
Appeal Decision

Site visit made on 15 March 2022

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 April 2022

Appeal Ref: APP/E5900/W/21/3285215

Waterfall House, 15 Toby Lane, London E1 4DP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 20, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
 - The appeal is made by Toby Lane LLP against the decision of the Council of the London Borough of Tower Hamlets.
 - The application Ref PA/21/01331, dated 26 May 2021, was refused by notice dated 31 August 2021.
 - The development proposed is prior approval for the erection of a two storey roof extension to existing dwelling to provide six new houses.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 20, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 for the erection of a two storey roof extension to existing dwelling to provide six new houses at land at Waterfall House, 15 Toby Lane, London, E1 4DP in accordance with the terms of the application Ref PA/21/01331, dated 26 May 2021, and the plans and details submitted with it, subject to the conditions in the attached schedule.

Main Issue

2. The main issue is whether the proposal would be acceptable in respect of its effect on the external appearance of the building, including the design and architectural features of its principal elevation.

Reasons

3. There is no dispute between the parties that the proposal is not permitted development. In addition, there is no dispute that the proposal is acceptable in respect of all of the detailed assessment criteria in paragraph AA.2 (1) (a), (b), (c), (d), (f), (g), (h), (i), (j), (k) and (l) of Schedule 2, Part 20, Class AA of the GPDO. I have considered the technical documents that accompany the prior approval application and, subject to additional controls, do not disagree with the conclusions reached by the Council about these matters.
4. The point of dispute between the main parties relates to assessment criteria AA.2 (1) (e) (i) which relates to the '*external appearance of the dwellinghouse, including the design and architectural features of— (aa) the principal elevation of the dwellinghouse, and (bb) any side elevation of the dwellinghouse that fronts a highway*'.

5. The appeal site includes a four storey building on Toby Lane comprises nine flats at upper floors and office space at the ground floor. It has external balconies and is constructed from brick and has light grey window frames and doors. The appeal site falls within an area of other multi-storey buildings some of which are taller than the host building. It is proposed to erect two additional storeys of residential development to provide six additional residential units.
6. The appellant considers that in considering the '*external appearance of the building*' this should be confined solely to the building in question and not to its wider context. In reaching this view, the appellant has included three appeal decisions where Inspectors took such a view. However, I would point out that AA.2 3(a) (ii) of the GPDO refers to the '*external appearance of the dwellinghouse, including...*' and to this extent it is not a closed list. Secondly, and, in any event, it is a matter of planning judgment as to whether consideration is given to the effect in terms of the building's intrinsic design and/or to the effect in terms of the building's relationship with adjoining or nearby properties.
7. In this case, the appeal building is located within a narrow street of closely related buildings and to that extent I do not consider it to be appropriate to consider the external appearance of the building in a vacuum or in isolation. The neighbouring development and sites are, in this case, a relevant aspect of the consideration of the effect of the development on the external appearance of the building.
8. Notwithstanding the above, I do not share the Council's concern that the additional two floors of accommodation would cause harm to the matter of '*external appearance*' from a height point of view. In height terms, the resultant building would not be too dissimilar to other buildings in the immediate locality. In this respect, the proposal would give the existing building a more vertical emphasis that is in-keeping with other development in the area. The Council refers to the existing building as having the appearance of two town houses, but I find that this exaggerated and, in any event, the proposal would not, overall, conflict with the elevational composition of the existing building.
9. The upper floor would include the use of light grey rainscreen cladding (and not dark as referenced by the Council) in an area where this type of material has been used for the tops of buildings. This includes the building opposite and at Walk House on the corner of Toby Lane and Harford Street. The use of a different material for the top level of residential accommodation would break up the massing of the development and it would assimilate well with the design of other buildings in the immediate locality. I am satisfied that the proposal would not be top heavy and, in fact, the use of a contrasting material for the top floor would minimise and soften the effect of additional upper storey development when seen from public areas.
10. I note the Council's concern about the top floor not being set in or back from main elevations. However, that is not the case for all buildings seen within the context of the immediate area (e.g. Scape student housing block) and so this aspect of the design of the development would not look incongruous in its urban setting. Windows would align with those that exist already on the building and the proportions would be acceptable.

11. Overall, and for the above reasons, I am satisfied that the proposal would be acceptable in respect of its external appearance including the design and architectural appearance of its principal elevation. The proposal would satisfy the requirements of the National Planning Policy Framework 2021 and the development plan for the area in respect of the matter of external appearance and design.

Conditions and planning obligation

12. Paragraph B under Part 20 (procedure for applications for prior approval under Part 20) says that *'the local planning authority may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval'*.
13. It has not been necessary for me to impose a time limit condition as the GDPO prescribes a three year period for completion of the development. It is necessary to impose a drawings condition for the avoidance of doubt and in the interests of certainty. In order to ensure an acceptable external appearance to the development, a condition is necessary relating to the submission of samples of external materials.
14. To promote sustainable transport and to reduce pressure for on-street car parking, it is necessary that the development is car free. The evidence is that there is on-street car parking stress in the area. The Council has suggested the imposition of a negatively worded condition in this regard, but the evidence indicates that this would require the appellant to complete a planning obligation or other agreement including an administrative charge.
15. The Planning Practice Guidance states that *'in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate, where there is clear evidence that the delivery of the development would otherwise be at serious risk'*. Prior to determining this appeal, I asked the appellant if the proposal would otherwise be at serious risk. I am not persuaded that the proposal would be otherwise at serious risk and, furthermore, the appellant indicated that they would be prepared to complete a planning obligation to ensure that the development was car free.
16. The appellant has submitted a completed car free housing planning obligation, dated 31 March 2022, and I am satisfied that it meets the tests as outlined in paragraph 57 of the National Planning Policy Framework 2021. The planning obligation is necessary to make the development acceptable in terms of transport and highway impacts. Given the completed planning obligation, it has not therefore been necessary for me to impose the Council's suggested car free housing planning condition.
17. The Council suggested conditions relating to the submission of a construction management scheme and that every dwellinghouse in the building must 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. However, these conditions are not necessary as they are already stipulated in AA.2 (4) and AA.2 (7) respectively.

Conclusion

18. For the reasons given above, I conclude that the appeal should be allowed.

D Hartley

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be carried out in accordance with the following approved plans: 3266_PL(20) 001; 3266_PL(20)001; 3266_PL(20)002; 3266_PL(20)00; 3266_PL(20)01; 3266_PL(20)02; 3266_PL(20)03; 3266_PL(20)04; 3266_PL(20)05; 3266_PL(20)06; 3266_PL(20)09; 3266_PL(20)10; 3266_PL(20)11; 3266_PL(20)12; 3266_PL(20)13; 3266_PL(20)50; 3266_PL(20)51; 3266_PL(20)52; 3266_PL(20)53; 3266_PL(20)60; 3266_PL(20)61; 3266_PL(20)62; 3266_PL(20)63; 3266_PL(20)30; 3266_PL(20)31; 3266_PL(20)40; 3266_PL(20)41.
2. No superstructure works shall take place until samples and full particulars of all external facing materials to be used in the construction of the development have been submitted to and approved in writing by the Local Planning Authority. Details submitted pursuant to this condition shall include but are not restricted to: a) details of external cladding; Details of external cladding, where relevant, shall include all types of brick or other cladding material to be used, details of bond, mortar and pointing for brick and details of joints, panel sizes and fixing method for other types of cladding. b) drawings of fenestration and new doors. Details of fenestration, where relevant, shall include reveals, sills and lintels. Drawings shall be at a scale of no less than 1:20. c) details of roofing. d) Details of any balconies associated balustrades, soffits and drainage. e) Details of any external rainwater goods, flues, grilles, louvres and vents. f) Details of any external plant, plant enclosures and safety balustrades. The development shall not be carried out other than in accordance with the approved details.