



Appeal Decision

Site visit made on 16 November 2021

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 March 2022

Appeal Ref: APP/A1910/D/21/3275458

10 Delmar Avenue, Hemel Hempstead HP2 4LY

- 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 Class AA of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Carl Blott against the decision of Dacorum Borough Council.
 - The application Ref 20/03932/UPA, dated 14 December 2020, was refused by notice dated 4 March 2021.
 - The development proposed is described as, "A second floor extension, with a gable roof to front & rear. Walls finished in a cladding to match existing. Fenestration & roof tiles to match existing".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council have referred to development plan policies. As the principle of development has been established through the grant of permission by The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO), prior approval appeals are not determined on the basis of s38(6) of the Planning and Compulsory Purchase Act 2004. However, I have taken the development plan policies into account insofar as they are relevant to the prior approval matters under consideration.
3. During the course of the appeal the revised National Planning Policy Framework (the Framework) was published. The main parties were provided with an opportunity to comment and I have taken any made into account. In line with paragraph AA.3(12)(b) of Class AA of Part 1 of Schedule 2 of the GPDO, I have had regard to the Framework so far as relevant to the subject matters of the prior approval.
4. During the course of the appeal the *CAB Housing Ltd*¹ judgment was issued. The parties, including the occupiers of 8 Delmar Avenue (No 8) and 12 Delmar Avenue (No 12), were provided with an opportunity to comment and I have taken any made into account.
5. Under Article 3(1) and Class AA of Part 1 of Schedule 2 of the GPDO, planning permission is granted for the enlargement of a dwellinghouse by construction of additional storeys. The Council refused to grant prior approval in relation to paragraph AA.2, making reference to the effect of the proposal on the external

¹ *CAB Housing Ltd, Beis Noeh Ltd & Mati Rotenberg v SSLUHC* [2022] EWHC 208 (Admin)

appearance of the dwellinghouse and on the amenity of adjoining premises, in relation to loss of light.

Main Issues

6. The main issues in this appeal are whether prior approval should be granted under Class AA of Part 1 of Schedule 2 of the GPDO, having particular regard to the effect of the proposal on:
- the external appearance of the dwellinghouse; and
 - the amenity of adjoining premises, in relation to loss of light.

Reasons

External Appearance

7. Paragraph AA.2(3)(a)(ii) of Class AA of Part 1 of Schedule 2 of the GPDO refers to the external appearance of the dwellinghouse. In this regard, the *CAB Housing Ltd* judgment confirmed that the control of the external appearance of the dwelling house is not limited to impact on the subject property itself, but also includes impact on neighbouring premises and the locality.
8. Although properties on the street have a range of forward projections, link garages and various elevation treatments, and several of the properties on the other side of the street to the appeal site are varied in terms of their overall styles and scales, the appeal property is part of a row of 2-storey detached dwellings, with largely consistent roof heights which give a clearly-planned uniform aesthetic to that side of the street.
9. The proposal, to create an additional floor to the appeal property, would in effect create a 3-storey dwelling. Due to its position amongst the row of 2-storey dwellings, the extended appeal property would appear notably conspicuous in the street scene. Its incongruity in its context would be particularly evident in views from where Delmar Avenue turns the corner, considering the run of properties with similar ridge heights which are positioned on that side of the street.
10. Similarly, although its roof form and window arrangements would be appropriate, the extended appeal property would present as being unduly large in terms of its scale, bulk and massing in its immediate context. Accordingly, as the extended dwelling would appear noticeably out-of-place in this location it would undermine the character and appearance of the local area.
11. My attention has been drawn to appeal decision Ref APP/J1535/D/21/3266264. That decision was issued before the *CAB Housing Ltd* judgment, which means that the conclusions of the Inspector in that appeal were not based upon the law as it currently stands. Accordingly, that decision carries limited weight in my consideration of this appeal. It does not outweigh the harm identified.
12. I therefore find that the proposal would have an unacceptable and harmful effect on the external appearance of the dwellinghouse, in conflict with paragraph AA.2(3)(a)(ii) of Class AA of Part 1 of Schedule 2 of the GPDO.
13. Whilst not determinative, I have had regard to Policies CS11 and CS12 of the Core Strategy 2006-2031 (adopted 2013) (Core Strategy). To the extent that they are relevant considerations within the terms of the GPDO, the proposal

would conflict with their collective aims that, amongst other things, within settlements and neighbourhoods, development should preserve attractive streetscapes. The proposal would also conflict with chapter 12 of the Framework which seeks to, amongst other things, achieve well-designed places.

Amenity of Adjoining Premises

14. The appeal site comprises a 2-storey link-detached dwellinghouse which is flanked by No 8 and No 12, which are also 2-storey properties.
15. It is common ground that the first-floor windows on the flank elevation of No 8, facing the appeal site, serve a non-habitable room. Considering this, and the separation distance between the 2 properties, the pleasantness of the living spaces within the property at No 8 would not be materially diminished by the proposal, due to any reduction in light. Similarly, although No 8 has a north-facing rear garden, due to the length and width of the garden at No 8 and that the proposal would only add one further storey to the appeal property, any loss of light would not be significant to users of that garden. Consequently, the proposal would not be likely to cause material harm to the living conditions of the occupiers of No 8 with respect to loss of light.
16. The existing side elevation of the appeal property, facing No 12, likely constrains the amount of sunlight that reaches the windows on the flank elevation of No 12 at first-floor level, which serve a habitable room. The proposal would add an additional storey to the appeal property which would mean that an additional long expanse of built form would be placed above those windows, in close proximity to them. Due to the orientation of the appeal property relative to No 12 this would obscure a notable proportion of sunlight for part of the day. I have had regard to the correspondence submitted by the current occupiers of No 12 in relation to this matter. However, in my view a reduction in sunlight of this magnitude would cause significant harm the living conditions of the occupiers of No 12.
17. For these reasons, I therefore find that the proposal would not comply with paragraph AA.2(3)(a)(i) of Class AA of Part 1 of Schedule 2 of the GPDO, which relates to the impact on the amenity of any adjoining premises, including the loss of light.
18. Whilst not determinative, I have had regard to Policies CS11 and CS12 of the Core Strategy. To the extent that they are relevant considerations within the terms of the GPDO, the proposal would conflict with their collective aims that, amongst other things, on each site development should avoid loss of sunlight to the surrounding properties. For the same reasons, the proposal would conflict with paragraph 130 of the Framework which provides that, amongst other things, planning decisions should ensure that developments create places with a high standard of amenity for existing and future users.

Other Matters

19. The appellant has liaised with their neighbours during the course of the development's design. In this regard, paragraph 132 of the Framework provides that, amongst other things, applications that can demonstrate early, proactive and effective engagement with the community should be looked on more favourably than those that cannot. However, the GPDO offers no

discretion; its requirements are a matter of law. As such, this matter does not change my findings on the main issues in this appeal.

Conclusion

20. As the proposal would not comply with AA.2(3)(a)(ii) nor AA.2(3)(a)(i) of Class AA of Part 1 of Schedule 2 of the GPDO, prior approval cannot be given for the proposal, and the appeal should therefore be dismissed.

Alexander O'Doherty
INSPECTOR