



Appeal Decision

Site visit made on 18 January 2022

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th March 2022

Appeal Ref: APP/Z5060/W/21/3276092

The Sienna Building, 116-118 Victoria Road, Barking IG11 8PZ

- 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 E Reich, Avon Freeholds Ltd. against the decision of the London Borough of Barking and Dagenham Council.
 - The application Ref 20/02265/PRIFLAT, dated 16 November 2020, was refused by notice dated 21 December 2020.
 - The development proposed is the erection of a two storey extension to accommodate 8 new self-contained flats.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council's decision notice refers to policies within their development plan. The principle of the proposed development has been established by the provisions of Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). The provisions of Paragraph B(15)(b) of Part 20 require regard to be had to the National Planning Policy Framework (the Framework) in respect of an application for prior approval under this Part.
3. Since the submission of the appeal, the High Court issued a judgement in the case of *CAB Housing Ltd, Beis Noeh Ltd & Mati Rotenberg v SSLUHC* [2022] EWHC 208 (Admin). This judgement concerns the interpretation of Class AA of Part 1 of the GPDO, which has consequences for how Conditions A.2.(1)(e) and (g) of Class A of Part 20 of the GPDO are interpreted. The main parties were therefore afforded the opportunity to comment on any implications the judgement may have on the appeal.

Main Issues

4. In addition to overlooking, privacy and loss of light, the Council's decision notice refers to the proposal being unneighbourly and having a detrimental impact upon the amenity of adjoining properties. Condition A.2.(1)(g) of Class A refers to the impact of development on the amenity of the existing building and neighbouring premises and does not limit those considerations to overlooking, privacy and the loss of light.

5. The Council's officer report refers to the impact the proposal would have on the living conditions of neighbouring residents with regard to overlooking, privacy, loss of light, outlook, noise and disturbance.
6. Taking the above into account, the main issues are the impact of the proposed development on: the external appearance of the building; and the living conditions of neighbouring residential occupants, with particular regard to outlook, light, privacy, and noise and disturbance.

Reasons

External Appearance

7. The appeal building is a three storey block of flats located alongside and opposite two storey terraced houses. Its flat roof appears to be only slightly taller than the ridge heights of the pitched roofs of those neighbouring houses. It occupies a space between the southern row of houses on Victoria Road and a raised railway embankment to the west. There are blocks of flats to the southeast which form part of the backdrop of some views of the appeal building from Victoria Road and Uphall Road to the north.
8. The proposed development would comprise zinc and timber cladding external materials which would blend with the existing external appearance of the appeal building, and its layout would include projections on the north elevation which would align with timber clad elements below. Furthermore, the sizes and positions of proposed windows would be sympathetic to the existing fenestration layout of the building. The architectural design and features of the proposal would therefore reflect those of the existing building, and in isolation of its surroundings, would create a coherent extension to the building.
9. Notwithstanding its appropriate finishing and the views of blocks of flats to the southeast, the proposed development would appear as an excessive and discordant feature amongst the modest two storey houses of Victoria Road. This would be on account of its overall size, scale, mass and bulk, which would far exceed and fail to respect those characteristics of the buildings in its immediate surroundings. The appeal building does not form part of the same cluster of blocks of flats to the southeast and would appear as a distinctly separate and incongruous tall building within the setting of modest houses. Its position alongside the railway embankment at the end of Victoria Road would not soften the appearance of the proposed development due to the relatively low height of the embankment.
10. The main parties have referred to the findings of different Inspectors in relation to different proposals and the external appearance of different buildings. There is no explanation within the GPDO or any other relevant legislation of what may comprise the 'external appearance' of a building in respect of Condition A.2.(1)(e) of Part 20, or how development should be assessed in that regard. The findings in the High Court judgement referred to above convince me that it is appropriate to consider the impact of the external appearance of the proposal, including its scale, on the neighbouring premises and locality.
11. I note references to a consent granted by the Council for a single storey upward extension to the appeal building. I have not been presented with the full details of that consent, but based on the descriptions provided, there would appear to be significant differences between the size and scale, and therefore

overall external appearance, of that scheme and the proposed development. Consent for a single storey upward extension to the appeal building does not therefore lead me to conclude the proposed development would have an acceptable effect on the external appearance of the building.

12. With the above in mind, the scale of the proposed development would be unsympathetic to the appeal building's surroundings and inconsistent with the prevailing height of neighbouring properties and the overall street scene. It would not therefore comprise good design or add to the overall quality of the area and would have an unacceptable and harmful effect on the external appearance of the building, contrary to the advice set out at chapter 12 of the Framework, which aims to achieve well-designed places.

Living Conditions

13. The proposed development would dominate views from the front facing windows of houses on the opposite side of Victoria Road, but the effect on the outlook of residents of those properties would not cause material harm to their living conditions due to the separation distances involved. The effect would be greater on the residents of 114 Victoria Road, due to the positioning of the garden serving that house in relation to the appeal building. However, the loss of outlook from that garden would be small, considering the existing relationship between that private outside space and the appeal building, and would not cause material harm to the living conditions of residents of that property.
14. The appellant has provided a Daylight and Sunlight Report (November 2020) which concludes that the proposal would have a low impact on the light received by neighbouring properties. The Council has referred to Appendix 2 of that document which shows that three ground floor windows on the front elevation of terraced houses on the opposite side of Victoria Road would experience a 10-11% loss of sunlight. Those windows are likely to serve habitable rooms, but the Daylight and Sunlight Report demonstrates that all of these neighbouring windows would pass the Building Research Establishment's guidance 'Site Layout Planning for Daylight and Sunlight: a guide to good practice' (2nd edition, 2011) with regard to diffuse daylight and direct sunlight tests. The evidence therefore shows the proposal would not cause unacceptable loss of light or overshadowing which would harm the living conditions of neighbouring residents.
15. The proposal would introduce additional windows on all elevations. Those on the front elevation would face towards residential properties on the opposite side of Victoria Road, while those on the east elevation would be obscure glazed. All the proposed windows would be directly above existing windows facing in the same directions. The proposed windows would not create any unacceptable overlooking or privacy concerns due to the distances between them and neighbouring windows. Those distances would be greater than existing distances between neighbouring windows in this location.
16. Detailed floor plans of the existing third floor flats within the appeal building have not been provided. The proposed section plans show the fourth floor would be suspended above the existing roof of the appeal building, which would provide a significant gap between the internal ceilings of the existing third floor flats and the finished floors of the proposed flats. I am therefore satisfied that there would be opportunities for appropriate insulation above the

existing third floor to avoid any unacceptable noise or disturbance impacts on the living conditions of residents of flats at that level.

17. In conclusion on the second main issue, the proposal would not cause material harm to the living conditions of the occupants of neighbouring properties with particular regard to light, outlook, privacy, and noise and disturbance. It would therefore be consistent with advice at paragraph 130(f) of the Framework.

Conclusion

18. For the reasons given above, and notwithstanding my findings in respect of the impact of the proposal on the living conditions of neighbouring residents, I consider the proposal would have an unacceptable and harmful impact on the external appearance of the building. I therefore conclude that the appeal should be dismissed.

L Douglas

INSPECTOR