

Appeal Decision

Site visit made on 19 October 2021

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 December 2021

Appeal Ref: APP/A5840/W/21/3270849

1 Haven Way, London SE1 3FJ

- 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) (GPDO).
 - The appeal is made by Hazelwood Properties Ltd against the decision of the Council of the London Borough of Southwark.
 - The application Ref 20/AP/3754, dated 18 December 2020, was refused by notice dated 28 January 2021.
 - The development proposed is the construction of an additional storey to provide 5 additional residential units (2no. x 1-bedroom units, 2no. x 2-bedroom units and 1no. x 3-bedroom unit) and associated refuse storage and cycle parking.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. For clarity and precision, and in the absence of a description on the application form, I have taken the description of development used in the banner heading from the accompanying covering letter, the appeal form and Council's decision notice.
3. The Government published the revised National Planning Policy Framework on 20 July 2021 (the Framework). Additionally, the London Plan 2021 was published after the Council made its decision. In both cases, the main parties have had an opportunity to comment on the significance of the changes in both documents.
4. Paragraph B (15) of Part 20, Class A of the GPDO 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, as if the application were a planning application. My determination of this appeal has been made on the same basis.
5. The principle of the development is established by the GPDO. The prior approval provisions do not require regard to be had to the development plan. I have therefore only had regard to the policies of the development plan in so far as they are material to the matters for which prior approval is sought.
6. Schedule 2, Part 20, Class A of the GPDO provides for new dwelling houses 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(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 including overlooking, privacy and the loss of light.

Main Issues

7. The Council is satisfied that the development meets all of the matters other than those relating to the external appearance of the building and the impact on the amenity of neighbouring premises. In the absence of any substantive evidence to the contrary, I have little reason to disagree with that assessment and have therefore focused on the matters in dispute.
8. Thus, the main issues are whether or not the proposed development would accord with the provisions of Part 20, Class A of the GPDO, having particular regard to:
 - i) the external appearance of the building; and,
 - ii) the impact on the amenity of neighbouring premises, with particular regard to the fifth-floor occupiers of the host property.

Reasons

Character and appearance

9. The host property comprises a 6no. storey building, contemporary in its appearance, located within a predominantly residential area. A number of residential blocks are in the immediate vicinity of the site, and are similar in terms of scale and massing, but vary in design and appearance.
10. The proposed development would replicate the existing floors to heighten the block in terms of repeating the materials, the pattern of windows and the floor-ceiling heights of the existing building. Thus, in terms of the walls, the appearance would only significantly change by its overall enlargement. I accept that the majority of the proposed development would only incorporate a set back from one of its side elevations. However, this would not be to the detriment to the appearance of the host property as the use of lighter coloured external materials, similar to those present at ground floor, would provide sufficient visual relief to prevent an overly bulky appearance. Furthermore, a 'top heavy' structure would not result through the single storey nature of the proposed development.
11. The proposed development would be predominantly glazed and there is no doubt that it would alter the appearance of the host property. The height, form and proportions of the additional storey would reflect those of the host property. The increased height and a taller building are an inevitable consequence and has to be interpreted as not being inconsistent with the street scene and wider area for the purposes of Part 20, Class A. Consequently, I find that the external appearance of the proposed building would be acceptable.
12. For these reasons, I conclude on this main issue that the external appearance of the building would be acceptable and would not result in harm within the context of the subject matter of the prior approval required under Schedule 2,

Part 20, Class A, Paragraph A.2(1)(e) of the GPDO. Within the context of that permitted development right and only in so far, as they are a material consideration, relevant to matters of the external appearance of the building, would also accord with LonP Policies D3, D4; Saved Policies 3.12, 3.13 of the Southwark Plan 2007 (SP); Strategic Policy 12 of the Council's Core Strategy 2011 (CS) and the requirements of the Framework.

Living conditions

13. The prior approval matters include consideration of the amenity of the existing building and neighbouring premises in respect of loss of light. During my visit, I was accompanied by an interested party, where I was given access to most of the top floor flats¹ at the host property, where I viewed the existing roof lights internally. Additionally, I visited a top floor flat² at 2 Haven Way, where I was able to view the host property, both internally and from the external terrace.
14. The appellant has submitted a Daylight and Sunlight Report³ (the report) in support of their application. Additionally, I note the reference by both main parties towards the previous appeal decisions⁴ for similar schemes, albeit not submitted for prior approval. Currently, 21no. rooflights serve the 6no. flats on the fifth-floor of the host property, 15no. of which would be covered over by the proposed development and the remaining 6no. rooflights would serve the kitchen/dining areas of the flats below, through a light shaft that would extend through the proposed development.
15. There were differences between the flats that I visited, through their layout, but these were subtle. Overall, the approach to the internal design and layout of the flats is similar, including the use of rooflights to enhance the living conditions for the respective occupiers. The use of rooflights throughout the flats that I visited, resulted in each one of them receiving a notable amount of daylight, which is a positive feature of the flats on the fifth floor of the host property. As such, the presence of the 21no. rooflights on these units, contributes significantly to the living conditions currently afforded by the existing occupiers on the fifth floor of the host property.
16. It is common ground between the main parties that the report and its findings complies with the guidance contained within the Building Research Establishment's Site Layout Planning for Daylight and Sunlight: a guide to good practice, (2011 2nd Edition) (BRE guidance) as the fifth floor flats would still achieve good access to natural daylight. I acknowledge that the existing rooflights were not included on the original permission, and I accept that it is highly likely that the host property did not require the installation of the rooflights to the fifth floor flats to be considered acceptable.
17. Nonetheless, the rooflights were installed and are consequently an important integral feature within these residential units, which from the responses submitted, would appear to be well appreciated and received by the respective occupiers. Whilst I accept that an element of natural daylight would remain within the kitchen area, this would not be to the extent currently enjoyed, as the shaft would have to extend through the proposed development above, likely limiting its overall effectiveness.

¹ Flats 532, 533, 534, 536 and 537, 1 Haven Way.

² Flat 631, 2 Haven Way.

³ Daylight and Sunlight Report, by CHP Surveyors Ltd, dated 17 December 2020.

⁴ APP/A5840/W/18/3202899 and APP/A5840/W/17/3174034

18. Currently, the flats on the fifth floor demonstrate a high standard of amenity for the existing occupiers. The removal of 15no. rooflights, even though they largely serve non-habitable areas within the flats and the alteration to the remaining 6no. rooflights over the kitchen areas would significantly detract from the existing light and airy character that these residential units currently exhibit. The standard of amenity afforded by the occupiers of these existing units would be notably reduced as a consequence of the proposed development, through the creation of much darker dwellings where there would be more reliance on artificial lighting. This would be further compounded by a distinct lack of shared light between rooms.
19. The appellant has drawn my attention to a number of judgments⁵, which I consider to be material considerations, albeit they related to different classes in the GPDO. Nonetheless, there is little in these judgments that would alter my findings above. I do not consider that the even in applying a flexible approach that the outcome for existing residents of the fifth floor of the host property would result in acceptable living standards or create a place that promotes health and well-being with a high standard of amenity for existing users.
20. For these reasons, I conclude on this main issue that the proposed development would significantly harm the amenity of the existing building and neighbouring premises in respect of loss of light, within the context of the subject matter of the prior approval required under Schedule 2, Part 20, Class A, Paragraph A.2(1)(g) of the GPDO. Within the context of that permitted development right and only in so far, as they are a material consideration, relevant to matters of amenity, would fail to accord with SP Policy 3.2; CS Policy 13; LonP Policy D4; Section 3.4 of the Council's 2015 Technical Update to the Residential Design Guide (2011) Supplementary Planning Document and the requirements of the Framework, particularly paragraphs 125 c) and 130 f).

Other Matters

21. A number of local residents, including Grange Gardens Residents Association, have also expressed a wide range of concerns including, but not limited to the following: loss of privacy/outlook, pressure on services, residential density, other development, access, disturbance, existing maintenance issues, amongst other things. However, I note that these matters were considered where relevant by the Council at the application stage and did not form part of the reason for refusal, which I have dealt with in the assessment above. Whilst I can understand the concerns of the interested parties, there is no compelling evidence before me that would lead me to come to a different conclusion to the Council on these matters.
22. I acknowledge that the proposed development would contribute to the local housing supply. However, I do not consider this modest benefit to be significant enough to outweigh the significant harm I have already identified. I have considered this appeal on its own merits and concluded that the proposed development would be unacceptable for the reasons set out above.
23. My attention has been drawn by the Council towards issues that have arisen since the determination of the application, regarding fire safety and a requirement to consult the Health and Safety Executive. However, as I am

⁵ R (Sunilkumar Bansilal Patel) v SSCLG and others CO/1207/2016 and East Hertfordshire District Council v Secretary of State for CLG and another (CO/3768/2016 & CO/3820/2016)

dismissing the appeal in any event, I have not needed to consider these matters further.

Conclusion

24. Notwithstanding my conclusions in respect of character and appearance, I have concluded that the proposed development would lead to significant harm to the living conditions of neighbouring occupiers, particularly those residents on the fifth floor of the host property. The proposal would therefore conflict with the requirements of the Framework as a whole, and in respect of the social and environmental objectives of sustainable development.
25. Accordingly, for the reasons given above, I conclude that the appeal should be dismissed.

W Johnson

INSPECTOR