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# Appeal Decision

Site visit made on 7 March 2022

**by Katie McDonald MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 22<sup>nd</sup> March 2022**

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**Appeal Ref: APP/E5900/W/21/3279527**

**2 Artichoke Hill, London E1W 2BA**

- 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, Paragraph A.2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
  - The appeal is made by Albany Homes Developments Limited against the decision of the Council of the London Borough of Tower Hamlets.
  - The application Ref PA/20/02418, dated 13 November 2020, was refused by notice dated 23 June 2021.
  - The development proposed is a two storey upward extension to part of existing mixed use residential block.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. I have used the description of development given by the Council on its Decision Notice as there was no description given on the application form.
3. The Council's statement raises an additional reason for refusal relating to the site's proximity to the Royal London Hospital's helipad, and asserts that as the site would be within 3 km of the helipad, the proposal would not be permitted development. It has also provided Counsel advice<sup>1</sup> to support its' position. The appellants have responded to this matter in their final comments, and I have addressed the issue within the Reasons below.

## Background and Main Issues

4. 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 GPDO), planning permission is granted for new dwellinghouses on detached blocks of flats subject to limitations and conditions.
5. Where an application is made for a determination as to whether prior approval is required for development, paragraph B(3) provides that the local planning authority may refuse the application where it considers the proposed development does not comply with, or the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, any conditions, limitations or restrictions specified in this Part as being applicable to the development in question.

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<sup>1</sup> "In the Matter of the Helipad at The Royal London Hospital" Kate Olley, Francis Taylor Building, December 2021

6. Paragraph A.2(1) requires the developer to apply to the local planning authority for prior approval as to, amongst other things, the external appearance of the building and the impact on the amenity of the existing building and neighbouring premises including overlooking, privacy and the loss of light.
7. Accordingly, the main issues in this appeal are whether the proposed development would be granted planning permission by Article 3 (1) and Schedule 2, Part 20, Class A of the GPDO with specific regard as to whether:
  - (a) the building is detached; and,
  - (b) the building is within 3 kilometres (km) of the perimeter of an aerodrome.
8. If it would be granted planning permission, I would then consider:
  - (a) Whether the external appearance of the building would be acceptable; and,
  - (b) Whether the impact on the amenity of the existing building and neighbouring premises including overlooking, privacy and the loss of light would be acceptable.

## Reasons

### ***Whether the proposed development would be granted planning permission***

9. Part 20, Class A is titled "new dwellinghouses on detached blocks of flats", and states that permitted development is "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".

#### *Is the building detached?*

10. "Detached" is defined under paragraph C(1) and states "*detached*" means that the building does not share a party wall with a neighbouring building". Part 1, Class A of the GPDO also includes a definition of detached that states the same, but goes on to include "...or, have a main wall adjoining the main wall of another building" and while this is in relation to a dwellinghouse only, Paragraph C(1) notably does not include this part in its definition.
11. Therefore, detached in relation to Part 20, Class A does not mean the building has to be standing separate from another, it simply means the neighbouring buildings must not share a party wall. A party wall is defined in the Party Wall etc. Act 1996 as "(a) a wall which forms part of a building and stands on lands of different owners to a greater extent than the projection of any artificially formed support on which the wall rests; and (b) so much of a wall not being a wall referred to in paragraph (a) above as separates buildings belonging to different owners."
12. The appellants provided a report<sup>2</sup> with the appeal which sets out that upon inspection there would appear to be a physical construction joint separating the two independent buildings, and they understand that no party wall awards were entered into for the development or reciprocally entered on the site.

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<sup>2</sup> Mayfords Chartered Surveyors - dated 7 March 2021.

13. The report concludes that the chartered surveyor is of the opinion that the building is structurally independent with no party walls shared with adjoining buildings. Therefore, whilst the building appears to be attached to the neighbouring building, the evidence before me indicates that the building does not share a party wall with it. Therefore, for the purposes of Part 20, Class A, the building would be considered "detached".

*Is the building within 3 km of the perimeter of an aerodrome?*

14. Paragraph A.1(o)(viii) sets out that development is not permitted if the land or site on which the building is located, is or forms part of land within 3 km of the perimeter of an aerodrome.
15. The proposal is within 3 km of the helipad for the Royal London Hospital. This is used by the hospital in operating the air ambulance helicopter.
16. Article 2 of the GPDO sets out that in this Order, "aerodrome" means an aerodrome as defined in [paragraph 1 of Schedule 1 to the Air Navigation Order 2016 (ANO)] which is—
- (a) licensed under that Order,
  - (b) a Government aerodrome,
  - (c) one at which the manufacture, repair or maintenance of aircraft is carried out by a person carrying on business as a manufacturer or repairer of aircraft,
  - (d) one used by aircraft engaged in the public transport of passengers or cargo or in aerial work, or
  - (e) one identified to the Civil Aviation Authority before 1st March 1986 for inclusion in the UK Aerodrome Index,
- and, for the purposes of this definition, the terms "aerial work", "Government aerodrome" and "public transport" have the meanings given in paragraph 1 of Schedule 1 to that Order.
17. "Aerodrome" in paragraph 1 of schedule 1 to the ANO is defined as:
- (a) means any area of land or water designed, equipped, set apart or commonly used for affording facilities for the landing and departure of aircraft; and
  - (b) includes any area or space, whether on the ground, on the roof of a building or elsewhere, which is designed, equipped or set apart for affording facilities for the landing and departure of aircraft capable of descending or climbing vertically; but
  - (c) does not include any area the use of which for affording facilities for the landing and departure of aircraft has been abandoned and has not been resumed;
18. The appellants accept that the helipad is an aerodrome. I agree. It is clear to me that the helipad would meet the definition of an aerodrome in the ANO.
19. I now must establish if the aerodrome meets any of the 5 (a) to (e) requirements from Article 2 of the GPDO. The Council's advice focuses on (d) - *one used by aircraft engaged in the public transport of passengers or cargo or in aerial work*. The appellants dispute this and consider that the aircraft is not engaged in public transport of passengers.
20. Article 6(2) of the ANO states an aircraft in flight is flying on a public transport flight if-...:

- (a) the flight is not a flight for the purpose of commercial air transport; and
  - (b) the flight is-
    - (i) for the carriage of passengers or cargo and valuable consideration is given or promised for that flight in the aircraft; or
    - (ii) operated by the holder of a national air operator's certificate or a Part-CAT air operator certificate and any passengers or cargo are carried gratuitously in the aircraft except for persons specified in paragraph (3) or cargo specified in paragraph (4).
21. Based on the evidence before me, the London Air Ambulance Limited is the holder of a national air operator certificate, thus meeting the ANO, Article 6, (2)(b)(ii). The appellants also agree. It is also reasonable to assume that the helicopter would carry passengers gratuitously.
22. However, the issue lies with the definition of "passenger", as the appellants contend that a patient, transported involuntarily to a hospital by air ambulance, does not meet the ordinary definition of passenger. The ANO defines passenger as a person other than a member of the crew and whilst it is not defined in the GPDO, dictionary definitions also describe "passenger" as a traveller in or on a vehicle (other than the driver, pilot, crew etc.) or a person who is travelling in a vehicle such as a bus, boat, or plane who is in it, but not driving it or working on it. The lack of definition in the GPDO means that one must apply common sense and use the ordinary meaning of passenger.
23. Therefore, it is my judgement that there is no requirement to "voluntarily" travel in a vehicle in order to be a passenger, and even though the air ambulance transports patients, they would still be passengers. Whether they get on the air ambulance voluntarily is irrelevant, they are travelling in a vehicle which they are not driving or working on.
24. Moreover, it is imperative to note that the 3 km aerodrome condition within the conditions of permitted development is based on the need to protect the air space close to aerodromes; to ensure aircraft are not put in danger by the height increases of a development. While the intricacies and interpretation of law are important, of upmost importance is the preservation of life - which is exactly what this helipad and air ambulance service seeks to do.
25. Consequently, the building would be within 3 km of the perimeter of an aerodrome, which is used by aircraft engaged in the public transport of passengers. Thus, the proposed development would not be granted planning permission by Article 3 (1) and Schedule 2, Part 20, Class A of the GPDO. Given this, there is no requirement to consider the external appearance or the impact on the amenity of the existing building and neighbouring premises.

## **Conclusion**

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

*Katie McDonald*

INSPECTOR