



Appeal Decision

Site visit made on 22 September 2021 by Darren Ellis MPlan

Decision by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 January 2022

Appeal Ref: APP/L5810/D/21/3269885

Lakeside, 3 Queen Elizabeth Walk, Barnes, London, SW13 9SA

- 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 and Schedule 2, Part 1, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mrs U Harvey against the decision of the Council of the London Borough of Richmond Upon Thames.
 - The application Ref 20/3097/GPH07, dated 30 October 2020, was refused by notice dated 21 December 2020.
 - The development proposed is to add one additional storey immediately above the existing single storey of the dwellinghouse, together with any engineering operations necessary for the purpose of that construction.
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Decision

1. The appeal is allowed, and prior approval is granted under the provisions of Article 3 and Schedule 2, Part 1, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) 'to add one additional storey immediately above the existing single storey of the dwellinghouse, together with any engineering operations necessary for the purpose of that construction' at Lakeside, 3 Queen Elizabeth Walk, Barnes, London, SW13 9SA, in accordance with the application Ref 20/3097/GPH07, subject to the conditions set out in section AA.2.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Procedural Matters and Main Issue

3. The description of development in the banner heading above is taken from the first part of the description of development on the application form which adequately describes the development proposed.
 4. The GPDO permits development consisting of the enlargement of a dwellinghouse by construction of one additional storey, where the existing dwellinghouse consists of one storey, together with any reasonably necessary engineering operations.
 5. Development is permitted under Class AA subject to limitations and conditions and a requirement that the developer applies for prior approval to the local planning authority.
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6. The drawings that the Council made its decision on included two small side-facing rooflights above the first floor landing that were deemed to be contrary to the condition in paragraph AA.2.(2)(b) which prohibits new windows in a roof slope forming a side elevation. The appellant has provided amended drawings with the appeal showing the scheme without the side-facing rooflights.
7. Generally, the appeal process should not be used to evolve a scheme and should be determined on the basis of plans submitted and considered by the Council at the application stage. Similarly, an appeal is made in relation to a specific scheme and it is not possible to submit multiple options for consideration in the event that the first option is unsuccessful. If that was the case an appellant could submit multiple options in the hope that one may be found suitable. Therefore, it is necessary to determine which proposal is being considered at the outset and determine the appeal on the basis of that scheme.
8. Where a proposal fails to meet the conditions set out in paragraph AA.2(2)(b) an appeal must be dismissed because the proposal would not meet the limitations of the GPDO. In those circumstances it is not necessary to consider the matters of prior approval, including the effect on external appearance. However, the fundamental dispute between the parties relates to the effect of the proposal on the external appearance of the dwellinghouse and how that should be assessed. The rooflights are immaterial to the arguments in that regard. If the appeal was dismissed on a technicality relating to the side facing rooflights, no resolution on the principal dispute would be reached. Having regard to that the pragmatic course of action is to determine the appeal on the basis of the amended proposal put forward by the appellant. I am satisfied that no prejudice would arise for either party if I were to accept the amended plans and consider the appeal on that basis, given the minor nature of the rooflights.
9. I have therefore assessed the appeal based on the amended drawings provided in appendix H of the appellant's statement of case, namely: Proposed Ground Floor Plan drawing no. 5226 3 11; Proposed First Floor and Roof Plans drawing no. 5226 3 12 Rev A; Proposed Elevations drawing no. 5226 3 20 Rev A. Based on the amended plans, the proposal would accord with paragraph AA.2(2)(b).
10. The Council has made reference to proposed alterations to the ground floor fenestration shown on the drawings and has suggested that the appellant contact them to ascertain whether those alterations amount to permitted development. For the avoidance of doubt, this decision relates to the proposed first floor addition only under Class AA and it is for the appellant to satisfy herself on the lawfulness of any ground floor alterations.
11. In terms of the prior approval process, the Council raised no objection in respect of the impact on neighbouring amenity, air traffic or defence assets, or protected views or vistas.
12. The main issue therefore is whether prior approval should be granted having regard to the effect on the external appearance of the dwellinghouse.

Reasons for the Recommendation

13. Paragraph AA.2.(3)(a)(ii) of Class AA requires prior approval to be sought for *'the external appearance of the dwellinghouse, including the design and*

architectural features of (aa) the principle elevation of the dwellinghouse, and (bb) any side elevation of the dwellinghouse that fronts a highway.'

14. The reason for refusal refers to the scale, mass and bulk of the proposal which, in the view of the Council, would enclose 'a greater amount of space to the detriment of the open character of the Metropolitan Open Land (MOL)'. Reference is made to alleged conflict with policy LP13 of the London Borough of Richmond Local Plan (2018) (the LP), which relates to MOL and Green Belt. MOL is a designation that seeks to protect strategic open spaces in London and the approach to development in those areas is similar to Green Belt policy with a fundamental aim of protecting openness.
15. The policy states that inappropriate development will be refused except in very special circumstances. A list of 'appropriate uses' in the Green Belt or MOL is then set out and that would not appear to include domestic extensions. However, the appeal does not relate to an application for planning permission. Planning permission is granted for upward extensions through the GPDO¹, subject to the prior approval process. Permitted development rights under Class AA apply to properties within the MOL and there is no requirement to assess whether proposals are 'inappropriate development'. Rather, permission is granted subject to consideration of a limited number of prior approval matters.
16. There is no explicit allegation in the Council's decision that the principal elevation of the dwellinghouse would cause harm in terms of its architectural appearance. Nor is it suggested that the addition would be out of kilter with the design of the original dwelling in terms of its proportions or appearance. Rather, the concern would appear to be at a broader strategic level relating to a loss of openness. However, whilst there may be a visual element to it, the concept of openness relates to the wider spatial quality of the MOL and not an issue solely concerned with to the external appearance of a particular dwellinghouse. The Council's concern is expressed less in terms of how the proposal would appear and more in relation to its spatial impact with regard to matters of scale, mass and bulk.
17. The matters for consideration under prior approval listed at sub-paragraphs (aa) and (bb) of paragraph (3)(a)(ii) are not necessarily a closed list. For example, it might be necessary to have regard to the context or the character of the surrounding area in order to assess whether the external appearance of a proposal is acceptable; it is difficult to assess a design in isolation of context. However, in my view the general concern relating to loss of openness goes beyond what could reasonably be considered under the relevant matters of prior approval. Any upward extension will have some impact on openness by extending into space that was previously unoccupied and the Council's approach would effectively rule out such development within the MOL.
18. Had the Government wanted to prevent such development in the Green Belt or MOL it could have excluded the implementation of permitted development rights under Class AA from those areas. It did not do so and an expectation of some associated impact on openness is therefore built into the decision to grant planning permission for upward extensions via the GPDO. Accordingly, whilst there would be a resultant loss of openness, contrary to the aims of policy LP13, that matter is not determinative in the question of whether prior

¹ As set out in Article 3(1) of the GPDO

approval should be granted in respect of the external appearance of the proposal.

19. Moreover, notwithstanding the broader strategic aims of the MOL, the appeal site is located along a narrow, tree-lined lane adjacent to existing two storey housing, with fencing and development associated with the sports facility to the rear. Thus, the immediate surroundings have a partially enclosed, rather than open, feel and the dwelling is not particularly prominent from wider vantage points beyond the lane in the vicinity of the entrance to the property. In that context, an additional storey would not look out of place in terms of design or appearance, particularly considering the scale of the adjacent dwellings.
20. The extension has been designed with matching features and materials to the existing building. The scale and pitch of the roof would remain unchanged. Consequently, in view of the above, the extra storey would be in keeping with the modern design and appearance of the existing dwelling and the principal elevation would be reflective of the existing character of the property such that it would not be harmful. In that respect, the proposal would comply with the design related criteria of policy LP1 of the LP insofar as is relevant to matters of prior approval and the external appearance of the dwellinghouse, including its design and architectural features would be acceptable. Accordingly, prior approval should be granted having regard to the specific requirements of paragraph AA.2.(3)(a) of Class AA.

Other Matters

21. Reference has been made to a previous appeal decision relating to a planning application to demolish the existing bungalow and replace it with a two-storey dwelling. The appeal decision letter or the plans relating to the proposed scheme have not been submitted and are not before me. As such, it is difficult to draw any comparison. In any event, an application for planning permission is fundamentally different to an application for prior approval. As set out, the principle of upward extensions within the MOL is established through the GPDO and I must assess the appeal based on the specific and limited matters for which prior approval is required. Therefore, the fact that the previous appeal was dismissed does not dictate that prior approval should not be granted and I have considered the proposal on its merits.

Conditions

22. Standard conditions are set out in paragraph AA.2 of Class AA, whilst paragraph AA.3.(15) allows further conditions to be imposed that are reasonably related to the subject matter of the prior approval.
23. A condition requiring the development to begin within three years has been suggested. However, the condition set out in paragraph AA.2.(3)(c) requires development to be completed within three years of the date of the granting of prior approval. The suggested condition would conflict with the condition in AA.2.(3)(c) and therefore it would not be necessary.
24. The Council has suggested a condition that requires the external materials to match the existing materials and that details or samples of these materials shall be submitted to and approved by the Council prior to the commencement of the works. The condition set out in paragraph AA.2.(2)(a) requires exterior materials similar to the existing materials to be used. The site is not within a

conservation area and it has not been demonstrated that details or samples of the materials need to be approved before works commence. It would therefore be unnecessary in this case to attach a condition that requires these details.

25. The Council suggested conditions which mirror the conditions set out in paragraphs AA.2.(3)(b), (d) and (e). As these conditions are automatically applied to prior approvals in Class AA it is not necessary to attach them as separate conditions. In respect of the suggested construction management plan condition, the Council included suggested measures that go beyond those set out within the GPDO but no specific reasoning was set out for a number of the suggested elements. Given that the proposal is for a domestic extension of moderate scale, the standard construction management condition contained within the GPDO is sufficient to mitigate any impact in terms of traffic, neighbouring amenity and visual amenity.

Conclusion

26. For the reasons given above the proposal would conform to the requirements and criteria of Schedule 2, Part 1, Class AA of the GPDO. Furthermore, the proposal would satisfy the aims of the Framework, the London Borough of Richmond Upon Thames Local Plan and the London Plan insofar as they relate to the appearance of the property and the surrounding area.
27. Having regard to the above, and taking account of all other matters raised, I recommend that the appeal should be allowed and prior approval granted, subject to the conditions set out in Schedule 2, Part 1, Class AA of the GPDO.

Darren Ellis

APPEAL PLANNING OFFICER

Inspector's Decision

28. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis, I agree with the recommendation and shall allow the appeal and grant prior approval, subject to the conditions set out in Schedule 2, Part 1, Class AA of the GPDO.

Chris Preston

INSPECTOR