



Appeal Decision

Site Visit made on 6 September 2021

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th October 2021

Appeal Ref: APP/M5450/W/21/3272798

Retlas Court, 77 Bessborough Road, Harrow HA1 3DS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under 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 Alexander Telford on behalf of Lyon Estate Limited against the decision of London Borough of Harrow.
 - The application Ref P/4144/20, dated 13 November 2020, was refused by notice dated 14 January 2021.
 - The development proposed is described on the application form as construction of two additional storeys of new dwellinghouses to provide 10 additional flats with associated plant, storage, waste and ancillary facilities.
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Schedule 2, Part 20, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) for the construction of two additional storeys of new dwellinghouses to provide 10 additional flats with associated plant, storage, waste and ancillary facilities at Retlas Court, 77 Bessborough Road, Harrow HA1 3DS in accordance with the terms of the application, Ref P/4144/20, dated 13 November 2020, subject to the various conditions laid out at Paragraph A.2 to Part 20 of the GPDO and the additional conditions set out at the end of this decision.

Preliminary Matters

2. Since the determination of the application that is now the subject of this appeal, the London Plan 2021 was published in March 2021. Further, a revised version of the National Planning Policy Framework (the Framework) was published in July 2021. The main parties to this appeal have had opportunities to comment upon any relevance of these occurrences to the outcome of this appeal.
3. The Town and Country Planning (General Permitted Development etc.) (England) (Amendment) (No.2) Order 2021 came into force on 1 August 2021. This had the effect of amending Part 20, Class A of the GPDO via introducing fire safety related requirements. However, as the heights of the existing building and proposed development are insufficient to necessitate an application for prior approval in a fire safety sense, I have not sought observations from the main parties as regards any potential relevance to the outcome of this appeal.

4. A signed Unilateral Undertaking (the UU) dated 25 May 2021 is before me, which seeks to secure that future occupiers of the development would be unable to be issued with parking permits. The Council has had the opportunity to make observations. I shall return to the UU later.

Main Issues

5. The main issues are:

- Whether or not the proposal would be permitted development under Schedule 2, Part 20, Class A, Paragraph A.1 of the GPDO; and
- Whether or not the impact of the proposal upon the amenities of occupiers of the existing building would be acceptable, having particular regard to the effect of the proposed lift shaft upon available outlook.

Reasons

Whether or not permitted development

6. Paragraph A.1 of Part 20 of the GPDO sets out various requirements that, if not met, result in development not being permitted by Class A. The Council refused to grant prior approval based, in part, on the proposal's alleged failures to comply with Criteria A.1(d) and A.1(j). These respectively refer to the additional storeys being constructed on the principal part of the building, and to the limits/specifications of permitted engineering operations.
7. Focusing upon Criterion A.1(d) first, I must consider whether the scheme involves the construction of additional storeys other than on the 'principal part' of the building. This is defined in the GPDO as the main part of the building excluding any front, side or rear extension of a lower height, whether this forms part of the original building or a subsequent addition.
8. The existing building is of three storey height and is comprised of interconnected built elements, each topped with a pitched roof. The main access into the building is via its central core (the central core), which is inset from the building's north-facing elevation and has a ridge height set slightly lower than other elements of the building. The central core houses a shared staircase as well as shared circulation corridors.
9. Whilst the central core is of lower height when compared to other parts of the building, it cannot rightfully be thought to constitute a front, side or rear extension. It instead forms an integral central element to the building. Moreover, without the central core, those units accessed via it and located to the building's upper floors would be incapable of being used as flats. I thus find that the central core comprises a component of the principal part of the building as opposed to an extension. As such, the scheme involves the construction of additional storeys in compliance with the requirements of Criterion A.1(d).
10. As regards Criterion A.1(j), it must be noted that its provisions apply to development falling under Class A.(a) consisting of engineering operations reasonably necessary to construct the development. The proposed lift shaft (the lift shaft), which is specifically referenced in the Council's second reason for refusing to grant prior approval, would be built development and would not

constitute an engineering operation. Thus, the lift shaft does not fall to be considered against the requirements of Criterion A.1(j).

11. I am also of the stance that the lift shaft would not represent works falling under Class A.(c). Whilst it would promote appropriate and safe access to and egress from the new and existing dwellinghouses (including in the event of a fire), Class A.(c) references the provision of safe access and egress via additional external doors or external staircases, and not via the addition of external lift shaft facilities (or similar).
12. However, Class A.(d) covers the construction of ancillary facilities reasonably necessary to support the new dwellinghouses. Policy D5 of the London Plan 2021 sets out that development proposals should achieve the highest standards of accessible and inclusive design and, amongst other provisions, should be designed to incorporate safe and dignified emergency evacuation for all building users. The lift shaft, even though to be delivered in tandem with an extension to the central core, would undoubtedly support these objectives. Moreover, given that it would provide highly accessible and inclusive access to new flats situated at up to four floors above ground level and could not realistically be accommodated within the building's existing footprint, the lift shaft constitutes an ancillary facility reasonably necessary to support the new dwellinghouses and thus represents works falling under Class A.(d).
13. I am satisfied that the lift shaft would satisfy the various positional requirements set out under Criterion A.1(n). Indeed, the existing building's curtilage incorporates land with an immediate association to the building which includes the small external area intended to accommodate the lift shaft.
14. For the above reasons, I find that the proposal would be permitted development under Schedule 2, Part 20, Class A, Paragraph A.1 of the GPDO.

Impact upon the amenities of existing occupiers

15. The provisions of Paragraph A.2 of Part 20 require the Local Planning Authority to assess the proposed development based on several different matters. The Council's third reason for refusal confirms that the only Paragraph A.2 matter in contention relates to the impact on the amenities of occupiers of the existing building due to the lift shaft's alleged adverse effects upon available outlook.
16. The lift shaft would be nestled in the corner of a L-shaped building where its eastern and southern elevations meet, and to the immediate rear of the central core. It would thus occupy a discreet location and would not be positioned directly in front of any existing window opening that serves a habitable space. Only partial views of the lift shaft upon oblique angles would be available from selected window openings. In-part owing to its limited footprint coverage, the lift shaft would not have an overbearing influence or result in any undue loss of outlook for existing occupiers of the building.
17. For the above reasons, having particular regard to the effect of the lift shaft upon available outlook, the impact of the proposal upon the amenities of occupiers of the existing building would be acceptable. The scheme accords with Policy DM1 of the Harrow Council Development Management Policies (July 2013) (the DMP), the Framework and the Harrow Council Residential Design Guide Supplementary Planning Document (December 2010) in so far as these policies and guidance require that the assessment of privacy and amenity

considerations will have regard to the visual impact of development when viewed from within buildings and outdoor spaces.

Other Matters

18. The proposal would introduce a consistent roof form across the entirety of the building. Most particularly when factoring in the built variety that exists local to the site, the external appearance of the building would be acceptable. Indeed, its height would not be excessive when read and experienced alongside No 2 Roxborough Avenue (No 2). The site is stepped away from the Roxborough Park & The Grove Conservation Area (the CA), and I find that the CA's character and appearance would be preserved through bringing forward development within its setting.
19. As regards the impact of the proposal upon the amenities of neighbouring premises, the proposal is supported by an assessment¹ (the Report) authored by a daylight and sunlight consultant. This provides comprehensive consideration of the scheme's effects in terms of the daylighting of neighbouring interior habitable rooms and of any potential loss of privacy. The specific premises assessed include those situated to the opposite western side of Bessborough Road and at No 2 to the north. In each instance it has been concluded that the scheme's amenity effects can be regarded as negligible.
20. Having inspected the site and its immediate surroundings and factored in the separation distances that would avail, as well as the specific positions of existing and newly proposed window openings and balcony features, I am satisfied that the findings of the Report are robust and accurate. I am also content that the scheme would not have an undue adverse effect upon the available outlook experienceable by any existing neighbouring occupier.
21. Whilst I do not have before me full details of the approved facing side elevation of the building that I observed to be under construction to the immediate south of the site, the flank wall of the additional storeys (where to run the site's southern boundary) would contain only two small-sized openings at height, which would not be expected to have any undue effect upon neighbouring privacy. Furthermore, owing to the site's orientation, the proposed works would not be anticipated to interrupt direct sunlight from entering the neighbouring development site.
22. Thus, based on the evidence that is before me, the scheme would have an acceptable impact upon the amenities of neighbouring premises when considering possible effects in the contexts of overlooking, privacy, outlook or loss of light. I also have no clear reason to consider that amenity issues would arise in a security sense and note that a dedicated waste storage room/area is intended at ground floor.
23. Concerns have been raised that the introduction of 10 flats would increase the potential for noise and disturbance to be generated and would raise cleanliness issues. However, existing access arrangements would remain unaltered and any increased level of activity when compared to current site circumstances would not realistically increase by any significant or readily noticeable degree. Moreover, the immediate area is already well-populated, and I observed Bessborough Road to be a busy and well-used route. I find that the impact of

¹ dated 14 August 2020

the scheme upon the amenities of the occupiers of neighbouring premises in a noise, disturbance or cleanliness sense would be acceptable.

24. References have been made by interested parties to high parking demand in the local area and to the potential for the scheme to exacerbate existing parking issues. However, the UU effectively secures that the development would be car-free via precluding future occupiers from obtaining parking permits applicable to Harrow's Controlled Parking Zones. I am satisfied that the UU is fit-for-purpose and note that the Council has confirmed its intention to seek to amend the relevant Traffic Management Order should the appeal be successful and the UU be entered in to. As such, given that merely a single disabled parking bay is to be provided on-site, car ownership would, realistically, be impractical for future occupiers of the additional storeys. When also factoring in the highly accessible nature of the site and the associated opportunities for future occupiers and visitors to the site to utilise sustainable modes of transportation, I find that the transport and highways impact of the development would be acceptable.
25. Concerns raised with respect to leaseholder rights and access rights for undertaking construction works are not strictly planning matters. In any event, unlike where an application for planning permission has been submitted, my considerations are necessarily limited to the provisions of Schedule 2, Part 20 of the GPDO and, more specifically, to the relevant matters listed under sub-paragraph (1) of Paragraph A.2. From the evidence before me, the scheme would not have an adverse impact or cause undue risks in the context of any of these listed matters. This indicates that prior approval should be granted.

Conditions

26. Sub-paragraph (18) of Paragraph B of Part 20 allows for the imposition of conditions reasonably related to the subject matter of the prior approval. The Council has suggested conditions that the appellant has had the opportunity to comment upon and which I have considered against advice in the Framework and Planning Practice Guidance. As a result, I have amended some of them for consistency and clarity purposes and have omitted others. In the interests of ensuring that the newly enlarged building has an acceptable external appearance, I have also added a condition requiring that the materials to be used match existing.
27. Whilst sub-paragraph (17) of Paragraph B sets out that development must be carried out in accordance with the details approved, a condition listing the approved plans is reasonable to impose in the interests of certainty.
28. In the interests of safeguarding the amenities of occupiers of the building, a condition to secure the submission and implementation of a scheme to control noise transmission to existing adjoining flats and to protect future occupiers from the impacts of noise (including from road traffic sources) is both reasonable and necessary.
29. Also, a condition to attain full details of the intended waste/refuse storage arrangements is reasonable to impose. This would assist in ensuring that the facilities are fit-for-purpose and suitably accessible in the interests of controlling the scheme's amenity impact. Nevertheless, a separate condition seeking to secure that refuse bins are stored within their designated storage area at all times (apart from on collection days) would be unduly difficult to

enforce given the range of different occupiers within the building.

Furthermore, should future associated amenity issues arise, options would exist outside of the planning process to pursue corrective actions.

30. In the interests of promoting sustainable travel choices and positively influencing the scheme's transport and highways impact, a condition to secure full details of the intended cycle storage provision is reasonable. Such a condition would promote the provision of fit-for-purpose facilities at the quantity depicted upon the approved ground floor site plan.
31. The site is not located within any area considered to be at risk of flooding and the scheme is centred upon the delivery of two additional storeys immediately above existing built form. Indeed, even when noting the intended construction of a lift shaft and the formalisation of a single disabled parking bay, limited alterations would be necessitated to the site's external areas. I note here that various areas of hardstanding are already in place to the side and rear of the building. In the context described here, and notwithstanding the requirements of Policy DM10 of the DMP, it would be unreasonable to impose conditions relating to details of paving and/or the provision of surface water attenuation measures at the site.
32. As the principle of development has been established via the GPDO and I have found the transport and highway impact of the development to be acceptable, it is neither reasonable nor necessary to require the submission of a full Travel Plan. Also, given that the scheme involves the construction of additional storeys upon an existing building, I am unpersuaded that it would be reasonable to require a Delivery and Servicing Plan to be submitted for approval. In any event, such a Plan would be anticipated to be unduly problematic to enforce effectively. This is particularly given the variety of future occupiers to whom it would apply.
33. Sub-paragraph (3) of Paragraph A.2 of Part 20 of the GPDO sets out that, before beginning the development, the developer must provide a report for the management of the construction phase. This report is required to set out hours of operation and details of how any adverse impact of noise, dust, vibration and traffic on local occupiers will be mitigated. Any effects upon on-site/adjoining parking arrangements would fall under traffic impact and the associated measures to control/mitigate such effects would, to my mind, need to be provided to fully discharge the requirements of sub-paragraph (3).
34. I note that the works permitted, which relate to the provision of additional stories to a single building, would not realistically be anticipated to be carried out over a protracted time period. Thus, the aforementioned requirements of sub-paragraph (3) offer satisfactory assurances that the amenities of neighbouring occupiers would be safeguarded during the construction phase of development. For these reasons, I find that a separate Construction Logistics Plan is unnecessary to condition.

Conclusion

35. For the reasons set out above, the appeal is allowed and prior approval is granted subject to conditions.

Andrew Smith

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: P00; P01; P02 A; P03 A; P20 A; P21 A; P22 A; P23 A; P24.
- 2) No development shall take place until a scheme to protect future occupiers of the additional flats from road traffic and other noise, and to control noise transmission to adjoining dwellings, has been submitted to and approved in writing by the Local Planning Authority. All works which form part of the scheme shall be implemented in full prior to the first occupation of the development, and thereafter shall be retained and maintained in good working order for as long as the building remains in use.
- 3) The additional flats hereby permitted shall not be first occupied until full details of the waste storage area depicted upon approved plan P01, including a layout plan setting out the types of storage and dimensions of access doorways, have been submitted to and approved in writing by the Local Planning Authority. The waste storage area shall be implemented in accordance with the approved details prior to the first occupation of the development and shall be retained in that form thereafter.
- 4) The additional flats hereby permitted shall not be first occupied until full details of the cycle parking depicted upon approved plan P01, which shall include 5% provision for larger cycles, have been submitted to and approved in writing by the Local Planning Authority. The cycle parking shall be implemented in accordance with the approved details prior to the first occupation of the development and shall be retained in that form thereafter.
- 5) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the construction of the existing building.