
Appeal Decision

Site Visit made on 13 September 2021

by Mr S Rennie BSc (Hons), BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 December 2021

Appeal Ref: APP/D1780/W/21/3274707

136 Bassett Avenue, SOUTHAMPTON, SO16 7EZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant prior 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 Mr Andy Patel against the decision of Southampton City Council.
 - The application Ref 20/01707/PA2A, dated 7 December 2020, was refused by notice dated 28 January 2021.
 - The development proposed is for prior approval of proposed new dwellings on a detached block of flats.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. 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 GPDO), planning permission is granted for works for the construction of up to two additional storeys of new dwelling houses immediately above the existing topmost residential storey on a building which is a purpose-built, detached block of flats. This is subject to limitations and conditions set out in Paragraph A.1.; Paragraph A.2. and Paragraph B.

Main Issues

3. The main issues are whether prior approval should be granted having regard to the effect of the proposal on:
 - (i) The visual amenity of the area from the external appearance of the building as proposed.
 - (ii) the living conditions of the occupiers of existing properties regarding issues such as outlook, loss of privacy or overbearing effect.
 - (iii) highways and transport issues.
4. Also, there is the main issue of the effect of the development on the Special Protection Area (SPA) of the Solent Coastline.

Reasons

Visual impact of the development proposed

5. The condition under paragraph A.2.1(e) of Part 20, Class A of the GPDO, requires that the developer must apply to the local planning authority for prior approval of the authority as to the external appearance of the building. However, the Council has considered this aspect under A.2.1(g), which relates to impact to amenity (in terms of visual amenity impact). However, it is apparent to me that the concern from the Council is the visual impact of the proposed development on the character and appearance of the area, including the street scene. It is my interpretation that 'external appearance' goes beyond an assessment of the building in isolation. In a case such as this, where the building is part of an established street scene, an assessment of 'external appearance' should take into consideration the building's intrinsic design and the effect in terms of the building's relationship with adjoining or nearby properties. The street context is an aspect of this building's external appearance.
6. As such, I consider that the Council's comments with regards visual amenity as being also applicable to an assessment under the condition A.2.1(e) - the external appearance of the building. The consideration of the issues (the assessment of the proposals on the visual amenities of the area) as raised by the Council and the appellant's responses are applicable, whether considered under A.2.1 (e) or (g). I do though regard it as appropriate in these circumstances to consider the visual impact of the proposed additional storeys of flats within a wider street scene context through this 'prior approval' process.
7. The existing building has flats over four storeys (though there is much less floor space on the third floor). The proposal would add two additional storeys to the building, though it would keep similar style mono-pitched roofs, fenestration, materials and balconies for example. In this regard, the design of the proposed additional storeys is appropriate in that it does not diminish the design quality of the existing building.
8. However, the external appearance has to be considered in its context within the street scene. It is a building on a corner plot in a residential area, fronting a busy highway (Bassett Avenue). Currently, the building is taller than the two storey dwelling heights that are the prevailing character of this street scene in this part of Bassett Avenue. Being on a corner plot it is not inappropriate to have a taller building in this location, but the existing building is not taller by a significant degree compared to the typical two storey houses. Indeed, the lower eaves of the sloping roofs are similar in height to the nearest adjacent house at No 134 Bassett Avenue, which itself has a steeply pitched roof. As such, the current height and roof form allows for a successful transition within the street scene of this taller corner plot building and the two storey height houses that are the prevailing character of this street scene.
9. The proposed additional two storeys would result in No 136 being markedly taller than the typical two storey houses within this street. The building would become overly prominent and appear to 'tower over' the adjacent No 134, which would accentuate the height difference. To my mind, such a six storey building, as would be the result of this proposal, would appear incongruous in a

street scene where the prevailing character is two storey houses. The appropriate height transition mentioned above would be lost.

10. As I saw on site, there is Brampton Tower, which is a particularly tall block of flats near the site on Bassett Avenue. This would be taller than No 136 even with the additional storeys. However, this tower is an anomaly within the street scene of this part of Bassett Avenue. There was no more prominent tall building like it which I observed in the area. The prevailing character of the area is two storey houses, although there are some other flatted developments, but not of the scale and prominence of Brampton Tower. I would also regard the flats at No 136 to visually relate more to the immediate neighbour to the south than to Brampton Tower, which is set back across the highway. As such, this tower is not justification for the additional height of No 136 as being appropriate in this street scene.
11. It is acknowledged that the thrust of the relevant permitted development rights is for upwards development on existing residential buildings, providing additional housing. However, there are conditions that need to be considered as part of the prior approval process. Furthermore, I would conclude that the proposal would not accord with National Planning Policy Framework (the Framework) paragraph 120(e) which allows for upward extensions "where the development would be consistent with the prevailing height and form of neighbouring properties and the overall street scene". This development would not be consistent with the prevailing height of the overall street scene, meaning that it would appear incongruous and overly prominent in its setting.
12. Overall, I conclude that the external appearance of the development as proposed would be harmful to the visual amenities and character of the area.

Amenity of Neighbours

13. A condition under paragraph A.2.1(g) states that prior approval is required relating to the potential impact on the amenity of the existing building and neighbouring premises including overlooking, privacy and the loss of light.
14. The nearest neighbour is those living at No 134 Bassett Avenue, which is a large detached house in a spacious plot. The issue is whether the proposal would result in increased overlooking with loss of privacy and an overbearing sense of enclosure. Being to the north of No 134, the proposed additional storeys should have no significant overshadowing effect.
15. The proposal is to add further storeys onto the building, but not increase its 'footprint' within the site. The building at No 136 would remain mostly to the side of the house at No 134, with this neighbour's garage in between on the boundary. The spacing between the building at No 136 and the neighbour's house means that the proposal would not appear significantly overbearing when viewed from within the house. There is also a conservatory type structure at No 134 attached to the rear of the garage, but any views from this part of the neighbour's house would not be much different from existing, with the Perspex type roofing not generally providing clear views back towards No 136. There would be clearer views from the garden of No 134 of the additional storeys, but these would be at a distance which would sufficiently mitigate any sense of enclosure or it being overbearing.

16. The additional storeys would include windows to the side and rear elevation which would allow some views from habitable rooms into mainly the rear garden area of No 134. However, there are existing windows that have a similar view from the existing upper floor flats. I acknowledge that the development would result in additional windows at a higher level, but I would not regard this as resulting in a significant increase in overlooking impact or loss of privacy.
17. On this matter, I would conclude there would be no significant adverse impact to neighbour amenity and the proposal would not conflict with Framework paragraph 130(f) in this regard, which requires development to allow for a high standard of amenity for existing users, for example.

Transport and Highways

18. A condition under paragraph A.2.1(a) states that prior approval is required for the transport and highways impacts of the development. On this matter the Council consider there being a need to improve local bus stop facilities (such as providing better information) to mitigate against a lack of sustainable transport options.
19. Indeed, the additional flats would mean a likely increase in trips to and from the flats. However, this is not a large scale development, being for 6 flats only, with there already being bus stops along Bassett Avenue. The site appears reasonably well positioned when it comes to sustainable transport options, with the bus routes nearby but also some facilities within walking or cycling distance.
20. The Council has required a contribution towards sustainable transport enhancement through a Section 106 legal agreement with planning obligations. However, paragraph 57 of the Framework sets the criteria for planning obligations. Based on the information before me, there is insufficient evidence to demonstrate that this requirement meets these tests, particularly whether it is necessary to make the development acceptable in planning terms.
21. On this basis, the effects as a result of the development would not amount to harmful impacts to transport or the highway networks.

The Solent Coastline and Southampton Water SPA

22. The appeal site is within 5.6 km of the Solent and Southampton Water SPA. It is my understanding that the mudflats and saltmarshes within the SPA provide essential feeding and roosting grounds for various internationally important water birds which together comprise a qualifying feature of the SPA. The conservation objectives for the SPA are, in summary, to ensure that the integrity of the site is maintained or restored in order to protect the habitats and the birds that depend on them.
23. Article 3(1) of the GPDO 2015 grants planning permission for the classes of development described as permitted development in Schedule 2 subject to Regulations 75- 78 of the Conservation of Habitats and Species Regulations 2017. Regulation 75 provides that it is a condition of any planning permission granted by a general development order made on or after 30 November 2017 that development which is (a) likely to have a significant effect on a European site or offshore marine site, alone or in combination with other plans or projects and (b) not directly connected with or necessary to the management

of the site must not begin until the developer has received written notification of the approval of the LPA under Regulation 77.

24. Article 3(1) effectively imposes a pre-commencement condition on all development that is permitted by the GPDO and would affect a European protected habitat. Permitted Development cannot be lawfully begun until the developer has made a Regulation 77 application and the LPA is satisfied that the development would have no adverse effect on the integrity of the habitat.
25. The appellant explains that they intend to make a financial contribution towards these measures. However, as I am dismissing this appeal for different reasons, I have not pursued this matter further.

Conclusion

26. Whilst I acknowledge that the proposal would provide towards a housing boost for the area and also the comments from the appellant regarding a lack of communication from the Council, overall, for the reasons given above, I conclude that the appeal should be dismissed.

Mr S Rennie

INSPECTOR