
Appeal Decision

Site visit made on 28 April 2022

by S Dean MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 May 2022

Appeal Ref: APP/Q3060/W/21/3289109
217-223 Derby Road, Nottingham NG7 1QJ

- 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 AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Bingwood Property Company LLP against the decision of City of Nottingham Council.
 - The application Ref 21/02175/PAUPD, dated 23 August 2021, was refused by notice dated 18 November 2021.
 - The development proposed is the construction of 2 additional floors on top of the existing building to deliver 8no. new flats, along with associated works to provide suitable waste and cycle storage facilities. It was described by the Council as "Additional two storeys to existing building to create 8 new self contained flats."
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. Despite the application form being titled "*Application for prior approval of a proposed: New dwellinghouses on detached buildings in commercial or mixed use, Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) - Schedule 2, Part 20, Class AA*" the Council has framed their decision and appeal submissions around Part 20, Class A which relates to new dwellinghouses on detached blocks of flats.
3. It is clear from the submissions of the appellant, their application, and the facts on the ground that the appeal submission was made under and should be assessed against the criteria in Class AA. As the appellant has highlighted this in their submissions, which the Council has seen and had opportunity to comment on, but has declined to do so specifically, I do not find that any prejudice arises to any party as a result of me considering the appeal under Class AA.
4. The principle of development is established by Part 20, Class AA of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO), subject to the granting of prior approval for matters set out. The prior approval provisions do not require regard to be had to the development plan.

Main Issues

5. The main issues are whether or not prior approval should be granted having regard to (i) the external appearance of the building and (ii) impacts on the amenity of neighbouring premises.

Reasons

External appearance

6. The appeal site is a purpose-built building in mixed use, with retail on the ground-floor and residential use above. The building is on a relatively steeply sloping road which alters its apparent scale when viewed from a distance both up and down the hill, and when viewed at close-quarters, particularly relative to the buildings around it. Around the site are buildings of very mixed age, form, appearance, material and use, but broadly consistent scale.
7. The additional floors are proposed in form, materials and design which replicate those of the existing building. As such, the effect of the proposal on the external appearance of the building itself, including the design and architectural features of the principal elevation would be minimal beyond its upwards extension, a feature which the Class allows for and anticipates.
8. Whilst the Class allows for and anticipates this effect, it does still require the prior approval process to be followed. The principle of the development is not established unless and until prior approval is granted for a specific proposal.
9. Although there is a mix of scale in the street-scene around the appeal site, this mix falls within a range which I find the appeal proposal would clearly lie beyond. There are no buildings of directly comparable scale which can be seen in the same context, settings and views as the appeal site. As a result, despite the width of the road and the mix of heights (particularly further away and elsewhere in Derby Road as noted by the appellant) I find that two additional stories on this building in this location would appear incongruously tall, obtrusive and dominant. The building would appear unduly and uncharacteristically tall, an effect emphasised by the fall in the road when looking up towards the site. To my mind that additional height would be so great as to outweigh the fall in the road and the apparent reduction in scale in views down towards the site and in longer views, interrupting the rhythm of the buildings along Derby Road.
10. As a result, I find that whilst the proposed design would be acceptable, the resulting height and scale of the building would be such that it would poorly relate to its surroundings and would have a harmful effect on the character and appearance of the locality. I note the examples cited by the appellant of similarly tall buildings nearby, and I was able to see them on my site visit. However, I do not find that any of them are so directly comparable to the appeal site in terms of their relationship to their surroundings that they lend support to this proposal.

11. The appellant has presented me with a number of appeal decisions, in which previous Inspectors preferred a narrow interpretation of the criteria in the Class, restricting their consideration solely to the external appearance of the subject property. Whilst I note these decisions and acknowledge that they are similar to the case before me, they all pre-date the CAB Housing High Court decision¹, referred to by the appellant and third-parties. That decision found that the control of external appearance is not limited to impact on the subject property itself, but also includes impact on the locality. This is the approach that the Council have taken, and one with which I agree, having regard to the content of the Order and the CAB decision.
12. I acknowledge that the CAB decision may still be subject to challenge but at the time of my decision, it has not been, and it represents an up-to-date assessment of the interpretation of the Order. Whilst it is ultimately a matter for my planning judgement as to whether or not the narrow or wide interpretation of the criteria in the Class apply, having regard to the evidence before me and that decision, I prefer the wide interpretation and find support for that in the CAB decision.
13. I note the support in the National Planning Policy Framework (the Framework) for upward extensions, and the requirement in the Order to have regard to it so far as relevant to the subject matter of the prior approval. For the reasons given above, I do not consider that the Framework support for upward extensions outweighs its recognition of the importance of character, appearance, good design and the achievement of well-designed places. I find that the appeal proposal, which would lead to a markedly taller and harmfully dominant building in the locality would not meet these objectives.

Amenity

14. I note that a number of third-party objections have been received with regard to overlooking, visual intrusion, noise and disturbance which could arise from the proposal. I have had regard to these and the way in which the layout and fenestration of the proposal would match that of the existing building, as well as the separation distances between the site and surrounding residential properties.
15. Taking that into account, as the proposal would result in matching windows at a higher level, and given the separation distances, I do not consider that harmful or unacceptable overlooking would occur. With regard to visual intrusion, whilst the proposal would be visible from surrounding properties, given its design would match the existing, and again, given the separation distances, I do not find this would be harmful or unacceptable. Similarly, I do not consider that any harmful or unacceptable overshadowing would occur, having regard to the submitted Daylight and Sunlight Assessment.
16. I note comments around the potential for student occupation, as well as to the potential for general noise and disturbance arising from the increased residential use of the site. Again, given that this use is existing, and in light of the separation distances involved, I am satisfied that the effect of the proposal would be acceptable.

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

17. I note third party concerns around parking provision, but also that highway officers have raised no objection in this regard.

Conclusion

18. For the reasons given above, whilst I conclude that the proposal would not have an unacceptable effect on the amenity of neighbouring premises, it would however have an unacceptable effect on the external appearance of the building, particularly in relation to its effect on the wider locality.

19. As such, prior approval should not be granted having regard to the external appearance of the building and the appeal should be dismissed.

S Dean

INSPECTOR