



Appeal Decision

Site visit made on 26 October 2021

by C Coyne BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 May 2022

Appeal Ref: APP/N5090/W/21/3267431

Orchid Court, 171 Granville Road, London NW2 2BE

- 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 GPDO).
 - The appeal is made by Mr J Curtis (Tiger Granville Ltd) against the decision of the Council of the London Borough of Barnet.
 - The application Ref 20/3568/PNV, dated 3 August 2020, was refused by notice dated 5 October 2020.
 - The development proposed is described on the application form as 'Construction of four (4) units above existing block of flats. Full elevations, including indicative materials, are provided for assessment purposes. A BRE assessment is included with the application materials.'
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The principle of development is established by the GPDO. The prior approval provisions do not require regard to be had to the development plan. Therefore, I have only had regard to the policies of the development plan in so far as they are material to the matters for which prior approval is sought.

Main Issues

3. The main issues are:
 - whether the proposal would constitute permitted development (PD) under Schedule 2, Part 20, Class A of the GPDO;
 - if so, whether prior approval should be granted having regard to the external appearance of the building, the impact on the amenity of neighbouring occupiers, and the transport and highways impacts of the development.

Reasons

Whether permitted development

4. From the evidence before me I consider that the appeal property constitutes a building. For a development proposal to be classed as PD under class A it must be a) a block of flats; b) detached and c) purpose-built. It is not disputed that the appeal property was purpose-built. It is however a matter of dispute

- between the parties as to whether it constitutes a detached building and a block of flats.
5. In accordance with definitions that are set out at Paragraph C to Part 20 of the GPDO, the term 'detached' means that the building does not share a party wall with a neighbouring building. As set out in the Council's evidence, it has been suggested that this means that a detached building should be free-standing and cannot be attached in any way to any other building.
 6. Section 336 of the Town and Country Planning Act 1990 states that a building includes any structure or erection. I therefore consider the car park to be a building. Indeed, the main parties appear to agree that as it sits beneath the appeal property and the other similar residential buildings as well as the commercial premises nearby, that the basement car park is a separate building to the appeal property.
 7. The appellant has also submitted an overlay plan that shows the layout of the basement car park in relation to the residential buildings above it which outlines the location of the support columns and walls of this car park. According to this plan the external car park walls clearly intersect with those of Orchid Court.
 8. The Party Wall etc. Act 1996 (the Act) defines two types of party wall. Type A), where it stands astride the boundary of land belonging to two (or more) different owners; and type B) which stands wholly on one owner's land but is used by two (or more) owners to separate their buildings. Under the Act the word 'owner' includes other types of ownership other than freehold such as leasehold.
 9. According to the appellant's statement, the appellant owns the freehold of the entire estate, including the car park and the buildings above it. In addition, according to the appellant's evidence document titled 'Orchid Court Owner Details' the residents of Orchid Court are listed as owners. Indeed, the appellant's rebuttal statement confirms this stating that they are 'long leaseholders'. The appellant's evidence also states that these leaseholders do not own the external walls of Orchid Court. Consequently, even though the flats belonging to Orchid Court above share a floor partition/ceiling structure with the car park below they do not share a party wall with it. Accordingly, as a matter of fact and degree, I consider the appeal property to be a detached building as defined by Paragraph C to part 20.
 10. As defined by Paragraph C to Part 20 a 'block of flats' means a building which is divided horizontally and consists of separate and self-contained premises constructed for use for the purposes of a dwellinghouse, and any ancillary facilities constructed solely for use by occupiers of the building. The main parties appear to agree that the basement car park underneath Orchid Court, and the other similar buildings nearby, is an ancillary facility to them. They also appear to agree that this basement car park serves the residents of these residential buildings as well as the occupiers of the nearby commercial units. Consequently, this ancillary facility is not solely for use by the residential occupiers of these buildings including Orchid Court.
 11. As a result, I consider that, as a matter of fact and degree, Orchid Court does not constitute a block of flats as defined by Paragraph C of Part 20 meaning that the proposal fails to meet this requirement.

12. For the above reasons, I therefore conclude that, based on the evidence before me, the proposal would not fully satisfy the requirements of Schedule 2, Part 20, Class A of the GPDO and therefore is not development permitted by it.

Prior Approval

13. In respect of the Council's second, third, fourth and fifth refusal reasons, given my conclusion that the proposal would not be development permitted under Schedule 2, Part 20, Class A of the GPDO, there is no need for me to consider whether prior approval would be required, as it would not alter the outcome of the appeal.

Conclusion

14. For the reasons given and based upon the evidence before me, I conclude that the proposal is not permitted development under Schedule 2, Part 20, Class A of the GPDO. Consequently, it is development for which an application for planning permission would be required. This would be a matter for the local planning authority to consider in the first instance and cannot be addressed through prior approval provisions. The appeal is, therefore, dismissed.

C Coyne

INSPECTOR