



Appeal Decision

Site visit made on 26 April 2022 by S Witherley CIHCM MRTPI

Decision by J Hunter BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 May 2022

Appeal A Ref: APP/A5840/D/21/3284266

162 Bermondsey Wall East, London SE16 4TT

- 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, Schedule 2, Part 1, Class AA of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
- The appeal is made by Mr Riccardo Tosetto against the decision of the Council of the London Borough of Southwark.
- The application Ref 21/AP/3178, dated 20 July 2021, was refused by notice dated 8 September 2021.
- The development proposed is: Prior Approval – Upwards Extension to a Dwellinghouse.

Appeal B Ref: APP/A5840/D/21/3284268

164 Bermondsey Wall East, London SE16 4TT

- 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, Schedule 2, Part 1, Class AA of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
 - The appeal is made by Mr & Mrs James and Belinda Richardson against the decision of the Council of the London Borough of Southwark.
 - The application Ref 21/AP/2544, dated 20 July 2021, was refused by notice dated 8 September 2021.
 - The development proposed is: Prior Approval – Upwards Extension to a Dwellinghouse.
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Decision

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Appeal Procedure

3. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Preliminary Matters

4. Two separate appeals were submitted. The name and corresponding address used in the banner header above are taken from the appeal forms and the Council's decision notices. Both appeals seek the same type of development under the Prior Approval process and have been refused by the Council for similar reasons. Each proposal will be considered on its individual merits, however, as they raise similar issues and to avoid duplication, they are dealt with in a single decision letter.

5. A request was sent to the Council asking for a copy of the delegated report for No. 162, Planning reference 21/AP/3178. The report submitted is not titled referenced to that site address or planning reference. The Council declined to respond. Nevertheless, the reason for refusal stated in the decision notice is the same as the one stated for the neighbouring property No. 164, planning reference 21/AP/2544. I have proceeded on the basis that the Council applied the same considerations across both applications.
6. The appellant describes the appeal sites as *two storey, detached property, originally constructed as an agricultural building and rural in location*. It is clear this is an error and is not representative of the characteristics of the individual appeal sites. I will proceed therefore on the basis of what I observed during my site visit.
7. The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) as amended was amended on 31 August 2020 to introduce Class AA to Part 1 of Schedule 2, setting out permitted development rights for development consisting of works for the construction of up to two additional storeys on an existing dwellinghouse that consists of two or more storeys, or for one additional storey on an existing single storey dwellinghouse, together with any reasonably necessary engineering operations
8. As a prior approval application there are two stages to the assessment – the first being eligibility. The Council conclude that the individual proposals were eligible to be considered under the prior approval process and have not raised any conflict with the conditions set out in the GDPO. There is no evidence to conclude differently in that regard. They have however, raised concerns in respect of the effect of the development upon the external appearance of the appeal properties. My consideration of the appeals shall therefore focus on this matter.
9. Prior approval appeals should not be determined, expressly or otherwise, on the basis of s38(6) of the Planning and Compulsory Purchase Act 2004 or as though the development plan must be applied. The principle of development is established through the grant of permission by the Order. The Council has referred to various development plan policies. These policies have only been considered insofar as they may be relevant to the context of specific prior approval matters. Therefore, the policies are not determinative of themselves, and the proposal has been considered on its merits in the confines of the prior approval regime.

Main Issue

10. Whether prior approval should be granted having regard to the external appearance of No. 162 and No. 164.

Reasons for the Recommendation

11. No. 162 and No. 164 are neighbouring three storey properties sited in a short terrace block located in a busy suburban location. The terrace block forms part of a well-designed estate which has a number of key characteristics. These include the use of similar materials, fenestration and window profiles. Upon the front elevations, which overlook the River Thames, there are projecting gable fronts which sit forward of the main pitched roof. A recessed outdoor sitting area is located at third floor.

12. Throughout the terrace there is a great deal of consistency and symmetry in the scale, form and outward appearance of the properties. These features contribute positively to the character and appearance of the individual properties and the wider street scape.
13. The proposed additional storey on both No. 162 and No. 164 would replicate the pitched roof that is currently set back from the characteristic paired gable front. Notwithstanding that the additional windows would align with the vertical windows of the floors below and would use matching materials, the additional floor would appear more prominent on the skyline as a result of its increased height and would significantly disrupt the well designed and cohesive form and scale of the block as a whole.
14. Additionally, it would remove one half of the paired gable front and replace it with a pitched roof, thus removing a key distinguishing feature from the individual property. This would result in the external appearance of each of the dwellings appearing inconsistent and would disrupt the deliberately planned design and architectural rhythm of the otherwise symmetrical and well-proportioned upper floors and roof profile.
15. Whilst I appreciate that it is the appellant's intention to develop these two properties at the same time, as noted above, the proposals would undermine the existing architectural composition of the individual property. Consequently, having regard to the original design of the individual properties and the shared characteristics of the wider block, the additional storey would appear harmful and incongruous regardless of whether they were constructed alongside each other.
16. I recognise that there are examples of buildings in the locality which sit taller than the appeal properties. These include those located to the rear and annotated on the proposed drawings as Collingwood House and Cornwallis House. However, whilst taller, these buildings appear again to be part of a carefully planned theme and from what I saw on site each block appeared to have a consistent height and roof profile.
17. The appellant has referenced two previous prior approval appeal decisions¹ where the respective Inspector approved the application. The appeal referenced as *The Cedars*, relates to a three-storey flat roof end of terrace property. Given the different property designs and site circumstances, it is not considered comparable to the appeals before me, particularly in terms of the differences in property design and the relationships with neighbouring properties.
18. The appeal relating to Pippins Court sought prior approval for two additional storeys on a block of flats. Additionally, the main issue in Pippins Court related to whether the proposal met with, in the first instance, the eligibility criteria for it to be considered under the permitted development regime. The Inspector found that it did and therefore moved on to the second part of the assessment which focused on the effect of the development upon the external appearance of the host property. The Inspector found that the *appearance would only significantly change by its enlargement of the same*. It is not considered therefore that the circumstances around this previous appeal are similar to the appeal before me.

¹ APP/J1535/D/21/3266264 & APP/H1840/W/21/3266807

19. Additionally, the appellant maintains the Inspectors consideration of those appeals were limited to the assessment to the impact on the appearance of the property itself and having regard to the specific wording of paragraph AA.2(3)(iii) of Part 1, Schedule 2 of the GPDO that, by introducing Class AA permitted development rights the Government clearly intended a degree of change to residential properties in certain situations.
20. However, that right is qualified by the need to apply for prior approval for a range of matters. It is difficult therefore to assess the external appearance of a proposal in isolation of its context; a similar design may be acceptable in one location but not another, depending upon how it would sit in relation to its surroundings. Consequently, it is reasonable to take account of the context in which the proposal sits when considering whether to grant prior approval for matters of external appearance. Whilst there will be situations where an upward extension will be considered as suitable, for the reasons set out above, this is not one of them.
21. Furthermore, since the decision was issued, the following High Court Judgment has been handed down; *CAB Housing LTD v SSLUHC & Broxbourne; Beis Noeh LTD v SSLUHC & LB Haringey; Mati.- Rotenberg v SSLUHC & LB of Haringey* [2022] EWHC 208 (Admin). This judgment specifically addresses upwards extensions under Class AA of the GPDO and clarifies a number of matters including whether 'external appearance' considerations allow assessment of the wider context. The judgement found that it is acceptable to do that and in summary states control of the external appearance of the dwelling house is not limited to the impact on the subject property itself, but also includes impact on neighbouring premises and the locality.
22. Given the above, the proposal would cause unacceptable harm to the external appearance of the individual dwellinghouses which would appear incongruous in the surrounding streetscape. Whilst planning policy is not determinative in prior approval appeals there would be conflict with the aims of saved Policies 3.12 and 3.13 of the Southwark Plan (2007) and paragraph 126 of the Framework, which collectively seek proposals to be of a high-quality design and be reflective of the existing character and appearance.
23. Whilst the Council has noted Policy P13 of the emerging New Southwark Plan, they have not provided a copy of this. Nevertheless, as discussed above, development plan policies are not determinative of themselves, and the proposal has been considered on its merits in the confines of the prior approval regime.

Conclusion

24. For the reasons given above, the additional storey would represent a harmful and incongruous extension and it is recommended that prior approval should not be granted to either No. 162 or No. 164, having regard to the external appearance of these dwelling houses.

S Witherley

APPEAL PLANNING OFFICER

Inspector's Decision

25. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is dismissed.

J Hunter

INSPECTOR