
Appeal Decision

Site Visit made on 24 August 2021

by Scott Britnell MSc FdA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 October 2021

Appeal Ref: APP/Z5630/W/21/3273592

1 Emerson Mews, New Malden KT3 3BG

- 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 North End Road Limited against the decision of the Council of the Royal Borough of Kingston Upon Thames.
 - The application, Ref 21/00260/PACND, dated 26 January 2021, was refused by notice dated 24 March 2021.
 - The development proposed is described as 'prior approval for the construction of a two-storey extension on a detached block of flats at 1 Emerson Mews, New Malden, KT3 3BG. The proposal complies with Schedule 2 part 2 class A of the General Permitted Development Order (2020) which took effect on the 1st August 2020'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Following submission of the appeal the Government published the National Planning Policy Framework 2021 (the Framework). Comments were sought from the main parties regarding this matter but no responses were received. Nevertheless, I consider that no party will suffer any injustice by me referring to the Framework in my decision.
3. The Council's decision notice is not dated. I have taken the date of the Council's decision in the banner header above from the appellant's appeal form.
4. The description of development in the banner header has been taken from the Planning Statement. There is no description included in the application form, which refers to the Planning Statement and submitted plans and drawings for that purpose. The Council's decision notice, the appeal form and appeal statement refer to the proposal as the 'erection of two additional floors to detached block of flats to form 4no. x additional apartments'. I consider this description more accurately reflects the proposal and I have proceeded on that basis.
5. Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO) permits the construction of new dwellinghouses on detached blocks of flats, including certain associated works. For development to be permitted by Class A, it must

satisfy the limitations set out at paragraph A.1 and the conditions at paragraph A.2. The conditions require developers to apply to the local planning authority for a determination as to whether prior approval will be required in relation to a number of specified matters. Paragraph B (15) 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 Framework, so far as relevant to the subject matter of the prior approval. I have considered the appeal on the same basis.

6. The appellant submitted a revised drawing with the appeal, E20-032/PRP001 Revision F. As the Council and interested third parties have had the opportunity as part of the appeal process to consider that drawing I have accepted it. Following my site visit, the appellant submitted a copy of a recent appeal decision¹ for my consideration. As that decision covers some of the same issues before me, I have had regard to it and the Council were given the opportunity to provide comments. In accepting the additional submissions, I have had regard to the principles established by the Courts in *Wheatcroft*². In that regard, I consider that no party would suffer any injustice by me proceeding as I have.
7. As a result of the aforementioned revised drawing, the Council's first two reasons for refusal have fallen away. As such, there is no need for me to consider them further.

Main Issues

8. In light of the foregoing preliminary matters paragraphs, the main issues are whether prior approval should be granted having regard to:
 - the external appearance of the building;
 - the impact on the amenity of the neighbouring premises at Nos 2, 3 and 4 Emerson Mews and 49 Montem Road with particular regard to outlook and privacy and in the case of 49 Montem Road, with regard also to daylight and sunlight³; and,
 - the transport and highways impacts of the proposed development.

Reasons

External appearance of the building

9. The existing building (the building) is a three storey block of five flats. It has a dual pitched roof with gabled side elevations and is a fairly narrow building. The proposal seeks to erect an additional two storeys to accommodate four new flats. The additional floors would be built in-line with the existing elevations and proposed materials and fenestration would match the existing.
10. I acknowledge that the GPDO establishes the broad principle that upwards extensions are acceptable. I note that the appeal property sits somewhat on its own, and have taken into account the examples cited by the appellant of other instances of buildings with divergent scales and forms set nearby one another

¹ APP/N5090/W/21/3267852.

² *Bernard Wheatcroft Ltd v SSE* [JPL, 1982].

³ The Council's decision notice refers to 49 Emerson Mews. However, there is no 49 Emerson Mews and the Officer Report clearly refers to the proposal depriving the occupants of 49 Montem Road of natural light (paragraph 41).

in the wider area. However, the proposal in this instance would result in a tall, narrow building, the height of which would be considerably out of proportion to its depth. The resultant form would in my view be awkward and excessively tall, markedly out of keeping with typical building proportions. The proposal would result in a significantly disproportionate addition to the building and would cause unacceptable harm to its external appearance.

11. The Council considers that the proposal would cause harm to the character and appearance of the area. However, the relevant prior approval matter is concerned only with the external appearance of the building and not expressly the wider area. I note that my approach in this matter is consistent with that of other Inspectors who have considered the same issue, notwithstanding that the specifics of each case inevitably differs⁴.
12. In light of the foregoing, I conclude that the proposal would cause harm to the external appearance of the building. There would be conflict with paragraphs 130 b) and 134 of the Framework. These state, amongst other matters, that development should be visually attractive as a result of good architecture and that development that is not well designed should be refused permission.

Living Conditions

13. The dwellings at Nos 2, 3 and 4 Emerson Mews (Nos.2, 3 and 4) are located close to the appeal building with a number of windows in their front elevation facing towards it. The dwelling at 49 Montem Road (No.49) is separated by a narrow road from the building with a number of windows in its side elevation.
14. Due to its height, scale, bulk and proximity to the dwellings at Nos.2, 3 and 4, the proposal would result in a harmful overbearing presence when viewed from the rooms served by the windows on the front elevations (inherent in my reasoning is that the scale and proportions of the proposal would be markedly out of keeping with the prevailing modest scale and traditional form of properties here). The proposal, therefore, would make these areas significantly less pleasant to use and would harm the living conditions of the occupants of those properties relative to existing conditions. For the same reasons, the proposal would appear overbearing when viewed from the rear garden of No.49 and the rooms served by the windows in its side elevation.
15. I note that the existing building is already a prominent feature when viewed from the aforementioned dwellings as it comprises three storeys where two store properties are commonplace. However, the proposal would introduce a built form that is substantially higher than the existing building. Thus, the effects of the proposal in terms of creating a sense of overbearing would be significantly over and above the current situation. I have also had regard to the appellant's comments that the proposal should not be resisted on the grounds of creating an overbearing impact. However, the impacts on the amenity of neighbouring premises set out at paragraph A.2 (1) (g) is not a closed list. As such, impact in terms of overbearing can be considered.
16. In terms of privacy, the existing building has two windows in its side elevation that face the front elevation of the dwellings at Nos.2 and 3. These windows serve living rooms. Although the dwelling at No.4 does not directly face the side elevation of the appeal building, I observed there to be a degree of mutual

⁴ APP/T1410/W/20/3263486 and APP/N5090/W/21/3267852

overlooking between this dwelling and the building. To the front elevation of the building is a number of windows serving kitchens, bathrooms and bedrooms. Given the height and proximity of a number of these windows to No.49, the rear garden of that dwelling and the windows in its side elevation are already overlooked.

17. However, and notwithstanding the existing situation, the proposal would introduce a number of additional windows at a greater height to the side and front elevations of the building. These would serve living rooms, bedrooms, kitchens and bathrooms and would enable additional views over and above those that already exist. Given the increased number of proposed windows, in conjunction with their height and proximity to the aforementioned dwellings, the proposal would significantly worsen the existing situation in terms of potential for overlooking.
18. Thus, the proposal would cause unacceptable harm to the living conditions of the occupants at Nos.2, 3, 4 and 49 through loss of privacy to internal areas, as well as the rear garden of No.49.
19. In terms of the effect of the proposal on light levels reaching No.49, the appellant has provided a daylight and sunlight report (DSR). As the appeal site sits to the north of No.49, I consider it unlikely that this dwelling would suffer any loss of direct sunlight as a result of the proposal.
20. However, the DSR indicates that a number of ground floor and first windows to No.49 would suffer loss of daylight as a result of the proposal. While some of these windows currently sit behind a boundary fence, I saw that there appeared to be sufficient space between it and the windows to ensure reasonable levels of daylight at present. Further, the most forward located ground floor window in the side elevation of No.49 does not look out on to a boundary treatment, neither do the first floor windows.
21. Consequently, the proposal would, due to its height and scale, result in an unacceptable loss of daylight to the windows in the side elevation of No.49, making the areas served by these windows less pleasant to use. While the appellant suggests that one of the affected windows serves a hallway, I have no evidence before me to indicate that other windows do not serve habitable rooms.
22. The evidence before me indicates that there would be no loss of sunlight to the rear garden of No.49 over the existing situation. However, the absence of harm in this respect is a neutral factor in my overall considerations.
23. In reaching the above conclusions, I note the appellant's comments that, as any application will have an element of impact on neighbouring properties, the legislation has already taken these impacts into account. However, impact on amenity of neighbouring premises is specifically listed as a prior approval matter. As such, it is a matter that must be considered on a case by case basis. Thus, it cannot be conflated with there being no requirement to consider the impact of a proposal on the character and appearance of an area which is not a specified prior approval matter.
24. I conclude that the proposal would cause harm to the living conditions of the occupants of Nos.2, 3 and 4 Emerson Mews and No. 49 Montem Road in terms of outlook and loss of privacy. Additional harm would result to the living

conditions of the occupants of 49 Montem Road through loss of daylight. There would be conflict with paragraph 130 f) of the Framework, which states that development should create places with a high standard of amenity for existing users.

Transport and Highways

25. The appellant submitted a Unilateral Undertaking (UU) with the appeal which was amended at final comments stage. The UU is not accompanied by a plan identifying the relevant land and so is not a valid agreement. Further, the precise nature of the proposed car club facility is not set out. Moreover, the revised drawing submitted with the appeal has removed the proposed club car parking space. While the appellant indicates that a bay would be provided within the existing car park⁵, no further details have been provided. Consequently, I have proceeded on the basis that the proposal would not provide any off-street parking spaces.
26. The appeal site is close to local bus stops and a railway station, as well as a number of other services and facilities, which could encourage future occupants to take more sustainable modes of transport. In addition, the appellant's Transport Statement (TS) suggests that car availability is more likely to be higher among houses than single bedroom flats. Further, data from the 2011 Census information indicates that only 28.30% of people in the area use a car or van to travel to work. However, I do not consider these matters adequately demonstrate that future occupants of the proposal would not own or use one or more private cars.
27. A Parking Survey was undertaken by the appellant to establish the level of on-street parking in the vicinity of the appeal site. On the two dates that the survey was carried out, parking spaces at Emerson Mews were 100% occupied, while unrestricted spaces in the wider area were occupied at 88% and 85% respectively. At my visit, I observed there to be a number of on-street parking spaces available in the surrounding roads. However, my visit which was carried out in the middle of the day and represents a snapshot in time. That said, I noted that Raby Road near to the appeal site is not wide enough for parking either side of the carriageway, which restricts the number of available on-street parking spaces.
28. By contrast, the Parking Survey was carried out on two separate days at a time when occupants of dwellings in the area are likely to have been at home. The results of the survey indicate to me that the level of on-street parking in the area is already high. The proposal would therefore add to competition for on-street parking spaces and overall traffic congestion in the area to some extent.
29. The survey also shows that a number of the vehicles parked on the public highway did so across existing crossovers/accesses. This indicates that competition for on-street parking in the area is already leading to instances of inconsiderate parking and would, in all likelihood, be exacerbated by the proposal. Such parking is, in my view, likely to cause harm to highway safety with vehicles causing obstruction to other road users and preventing safe access to existing off-street parking spaces.

⁵ Final comments 6 August 2021.

30. I note the appellant's comments that the proposal would be a car free development, which would support more sustainable modes of transport. However, for the reasons that I have set out I do not consider that the proposal adequately demonstrates that future occupants would not own or use a private car. Moreover, while the appellant suggests that car ownership could be limited through leases agreed with future occupants, there is no proposed mechanism before me to secure this (nor a way which I can legitimately secure that with reference to relevant elements of the Planning Practice Guidance).
31. I conclude that the proposal would cause harm to highway safety and would conflict with paragraphs 111 and 112 c) of the Framework. These state, amongst other matters, that development should only be refused on highways grounds if there would be an unacceptable impact on highway safety and that developments should create places which minimise the scope for conflicts between pedestrians, cyclists and vehicles.

Other Matters

32. The appellant suggests that the Council did not work proactively with them or engage with them during the application process. While I note the appellant's comments, this is not a determinative matter in this appeal.

Conclusion

33. For the above reasons, I conclude that the appeal should be dismissed.

Scott Britnell

INSPECTOR