



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: 17 March 2022

Appeal Ref: APP/N5090/W/21/3279770

36 Cranbourne Gardens, London NW11 0HP

- 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 AD of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Israel Jerry Kohn against the decision of the Council of the London Borough of Barnet.
 - The application Ref 20/6222/PNU, dated 22 December 2020, was refused by notice dated 29 March 2021.
 - The development proposed is two storey extension with pitched roof to provide two additional floors of accommodation comprising 5 No. flats above the existing dwellinghouse.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal is made pursuant to Schedule 2, Part 20, Class AD of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO'). Class AD permits development consisting of works for the construction of new dwellinghouses immediately above the topmost storey on a detached building in use as a single dwellinghouse, as well as certain associated works.
3. For development to be permitted by Class AD, it must satisfy limitations set out at paragraph AD.1, and conditions at paragraph AD.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) of Part 20 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 National Planning Policy Framework ('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. The prior approval provisions do not require regard to be had to the development plan. I have therefore only had regard to the policies of the development plan referred to by the main parties insofar as they are material to the matters for which prior approval is sought.
5. The Council's report on the application referred to a discrepancy between the proposed Level 02 floor plan and the proposed north/west elevation, with the

latter illustrating a second-floor window to the side of the extended rear projection of the building that does not appear on the former. The conditions laid out at paragraph AD.2 include that development must not include a window in any wall or roof slope forming a side elevation of the building, and the appellant's appeal statement confirms that there would not be a window to the north/west elevation of the extended part of the building. I have considered the appeal on this basis.

6. Since the appeal was submitted, the High Court issued judgement in the case of *Cab Housing Ltd v SSLUHC* [2022] EWHC 208 (Admin) ('Cab Housing Ltd'). The judgement concerned determinations pursuant to Class AA of Schedule 2, Part 1 of the GPDO, but at paragraph 9, the court commented 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 make representations on any implications of the judgement, and I have taken into account the comments made.

Main Issues

7. Having assessed the proposal, the Council has raised objections only in relation to prior approval matters concerning the external appearance of the building and impact on the amenity of neighbouring premises. I have no firm evidence to disagree with that assessment.
8. The main issues are therefore whether or not prior approval should be granted having regard to (i) the external appearance of the building and (ii) the impact of the proposal on the amenity of neighbouring premises with particular regard to overlooking and privacy.

Reasons

External Appearance

9. The appeal relates to a large detached dwelling comprising accommodation at basement, ground and first floor levels, and a second floor partly within the roof. The roof form, placement of windows and external detailing and materials of the proposed extension would match those of the existing property, and I am satisfied that the design and architectural style of the development would therefore be sympathetic to the host building.
10. However, while other nearby buildings on Cranbourne Gardens and Oakfields Road include properties that have been subject to redevelopment or assorted extensions, including at roof level, the majority are two-storey dwellings or three-storey dwellings with the upper storey provided at roof level. Despite considerable variation in the style, appearance, width and overall scale of the buildings, differences in height between neighbouring properties are typically relatively small. The appeal site and the Church of St Mary and Archangel Michael which is opposite sit on an area of generally higher ground, but my overall impression was of fairly gentle transitions in the roof lines along Oakfields Road and Cranbourne Gardens in both directions as land levels broadly increase towards the higher ground.
11. The appellant's view is that the only consideration in this case should be the design and architectural features of the principal elevation of the building, and that prior approval under Class AD is not required in respect of proposed

building height in relation to the surrounding area. However, the wording of AD.2(e) refers to the external appearance of the building including the design and architectural features of the principal elevation and any side elevation that fronts a highway. The use of 'including' indicates to me that the assessment is not restricted just to the listed matters, but may also take into account other factors. In addition, the wording does not specify that the assessment of the external appearance of the building should be confined to the impact of external appearance solely on that building, or that its height or effect on the street scene and local character may not be considered.

12. In my judgement, the external appearance of the development could not in this case reasonably be considered in isolation from its context sitting within a street scene which is for the most part characterised by dwellings with a reasonably regular roofline that broadly reflects land levels. In reaching this view, I have had regard to examples referred to by the appellant of other appeal decisions where prior approval assessments of external appearance have been confined to the appearance of the subject property itself. Nevertheless, each case must be determined on its individual merits, and these decisions do not alter my view that it is appropriate in this case to have regard to the effect of the external appearance of the building on the locality.
13. My conclusion in this regard is also consistent with the more recent judgement in *Cab Housing Ltd* where the court concluded that the control of the external appearance of a dwelling house is not limited to impact on the subject property itself, but also includes impact on neighbouring premises and the locality. I appreciate that the judgement concerned proposals under Class AA of the GPDO rather than Class AD and does not therefore directly apply to the current appeal. Given though the similarities in the relevant parts of these classes, I consider that it offers some support for my view that aspects other than simply the appearance of the building itself can be relevant to the assessment of external appearance.
14. The appellant comments that the purpose of permitted development rights under classes including Class AD is to allow the creation of taller buildings, and that the rights were introduced to remove red tape and allow greater housebuilding on smaller sites. Be that as it may, these permitted development rights are subject to prior approval procedures, and do not therefore establish that such development would inevitably always be acceptable.
15. The development proposed in this case would not constitute a 'tall building' as defined by Policy CS5 of the Core Strategy 2012, and I agree with the appellant that the fact that the development would result in a taller building and a change in the street scene is not in itself an indication of harm. I have also carefully considered the appellant's evidence including the Townscape Assessment which I note has not been explicitly challenged by the Council.
16. Nevertheless, the appeal building is already one of the largest in the street. The development would result in a considerable increase in the height and upper bulk and mass of the building, and the proposed third floor and roof would project entirely above the roofs to the adjacent dwellings at 32 and 40 Cranbourne Gardens. Irrespective of changes to the surrounding area and the overall size and scale of dwellings in the vicinity, I have not been directed to any of comparable height to that proposed on the appeal site, and I find that the proposal would harmfully exacerbate the existing disparity in the scale of

the building against others nearby. The fact that it is common ground between the main parties that there would not be unacceptable effects on sunlight, daylight or overshadowing is not compelling evidence to the contrary.

17. The appellant comments that the site is at a point of townscape importance and that the Church opposite would remain the tallest building in the immediate area. However, the visualisations within the Townscape Assessment indicate that in views along Cranbourne Gardens from the south east, the development would appear taller than the church as well as an adjacent three-storey community centre with nursery which is currently under construction. In any event, it seems to me that the church forms an important landmark at this part of the street of distinctly different nature, scale and appearance from the nearby residential development, and I consider that neither this building nor the community centre offer convincing justification for development of the scale proposed on the appeal site.
18. The Church, community centre and vegetation would provide for some screening of the development to views along Oakfields Road, but this would not be complete, and it would still be readily apparent in views along Cranbourne Gardens. In these views, I consider that the substantially greater height and upper bulk of the building against other dwellings nearby would be striking, and would cause it to visually dominate and appear to tower above its neighbours. As a consequence, I can not agree with the appellant that the height of the proposed development relative to the prevailing height of surrounding buildings could reasonably be described as a modest increase. Nor do I consider that the development would sit comfortably in its context. I find instead that the appearance of the development would be highly prominent, and despite the Church and community centre opposite and the location of the site on higher ground at something of a focal point, I find that it would be an inappropriate and visually intrusive interruption to the overall roofline along the street.
19. Notwithstanding my finding that the development would be sympathetic to the appearance of the host building, I find that the proposal would be unduly prominent with significant detriment to the character and appearance of the street scene and the area. This would be contrary to the Framework insofar as it seeks good design and development that is visually attractive and sympathetic to local character, and supports upward extensions where development would be consistent with the prevailing height and form of neighbouring properties and the overall street scene. I therefore conclude that the external appearance of the building would be unacceptable.

Amenity of Neighbouring Premises

20. There are existing windows to the rear of the appeal building which afford views towards neighbouring properties and gardens. However, at the time of my visit, there was fairly dense vegetation to sections of the site boundaries which serves to significantly filter the available views of neighbouring gardens from even the upper floor windows. I saw that the boundary vegetation also obscures views of many windows from neighbouring gardens.
21. The proposal includes rear windows serving habitable rooms on the third and fourth floors, as well as an increase in the number of second-floor rear windows in comparison to the existing building. Although they would be aligned with windows below, the outermost windows to the second and third floors would

also be closer to the sides of the building than the existing second-floor windows which are set in from the edges of the roof.

22. The provision of windows at greater height to the third and fourth floors would be likely to increase potential views above the boundary vegetation and the likely intervisibility between these windows and adjacent gardens. I accept that some overlooking is often a feature in residential areas and that views towards neighbouring gardens may not be wholly new. Even so, the proposal would result in a significant increase in the overall number of windows to the rear of the building, and windows at significantly greater height, and closer to the boundaries with adjacent dwellings at 32 and 40 Cranbourne Gardens, than currently. In combination, I consider that this would result in a pronounced increase in both actual and perceived overlooking of the gardens to Nos 32 and 40 to an unusual degree. In my judgement, there would be a consequent distinct and intrusive loss of privacy for the occupiers of these dwellings, adversely affecting the enjoyment of their gardens.
23. There would not be direct overlooking of neighbouring habitable windows, and the Council has not argued that separation to dwellings on Bridge Lane to the rear would be inadequate, nor that there would be harmful loss of light. However, these factors do not alter or outweigh the loss of privacy to the gardens of Nos 32 and 40.
24. I find for these reasons that the proposal would cause unacceptable harm to the amenity of neighbouring premises through overlooking and loss of privacy. In this respect, the proposal would be contrary to the requirement within the Framework for a high standard of amenity for existing and future users.

Other Matters

25. Whether a proposal attracts comments in support or opposition or the number of local comments are not in themselves compelling evidence of the acceptability or otherwise of a development. I have had regard to the representations that have been made by interested parties including whether the appeal building benefits from permitted development rights under Class AD, but none of the other matters raised either individually or collectively alter my conclusions on the main issues.
26. The proposal would make efficient use of the site and would deliver 5 additional homes in accordance with the Government's objective outlined within the Framework to significantly boost the supply of housing. Nonetheless, I do not consider that the fairly modest benefit of 5 additional dwellings would be sufficient to outweigh the totality of the unacceptable effects arising from the external appearance of the building and the harm to the amenity of neighbouring premises. Moreover, the appeal falls to be assessed against the requirements of the GPDO which does not require other factors to be considered in balancing the impacts of development.

Conclusion

27. For the reasons given above, I conclude that the appeal should be dismissed.

J Bowyer

INSPECTOR