number of homes in the coming years. The proposal would enable greater accessibility through the provision of lift access to the new flats even if the access to existing flats would remain largely unchanged. However, the proposal would not be well-designed and it would have negative and uncertain effects with regards to living conditions. Therefore, the above benefits would be outweighed by the adverse effects I have identified.
26. Notwithstanding that the Council is no longer defending the 4th reason for refusal, interested parties have raised concerns about parking and highway impacts. Given that I am looking to dismiss the appeal for other reasons, it has not been necessary for this decision to consider these impacts in any detail. Similarly, it has not been necessary for me to address interested parties concerns regarding the effect of the proposal on the significance of designated heritage assets, or the effects in terms of ventilation, noise, construction, servicing, or any other matter raised.

Conclusion

27. The proposal would not represent permitted development. Even if it did, the proposal would have a negative effect on the character and appearance of the

building and negative and uncertain effects on the living conditions of occupiers of neighbouring properties. For these reasons, I conclude that the appeal should be dismissed.

Tom Gilbert-Wooldridge

INSPECTOR