



Appeal Decision

Site visit made on 29 March 2022

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 April 2022

Appeal Ref: APP/U5360/W/21/3280151

Montefiore Court, 69 Stamford Hill, Stoke Newington, London N16 5TY

- 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 Mr C Fried against the decision of the Council of the London Borough of Hackney.
 - The application Ref 2021/0160, dated 19 January 2021, was refused by notice dated 2 April 2021.
 - The development proposed was described as 'prior notification requirement under Class A of Part 20 of the GPDO for a two-storey roof extension to form 22 apartments'.
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Decision

1. The appeal is dismissed.

Preliminary Matters and Background

2. The appellant's evidence refers to both Class A and Class AA of Schedule 2, Part 20 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO'). However, the evidence before me indicates that the appeal building is in residential use, and therefore Class AA which relates to new dwellinghouses on detached buildings in commercial or mixed use would not appear to be applicable. The Council has assessed the proposal against Class A which 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, and I have determined the appeal on the same basis.
3. Development permitted by Class A is subject to limitations which are specified at paragraph A.1, and conditions which are set out at paragraph A.2. The conditions at A.2 establish a requirement for developers to apply for a determination as to whether prior approval will be required in relation to a number of specified matters.
4. Having assessed the proposal, the Council considered that insufficient information had been provided to demonstrate compliance with the limitation at A.1(e) which concerns the internal height of any additional storey. It has also raised objections in relation to the prior approval matter at A.2(1)(a) concerning the transport and highways impacts of the development. The Council has not argued that the proposal fails to comply with Class O in other respects or that other prior approval matters would be unacceptable, and I have no compelling reasons to find otherwise.

Main Issues

5. Having regard to the above, the main issues are:

- i) whether or not the proposal would satisfy the limitation at A.1(e) having regard to the floor to ceiling height of the additional storeys; and, if so
- ii) whether or not prior approval should be granted having regard to the transport and highways impacts of the development.

Reasons

6. As part of the appeal, the appellant has submitted a 'Proposed Sections' plan (plan no A301 rev P1) which indicates that the additional storeys proposed would have a height, measured internally, of 2.5 metres. However, the limitation at A.1(e) states that development is not permitted by Class A if 'the floor to ceiling height of any additional storey, measured internally, would exceed **the lower of** (i) 3 metres; or (ii) the floor to ceiling height, measured internally, of **any storey** of the principal part of the existing building' (my emphasis).
7. Although the Proposed Sections plan does not label the floor to ceiling height of the storeys of the existing building, the floor to floor heights of each storey are labelled, and are in each case less than 3 metres. The floor to ceiling heights would be lower still. I therefore find that the limitation at A.1(e) requires that the height of the additional storeys should be assessed against the height of the storeys of the existing building as this is the lower measure in this case.
8. The Proposed Sections plan illustrates that the floor to ceiling heights of the proposed additional storeys would be comparable to the existing third-floor. However, it also shows that the third-floor is of greater floor to ceiling height than the ground, first and second-floors of the existing building, and that the additional storeys would similarly be of greater height than these floors.
9. I appreciate that the height of the additional storeys would be less than the 3 metres referred to at (i) of A.1(e), but they would exceed the floor to ceiling height, measured internally, of the 3 lower storeys of the principal part of the existing building. On the basis of the evidence that is before me, I therefore conclude that the proposal would conflict with the limitation at A.1(e). Accordingly, it would not be permitted under Class A.
10. In light of my finding that the proposal would conflict with the limitation at A.1(e), it is not necessary for me to go on to consider the prior approval matter of the highways and transport impacts of the development since this could not alter my conclusion as to whether the appeal scheme would be permitted development under Class A.
11. Similarly, while I have had regard to representations made by interested parties, none of the matters raised alter my findings that the development would not be permitted under Class A.

Conclusion

12. For the reasons given above, I find that the proposal would not be permitted under the requirements of Schedule 2, Part 20, Class A of the GPDO. I therefore conclude that the appeal should be dismissed.

J Bowyer

INSPECTOR