



Appeal Decision

Site visit made on 7 December 2021

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st January 2022

Appeal Ref: APP/E5900/W/21/3271129

9 Gaselee Street, Isle of Dogs E14 9QZ

- 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 1, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by KPL (Katrin Properties Ltd) against the decision of the Council of the London Borough of Tower Hamlets.
 - The application Ref PA/21/00067, dated 4 January 2021, was refused by notice dated 5 March 2021.
 - The development proposed is application for Prior Approval under Schedule 2, Part 1, Class AA Town and Country Planning (General Permitted Development Order) 2015, as amended, the enlargement of a dwellinghouse by construction of additional storey that would reach a maximum height of 16.5m.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for an award of costs was made by Katrin Properties Ltd against the decision of the Council of the London Borough of Tower Hamlets. This application is the subject of a separate Decision.

Preliminary Matters

3. In the banner heading above, I have used the appellant name as it is set out on the initial application form in the interests of consistency but it is noted that KPL and Katrin Properties Ltd are used interchangeably between application, appeal and costs applications.
4. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (hereafter, 'the Order') grants permission¹ for the enlargement of a dwellinghouse consisting of the construction of up to two additional storeys where the dwellinghouse already consists of two or more storeys. Paragraph AA.1(a) to (k) sets out the circumstances in which the permission granted by Class AA does not apply. The Council have not identified any conflict with the requirements of paragraph AA.1(a) to (k), nor do I have any evidence before me that would lead me to conclude differently.
5. Thus, paragraph AA.2 sets out the conditions that apply to the permission granted by Class AA whilst paragraph AA.3 describes the procedure for prior approval applications. Sub-paragraph AA.2(2)(d) states that following the

¹ By virtue of Article 3(1) and Schedule 2, Part 1, Class AA

development the dwellinghouse must be used as a dwellinghouse within the meaning of Use Class C3 and for no other (other than ancillary to the primary use) purpose.

6. Although no part of Class AA or its constituent parts set out a similar requirement to the above in terms of the use of the existing building, the term dwellinghouse is employed consistently throughout Class AA. The Council allege that the appeal property has been occupied as short-term accommodation and is not a dwellinghouse under the terms of Use Class C3, something that the appellant denies.
7. However, much of the evidence submitted by the Council relates to the occupation of neighbouring properties in Gaselee Street as short-term and holiday accommodation lets, and not directly to the appeal property. The Council seek to adduce that as those neighbouring properties are within the appellant's ownership then it follows that the appeal property is occupied in the same manner. However, the evidence before me does not, for the purposes of determination under Class AA, demonstrate that the appeal property is not a dwellinghouse for these purposes.
8. Paragraph AA.2(2)(d) is quite clear in any event that it is a condition of the permission granted by Class AA that the extended property must be used as a C3 dwellinghouse. Although the Council have queried the proposed layout of the additional floors, and particularly the inclusion of an additional kitchen, I am not persuaded that that necessarily amounts to grounds that the provisions of paragraph AA.2(2)(d) would not be complied with. In any event, compliance with this condition of the Order is an on-going requirement and its monitoring is a matter for the Council and the appellant to resolve. As such, this is a matter between the appellant and the Council going forward, for which further provisions also exist under sections 191 or 192 of the Town and Country Planning Act 1990 (as amended) and not under a section 78 appeal as in this instance.
9. Paragraph AA.2(3)(a) sets out the matters for which prior approval must be sought, with sub-paragraph (i) referring to the impact on the amenity of any adjoining premises, including overlooking, privacy and loss of light, whilst (ii) refers to the external appearance of the dwellinghouse including its design and architectural features of the principal elevation. The National Planning Policy Framework (the Framework) can be considered relevant in prior approval cases, but only insofar as they relate to the development and prior approval matters. I have determined the appeal accordingly.

Main Issue

10. With the above in mind, the main issue is whether or not the proposal would accord with the provisions of Part 1, Class AA of the Order, with particular regard to the external appearance of the dwellinghouse and the impact on amenity of adjoining premises.

Reasons

11. The conditions set out at paragraphs AA.2(3)(a)(i) and (ii), with regard to amenity and external appearance respectively, are not closed lists. Examples of each are given in each case but are not exhaustive lists.

12. The appeal property is a mid-terraced 3-storey dwellinghouse, although the distinctive rise-and-fall of the peaked gables and lower, linking flat roofed elements give the terrace the appearance of a row of linked semi-detached houses. Nevertheless, its design, proportions, height and appearance are replicated along the street resulting in a pleasing sense of rhythm and repetition. Towards the northern end of the street, close to the junction with Baffin Way, the scale of buildings increase under a rising pitched roof to 4, 5 and then 6 storeys in height.
13. Whilst it attempts to replicate the peaked gable and flat roofed linking elements of the host building, and also as features seen widely along the street, the result in isolation would be an awkward, incongruous and ungainly, slab-sided extension. Without the balance of the other 'half' of the peaked gable elevation of this pair, and losing the sense of rhythm and repetition which are key features of the wider terrace, the extension would bear little resemblance to the existing dwelling's design and architectural features.
14. Moreover, where the sense of rhythm and repetition is clearly established along the street and is a distinct element of the terrace's design language, the proposal cannot be viewed in isolation. The relationship between the appeal property and its surroundings is, in this instance, a relevant aspect of the consideration of the effect of the proposal on the appeal property's external appearance.
15. Just as the proposal would cause clear and demonstrable harm to the character and appearance of the appeal property, assessed in terms of its design and architectural features, so too in terms of the appeal property's setting within the terrace. The harm arising to character and appearance in the latter instance compounds the significant harm that I have identified in respect to that of the host building.
16. I acknowledge that there is a substantial step-up in upper floor bulk and massing and a corresponding increase in roofline towards the northern end of the terrace. However, it is clear that the transition in scale of the terrace from south to north was a conscious design decision at the time. What is proposed in this instance would result in an abrupt and incongruous leap in scale and design and would be at odds with the architectural features and character of the host building, and would also compromise the prevailing character and design of the terrace as a whole.
17. The proposal's detailing in terms of fenestration pattern and materials would reflect those of the existing building. However, whilst a positive feature, this would not mitigate the harmful effect of the proposed extension upon the external appearance of the existing building.
18. For the reasons set out, I conclude that the proposed development would cause significant harm to the external appearance of the building. The proposal would therefore be in conflict with the aims of the Framework with regards to achieving well-designed places and creating high quality, beautiful and visually attractive buildings.
19. Although the Council's second refusal does not expressly cite the Framework, I have noted the content of London Plan policy D4 and Tower Hamlets Local Plan policies S.DH1 and D.DH2, to which the Council do refer. Together, these policies seek to deliver high quality design which respects and positively

responds to, amongst other things, context and townscape and be of an appropriate scale, height and form and thus reflect the aims of the Framework in seeking to achieve well-designed places and creating high quality, beautiful and visually attractive buildings.

Conclusion

20. For the reasons set out above, and having considered all other matters raised, I conclude that the appeal should be dismissed.

G Robbie

INSPECTOR