



Appeal Decision

Site visit made on 10 February 2022

by Rory MacLeod BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 April 2022

Appeal Ref: APP/N5660/W/21/3283416

11-13 Argyll Close, London, SW9 9QL

- 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) Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
 - The appeal is made by The Straight & Narrow Company Ltd against the decision of London Borough of Lambeth.
 - The application Ref 21/02110/P20, dated 26 May 2021, was refused by notice dated 28 July 2021.
 - The development proposed is application for prior approval for the erection of two additional storeys above the existing detached block of flats to provide 4 x 1 bedroom flats.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Paragraph A to Part 20, Class A of the GPDO sets out as permitted development, "*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*" together with related works.
3. Paragraph A.1 of Part 20, Class A sets out a list of preclusions whereby development is not permitted by Class A. I concur with the main parties that the proposal satisfies these eligibility criteria.
4. Paragraph A.2 of Part 20, Class A of the GPDO requires prior approval to be sought for the matters listed in that paragraph. Following examination of additional information submitted by the appellant at the appeal stage, the Council has withdrawn its refusal reasons 3, 4 and 5 relating to natural lighting for the proposed flats, to neighbouring dwellings and to internal ceiling heights. The Council is now content that the development meets all of the matters other than relating to the external appearance of the building. It raises an issue on transport and highway impacts to which I shall return.
5. Article 3(9A) states that "*Schedule 2 does not grant permission for, or authorise any development of, any new dwellinghouse— (a) where the gross internal floor area is less than 37 square metres in size; or (b) that does not comply with the nationally described space standard issued by the Department for Communities and Local Government on 27th March 2015*". It is therefore necessary to examine the floor areas of the proposed flats.

Main Issues

6. The main issues therefore are (a) whether the proposed additional units accord with the nationally described space standards and, (b) the effect of the proposed upward extension upon the external appearance of the building.

Reasons

Space Standards

7. The appeal relates to a purpose built building of flats erected following a grant of planning permission in 2004. The building is mostly arranged over 3-storeys but has a 2-storey wing to its south-western side abutting a terrace at 1-9 Argyle Road. It is located at the northern end of a short cul-de-sac off Dalyell Road and backs on to the rear gardens to dwellings in Stockwell Green which are in a conservation area.
8. The proposal would be to add 2 floors to the 3-storey element. The flats would broadly follow the internal layout of the two existing flats on the second floor and would have a gross internal area of either 41 sqm or 47 sqm. This would exceed the minimum floor area of 37 sqm for a one person flat but would be below the 50 sqm specified for a one-bedroom two-person dwelling. The bedroom size for all 4 flats would exceed the 11.5m sqm specified for a double bed standard. The built-in storage area for all 4 flats would be below the 1.5 sqm specified in the standards.
9. The appellant contends that all 4 flats would be generously sized 1-bedroom, 1-person units with more than sufficient space for internal built-in storage for future occupiers in view of this generous sizing. But the appeal description does not clearly specify the number of persons to occupy each flat and given the large size of the bedrooms, each flat could readily be construed as being suitable for 2 persons. In which case all would be undersized. It would be a relatively straight-forward matter to adjust the internal layout to all flats to show a bedroom suitable for a single person and appropriate built-in storage.
10. The proposal would not accord with the nationally described space standards and would not therefore be Permitted Development in accordance with Article 3 and Paragraph A of the GPDO.

External appearance

11. This issue falls to be considered under condition A.2.(1)(e) of Class A, Part 20, but the Council's decision notice mistakenly quotes A.2.(1)(g).
12. The third floor's brick facing would be similar to that on the lower floors with the metal cladding to the top floor forming a contrast. Such an approach is not unusual for a subservient and recessed top floor, but in this case the steeply sloping dormer would rise from eaves level and its profile would be accentuated by the rise of the central staircase core to fourth floor level in flush brickwork.
13. The proposed windows to the main front and rear elevations would be deeper than those on the second floor, distorting a conventional hierarchy, but not dissimilar to the depth of the first floor windows. Notwithstanding this the overall pattern of fenestration proposed would be broadly sympathetic to that of the external appearance of the building. The replacement of all third floor windows would strictly be outside the scope of the prior approval submission.

14. Paragraph B (15) of Part 20, Class A of the GPDO 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 taken account of representations received and the updated Framework (2021).
15. Paragraph 120(e) to the Framework states that planning decisions should support opportunities to use the airspace above existing residential premises for new homes, particularly where the development would be consistent with the prevailing height and form of neighbouring properties and the overall street scene. Several of the representations submitted comment that the external appearance of the resulting building would not fit well into the site's context.
16. In a recent High Court judgement¹ in relation to the interpretation of Class AA of Part 1 of Schedule 2 to the GPDO, a conclusion was reached 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*". The same logic can be applied to upward extensions at Part 20 Class A.
17. The scale of the resultant 5-storey building would dominate the 2-storey wing to the south-western side and the 3-storey terrace at 1-9 Argyle Close beyond this. The open nature of land on the facing side of the road would add to the prominence of the resulting building as an incongruous feature at the head of the cul-de-sac. The facing treatment to the staircase core at fourth floor level would also emphasise the elongated nature of the resulting building. Other fourth floor elevations would just be metal clad, but the resulting building would appear as a conspicuous and isolated feature when viewed from buildings in Stockwell Green and from the wider locality.
18. The appellant comments that development proposals pursuant to Part 20 of the GPDO have an inevitable consequence of increasing the height of existing buildings, which will necessarily result in a change to their external appearance to some degree. Furthermore, that the permitted development allowance is in accordance with the objective in the Framework to boost the supply of new homes. Nonetheless, having regard to all relevant considerations relating to external appearance and to the need for additional homes, it is my judgement that prior approval should not be granted in relation to condition A.2.(1)(e) on the external appearance of the building.

Other Matters

19. Local residents have objected to the proposal on other issues, not all of which fall for consideration as prior approval matters under the conditions listed at A.2.(1). The impact on the amenity of occupiers of neighbouring buildings is a relevant consideration under Paragraph A.2.(g). But having regard to the separating distances to the nearest neighbouring dwellings and to the appellant's evidence on natural lighting, I am satisfied that there would not be a material adverse effect on the amenity of neighbouring occupiers.

¹ Paragraph 102 of *Cab Housing Ltd and others v Secretary of State for Levelling Up, Housing Communities and others* [2022] EWHC 208 (Admin)

20. The Council has introduced in its appeal submission a request for a planning obligation to satisfy transport related mitigations from condition A.2.(1)(a) on the transport and highway impacts of the development. But this was not raised as a refusal reason, notwithstanding the discussion of the issue in the officer's delegated report. Moreover, as the appeal is to be dismissed in relation to other matters, it is not necessary for me to examine the issue at this stage.

Conclusion

21. The proposal would result in the provision of additional housing in accordance with the objective to significantly boost the supply of homes as set out at Paragraph 60 of the Framework. However, this benefit would be outweighed by the harm I have identified in relation to the nationally described space standards and to the external appearance of the building.

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

Rory MacLeod

INSPECTOR