



Appeal Decision

Site visit made on 8 March 2022

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 March 2022

Appeal Ref: APP/N5090/W/21/3283645

Avenue Court, Farm Avenue, Cricklewood, London NW2 2PT

- 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 Urban Infill against the decision of the Council of the London Borough of Barnet.
 - The application Ref 21/3262/PNV, dated 11 June 2021, was refused by notice dated 9 August 2021.
 - The development proposed is additional storeys at third and fourth levels to provide 4no self-contained flats.
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Decision

1. The appeal is allowed and prior 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 additional storeys at third and fourth levels to provide 4no self-contained flats at Avenue Court, Farm Avenue, Cricklewood, London NW2 2PT in accordance with the application 21/3262/PNV made on 11 June 2021 and the details submitted with it, including plan Nos 0532-PL-001 Rev A, 0532-PL-002 Rev A, 0532-PL-021 Rev A, 0532-PL-022 Rev A, 0532-PL-023 Rev A, 0532-PL-024 Rev A, 0532-PL-051 Rev 0, 0532-PL-052 Rev 0, 0532-PL-021 Rev 0 (Existing: North Front Elevation), 0532-PL-022 Rev 0 (Existing: South Rear Elevation), 0532-PL-023 Rev 0 (Existing: West Flank Elevation), 0532-PL-024 Rev 0 (Existing: East Flank Elevation), 0532-PL-201 Rev B, 0532-PL-202 Rev B, 0532-PL-211 Rev B, 0532-PL-212 Rev B, 0532-PL-213 Rev B, 0532-PL-221 Rev B, 0532-PL-222 Rev B, 0532-PL-223 Rev B, 0532-PL-224 Rev B and 0532-PL-231 Rev 0, subject to the additional conditions set out in the attached schedule.

Preliminary Matters

2. The appeal is made pursuant to Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO'). Class A permits development consisting of works for the construction of up to two additional storeys of new dwellinghouses immediately above the existing topmost residential storey on a building which is a purpose-built, detached block of flats, as well as certain associated works.
3. For development to be permitted by Class A, it must satisfy limitations set out at paragraph A.1, and conditions at paragraph A.2. These conditions establish a

requirement for developers to apply to the Local Planning Authority for a determination as to whether prior approval will be required in relation to a number of specified prior approval matters. In determining such an application, paragraph B(15) requires the local planning authority to take into account any representations made to them as a result of consultation, and to have regard to the Framework, so far as relevant to the subject matter of the prior approval, as if the application were a planning application. I have considered the appeal on the same basis.

4. In refusing the application, the Council cited policies of the Core Strategy 2012 (CS) and Development Management Policies Development Plan Document 2012 (DMP) as well as the Supplementary Planning Document: Residential Design Guidance 2016 (RDG). The prior approval provisions do not require regard to be had to the development plan, and I have therefore only had regard to policies of the development plan insofar as they are material to the matters for which prior approval is sought.
5. Since the appeal was submitted, the High Court issued judgement in the case of *Cab Housing Ltd v SSLUHC* [2022] EWHC 208 (Admin). The judgement concerned determinations pursuant to Class AA of Schedule 2, Part 1 of the GPDO, but included comments at paragraph 9 that 'the issues in this case also affect the proper construction and ambit of permitted development rights granted by GPDO 2015 under Classes ZA, A, AA, AB, AC and AD of Part 20.' Given the potential relevance to the appeal before me, I invited the main parties to comment on the judgement, and I have taken into account the comments made.

Main Issue

6. The main issue is whether or not prior approval should be granted having regard to the external appearance of the building.

Reasons

7. Avenue Court is a three-storey block of flats at the junction of Farm Avenue with Cricklewood Lane. The appeal proposes two additional storeys to the building. The new third floor would be constructed in line with the floors below and would be finished in matching facing brickwork and strips of painted render, while the new fourth-floor would be inset from the lower levels and would be finished externally in powder coated aluminium panels. The main parties refer to prior approval that has previously been granted for one additional storey to the building¹ ('the PA'), and from the evidence before me, the Council's concerns with the appeal development relate to the further storey at fourth-floor level that is now proposed.
8. Paragraph 120 of the Framework offers general support for upward extensions to buildings where development would, amongst other things, be well-designed and consistent with the prevailing height and form of neighbouring properties and the overall street scene.
9. The development would result in a five-storey building. This would be noticeably taller than the groups of similar two-storey detached and semi-detached dwellings, some with additional accommodation at roof level, which generally characterise Farm Avenue and the closest part of Cricklewood

¹ Application ref 21/3260/PNV

Lane to the east of Farm Avenue. However, the appeal building is of much larger overall scale and more contemporary flat roof design in comparison to these neighbours. It is consequently already of markedly different character and appearance, and I note that the PA scheme would further increase the height and scale of the building, raising the eaves above the roofline of the adjacent dwellings, strengthening this impression.

10. Instead, I saw that the building had more in common with development on Cricklewood Lane to the west of Farm Avenue where development varies in scale and appearance, but includes a number of fairly large buildings, and other examples of flat roof designs similar to the appeal building such as at Lisle Court opposite the site. While the closest buildings, and adjoining neighbours to 2 sides of the site are two-storey dwellings, I found as a result that the appeal building has a much closer visual relationship with this more varied development. The highway of Farm Avenue and an area of open space provide a degree of separation to the side of Lisle Court. Even so, the gap is not large, and in my judgement the appeal building is appreciated as a continuation of the Cricklewood Lane street scene from the west side of Farm Avenue across the junction.
11. The overall scale of the building would not be out of keeping with other development on Cricklewood Lane to the west. There are also views from the appeal site of development at The Broadway on the junction of Woodley Crescent with Cricklewood Lane which is of significant size and up to eight-storeys in height. The development would not therefore be the tallest building in the vicinity, and while it would be higher than Lisle Court, the difference would not be substantial. I acknowledge that the development would be taller than the majority of buildings nearest to the site. Nevertheless, given that it would be seen as part of the wider Cricklewood Lane street scene where there is an irregular roofscape and little overall consistency in the height of buildings, I do not consider that the height or scale of the building would appear excessive or jarring.
12. Moreover, I agree with the main parties that the set back of the fourth storey from the floor below and a surrounding glazed balustrade would help to reduce the visual impact of the development. The powder coated aluminium panels would differ from the materials of the building below and others in the immediate vicinity, but would not in my view be unsympathetic or discordant in the context of the mixed designs and external finishes already present in the area including brick and render of varying colours. The alignment of glazing with fenestration to the floors below would also help to tie the fourth storey visually to the lower levels of the building.
13. I appreciate that the development would be readily visible including from Cricklewood Lane, Farm Avenue and Dersingham Road, but visibility is not in itself an indication of harm. In combination, I find that the set back and contrasting external finish would give the fourth storey the appearance of a more light-weight structure sitting comfortably above the building's lower levels, reducing the impression of bulk and mass while adding visual interest. It would also soften the visual impact of the transition in height to nearby two-storey buildings. While the proposal would undoubtedly be larger than the closest dwellings, I find for these reasons that the overall bulk and mass would sit comfortably on the site, and I am satisfied that the development would not appear unacceptably conspicuous or imposing in the street scene.

14. In my assessment, the development would therefore assimilate appropriately with the host building and its surroundings without undue prominence, and it would be suitably well designed. I find the proposal would accord with the Framework insofar as it broadly seeks well-designed places and requires, amongst other things, development that is visually attractive and sympathetic to local character, and I therefore conclude that the external appearance of the building would be acceptable.
15. For the same reasons, I find that the proposal would accord with Policies CS5 of the CS and DM01 of the DMP and guidance within the RDG which together broadly seek high-quality design and development that respects local context and character including with regard to the appearance, scale, mass and height of surrounding buildings, spaces and streets. This further supports my conclusion that the external appearance of the development would be acceptable.

Other Matters

16. I have taken into account all other matters raised including concerns about highway safety, traffic and parking. However, the Council comments that the site is within an area of good accessibility and within walking distance of a town centre close to local amenities. There were a large number of parking spaces available on street at the time of my visit, and while I accept that this represents a snapshot, there is no clear evidence before me of existing parking pressure that would be harmfully exacerbated by the proposal, nor demonstrating that additional on-street parking would harm highway safety or cause congestion. I therefore see no reason to take a different view to the Council and Highway Authority who have not objected to the proposal on grounds of parking, highway safety or convenience.
17. I am satisfied given the relationship of the development with neighbouring dwellings that separation would be sufficient to ensure no unacceptable loss of privacy for surrounding occupiers through overlooking of windows or gardens in comparison to the existing situation. The appellant has also provided a Daylight and Sunlight Assessment which indicates that the proposal would not cause harmful detriment to light levels for neighbouring properties. Based on the report and my observations at my visit, I consider the assessment to be reasonable. I am also satisfied that the proposal would not cause harmful overshadowing or an undue adverse effect on outlook currently available to neighbouring occupiers.
18. My conclusion that the external appearance of the building would be acceptable is based on the specific circumstances of the development proposed and the context of the site, and I can see no reason why it would lead to harmful development on other sites in the area. Matters relating to effects on local services and utilities are outside the scope of the GPDO assessment of this appeal.

Conditions

19. Planning permission granted for development under Article 3(1) and Schedule 2, Part 20, Class A of the GPDO is subject to conditions set out in paragraph A.2 of that Class which specify that:
 - the development must be completed within a period of 3 years starting with the date prior approval is granted;

- before beginning the development, 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 development 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;
 - the developer must notify the local planning authority of the completion of the development as soon as practicable after completion and the notification must be made in writing and include the name of the developer, the address or location of the development and the date of completion; and
 - any new dwellinghouse is to remain in use as a dwellinghouse within the meaning of Class C3 of the Schedule to the Use Classes Order and for no other purpose, except to the extent that the other purpose is ancillary to the primary use as a dwellinghouse.
20. Paragraph B(18) of Part 20, Class A further states that the local planning authority may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. I have considered the Council's list of suggested conditions in this light, and with regard to the advice set out in the Framework.
21. Given the conditions laid out at Paragraph A.2 to Part 20 of the GPDO, I am not persuaded from the evidence before me that separate conditions to specify the time limit for development to be carried out and to require a Demolition and Construction Management and Logistics Plan would be necessary in this case. I have not therefore imposed them, nor a condition listing the approved plans which are instead recorded within my formal decision.
22. I have attached a condition to require further details of the materials proposed to the exterior of the building which is necessary in the interests of ensuring that the external appearance of the building would be acceptable. However, I am not persuaded that details would be required before any development other than demolition takes place, nor that details of hard surfacing would be necessary with regard to the prior approval matters, and I have amended the condition accordingly.
23. In the interests of promoting sustainable travel choices and positively influencing the scheme's transport and highways impact, a condition to secure details of cycle storage provision is necessary, although I have removed unnecessary prescription over the standards which the Council may consider any application to discharge the condition against. I have also included a condition to secure refuse and recycling storage in the interests of managing the impact of the development on the amenity of the occupiers of the existing and neighbouring buildings.
24. Although not suggested by the Council, I also consider that a condition to prevent use of the roof to the third storey closest to 208 Cricklewood Lane as a balcony or terrace would be necessary to safeguard the amenity of neighbouring occupiers.
25. Given the details already submitted, I can see no reason that further particulars of the levels of the building would be necessary, and levels of roads and footpaths would not in my view be necessary with regard to the prior approval matters. I have also omitted suggested conditions relating to

protection for trees; a scheme of hard and soft landscaping; water usage; accessibility and adaptability of the dwellings; and carbon dioxide emissions as I am not satisfied from the evidence provided that these are reasonably related to the subject matter of the prior approval.

26. The Council has also suggested a condition to restrict permitted development rights within the site. However, permitted development rights for dwellinghouses at Part 1 Classes A-F of the GPDO would not in any case be applicable to the appeal building which contains flats. In addition, no detailed explanation is given for why a restriction on permitted development rights under Part 2 Classes A and C of the GPDO would be necessary as a consequence of the nature of the development proposed. I am not therefore persuaded that there is clear justification in this case to restrict national permitted development rights as the Framework advises would be required.

Conclusion

27. For the reasons given above, I conclude that the appeal should be allowed and prior approval should be granted.

J Bowyer

INSPECTOR

Schedule of Additional Conditions

- 1) Details of the materials to be used for the external surfaces of the building hereby approved shall be submitted to and approved in writing by the Local Planning Authority before the relevant materials are installed. The development shall thereafter be implemented in accordance with the approved details.
- 2) The development hereby approved shall not be first occupied until cycle storage has been provided in accordance with details of cycle parking spaces including the type of stands, gaps between stands, location of cycle parking and type of store which have first been submitted to and approved in writing by the Local Planning Authority, and the cycle storage shall thereafter be retained as approved.
- 3) The development hereby approved shall not be first occupied until details of enclosures and screened facilities for the storage of recycling containers and wheeled refuse bins or other refuse storage containers where applicable, together with a satisfactory point of collection, have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in full accordance with the approved details before the development is first occupied and retained as such thereafter.
- 4) The section of roof labelled on plan no 0532-PL-212 Rev B as 'access for maintenance only' shall only be used in connection with the repair and maintenance of the building and shall at no time be converted to or used as a balcony, terrace, roof garden or similar amenity or sitting out area.