



Appeal Decision

Site visit made on 2 February 2022

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th February 2022

Appeal Ref: APP/L2250/W/21/3279975

Willow Court, Enbrook Road, Sandgate, CT20 3NU

- 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 Eco-Regeneration LLP against the decision of Folkestone and Hythe District Council.
 - The application Ref 21/0337/FH/PA, dated 12 February 2021, was refused by notice dated 21 May 2021.
 - The development proposed is enlargement of a block of flats by construction of two additional storeys for 11 apartments.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Article 3(1) and Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the enlargement of a block of flats by construction of two additional storeys for 11 apartments at Willow Court, Enbrook Road, Sandgate, CT20 3NU in accordance with the terms of application Ref 21/0337/FH/PA, dated 12 February 2021 and the plans submitted with it.

Preliminary Matters

2. Class A of Part 20 of the Order establishes that new dwellinghouses on detached blocks of flats are permitted development subject to several restrictions and conditions. One of these requires application to be made for prior approval as to the impact on the amenity of neighbouring premises including overlooking, privacy and loss of light.
3. In prior approval cases there is no requirement to have regard to the development plan as there would be for any development requiring planning permission. Nevertheless, the policies cited in the Core Strategy and the Places and Policies Local Plan are material considerations. In determining an application the local planning authority must take any representations made into account. It must also have regard to the National Planning Policy Framework so far as relevant to the prior approval matters and as if the application were a planning application. The same approach will be taken in deciding the appeal.

Main Issue

4. There is no dispute regarding any of the limitations on permitted development in paragraph A.1. Therefore the main issue is the effect of the proposed

development on the amenity of neighbouring premises with particular reference to overshadowing and to the gardens of properties in St Paul's Way.

Reasons

5. Willow Court is a 5-storey building including a lower floor ground floor and has a simple 1960s design. It is proposed to add two extra stories to accommodate 11 flats increasing the height of the building by over 6m.
6. Because of the juxtaposition of Willow Court with the houses in St Paul's Way and the angle and path of the sun, the proposed upward extension would curtail sunlight within their rear gardens. This would occur in the late afternoon. The effect in the sunnier months of August and September is particularly highlighted by the Council when the sun is lower in the sky and when residents may wish to sit outside. Policy HB1 of the Places and Policies Local Plan seeks to avoid an adverse impact on the amenity of neighbours and Policy HB8 indicates that development should not cause undue overshadowing of neighbouring properties.
7. The appellant has prepared a daylight and sunlight assessment based on the Building Research Establishment (BRE) guidance in *Site Layout Planning for Daylight and Sunlight: a guide to good practice* (P J Littlefair, 2011). This is advisory but to appear adequately sunlit throughout the year it recommends that at least half of a garden should receive at least two hours of sunlight on 21 March. The assessment shows that more than 76% of the closest amenity areas would receive over two hours of sunlight on that date if the proposed development were built. According to the guidance this means that the loss of sunlight would be unlikely to be noticeable.
8. A study has also been undertaken of the specific times of day and year that are of concern to the Council. These show that the impact would be brief and would affect areas that are already quite heavily overshadowed. The findings of the appellant's assessment are not disputed. Moreover, the supporting text to Policy HB8 refers to the detailed BRE tests. Consequently significant weight should be attached to this evidence. Furthermore, whilst the National Planning Policy Framework aims to create places with a high standard of amenity for existing users, it also expects authorities to take a flexible approach to applying daylight and sunlight policies or guidance.
9. The assessment has also tested neighbouring windows in St Paul's Way, St Paul's Court and Enbrook Road for any loss of daylight or sunlight by measuring the vertical sky component and the annual probable sunlight hours. All relevant BRE guidelines are met with very good results and it is therefore concluded that no undue loss of daylight or sunlight would be experienced.
10. In summary the proposal would not result in overshadowing of the gardens of the properties in St Paul's Way to the extent that their living conditions would be seriously diminished. Therefore the effect of the proposed development on the amenity of neighbouring premises would be acceptable.

Other Matters

11. Other objections have been raised by local residents. The design and external appearance of the extension would reflect the existing building but with contrasting materials to distinguish the upper levels. It would be considerably taller than the generally two-storey development in the vicinity although Willow

Court is already substantial in comparison. The effect of the increased height would also be seen in the context of the rising land and forest trees to the east. In any event, the Government considers the permitted development right to extend upwards to provide additional homes is necessary. This is in order to boost housing delivery and increase densities by making effective use of existing buildings and avoiding the need to develop greenfield sites.

12. According to the Council the appeal site lies within a sustainable urban area where nil parking provision for residential flats is acceptable. On-street parking restrictions may also discourage car ownership. Nevertheless, 11 additional parking spaces are shown in the rear courtyard together with a cycle store for 12 bikes. Even if some of the garages at Willow Court have been sold off there is no compelling evidence that development should be prevented on highway grounds because of an unacceptable impact on highway safety.
13. Representations say that the road floods and is impassable at least three or four times a year. However, the site is not within a defined flood risk area and there is no technical information to indicate that adding 11 units on top of Willow Court would increase risks.
14. Some objections raised by third parties cannot be considered through the prior approval process. These include those relating to any noise from additional residents, the effect on local services, adequacy of foundations, fire risk, accessibility, disturbance during construction and sewage disposal. However, some of these are covered by other regimes and the Order requires details of the management of the construction process to be given in advance.

Conditions

15. Under Class A development is permitted subject to a condition that it must be completed within 3 years starting from the date of this decision. Furthermore, as referred to above, under paragraph A.2(3), the developer must provide the local planning authority with a report for the management of the construction of the development, which sets out the proposed hours of operation and how any adverse impact of noise, dust, vibration and traffic on occupiers of the building and adjoining owners or occupiers will be mitigated.
16. The developer must also notify the local planning authority of the completion of the development as soon as reasonably practicable. Paragraph B(17) of Part 20 confirms that development must be carried out in accordance with the approved details.
17. The Council requests a condition requiring the appropriate remediation of any unforeseen contamination. However, notwithstanding its age, there is no evidence that asbestos is present at the block and there are health and safety regulations regarding the handling and disposal of this material in any event.

Conclusion

18. Having regard to the reasons given above, prior approval should be granted and the appeal allowed.

David Smith

INSPECTOR