



Appeal Decision

Site visit made on 1 April 2022

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 June 2022

Appeal Ref: APP/A5840/W/21/3284901

Zeno House, 19 Long Walk, London SE1 3NQ

- 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 A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
 - The appeal is made by Mayfield Property Group Ltd against the decision of London Borough of Southwark.
 - The application Ref 21/AP/1170, dated 11 December 2020, was refused by notice dated 10 June 2021.
 - The development proposed is 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. It will result in the creation of an additional two studio dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO), permits 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, amongst other things, engineering operations reasonably necessary to construct the additional storeys and new dwellinghouses.
3. As detailed within the GPDO, development under Class A is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for prior approval. The local planning authority may refuse the application where it considers that the proposal does not comply with the limitations or restrictions that are applicable to such permitted development.
4. The provisions of the GPDO require the local planning authority to assess the development proposed solely on the basis of a limited number of considerations. The Council consider that owing to an extension to part of the existing fourth floor (in addition to the proposed additional two storeys) the proposed development would exceed the limitations of Class A. The Council has also raised concerns in respect of the effect of the development upon the external appearance of the building and fire safety. I therefore consider these to be the main issues in the appeal.

5. Development plan policies and the National Planning Policy Framework (the Framework) can be considered relevant in prior approval cases, but only insofar as they relate to the development and prior approval matters. I have proceeded on this basis.
6. On 20 July 2021, the Government published its revised National Planning Policy Framework ('the Framework'). It replaces the previous version published in February 2019. The Framework represents the Government's up-to-date planning policies for England and how they should be applied. I have had regard to the Framework in reaching my decision.
7. Since the original decision the Council have adopted The Southwark Plan (2022). This replaces the Southwark Plan (2007) and the Southwark Core Strategy (2011) such that the policies of those plans cited on the decision notice are no longer part of the development plan and have no weight. The Council have not confirmed which policies of The Southwark Plan (2022) are most relevant to the appeal.

Main Issues

8. The main issues are whether prior approval should be given, having particular regard to 1) the limitations of Class A, 2) the resulting external appearance of the building and 3) fire safety.

Reasons

Whether the proposed development exceeds the limitations of Class A

9. The proposed development includes an extension to the existing fourth floor to accommodate a staircase extension to access the proposed dwellings. The Council considers that this would exceed the two-storey extension limit as outlined in Class A and therefore the proposed development would not be eligible for the prior approval process. The Council do not consider that the proposal would fail to meet with any of the other limitations of Class A and I have no reason to form a different view.
10. Class A permits 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, amongst other things, (c) works for the construction of appropriate and safe access to and egress from the new and existing dwellinghouses, including means of escape from fire, via additional external doors or external staircases. The appellant considers that the staircase extension would meet this limitation, insofar as it provides for appropriate access.
11. I agree that the staircase would fall under the criteria of providing appropriate access. It would be externally enclosed and external to the proposed dwellings. Although it would be on a separate level, and thus bringing the works over three storeys, it would nevertheless constitute works for the construction of appropriate and safe access.
12. Therefore, the proposed development would comply with the limitations of Class A.

External appearance

13. Where any development under Class A is proposed, development is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for prior approval of the authority as to, amongst other things, the external appearance of the building.
14. 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 several appeal decisions where Inspectors took such a view. However, I would point out that the Order does not make such a suggestion. 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.
15. It is therefore not necessary and will not always be sensible or appropriate to consider the external appearance of the building in isolation; the street context may be an aspect of the building's external appearance. What is acceptable on one site may not be on another.
16. In considering whether control of external appearance is limited to its effects on the subject property itself, as opposed to its surroundings, the Courts have held that there is nothing in the language of the GPDO to justify this viewpoint. The Order does not contain any language to the effect that the decision-maker may only assess the impact of that external appearance *on* the building itself. The Courts have held that the decision maker is therefore empowered to assess and control all relevant aspects of that external appearance, and not simply those which impact on the subject building.
17. 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 surrounding buildings are, in this case, a relevant aspect of the consideration of the effect of the development on the external appearance of the building.
18. The appeal building is five storeys in height. It is located in an area with a range of building heights with those of greatest height being situated on the junction between Tower Bridge Road and Abbey Street, and on the main road frontages. The appeal building is located on Long Walk where it sits in between two three-storey residential buildings. Although it sits to the rear of the prominent buildings on the nearby junction, the appeal building is located in an area where there is a marked reduction in the height of buildings.
19. The appeal building, sitting either side of three storey buildings has its first three stories faced in a dark brick. The upper two floors have a lighter cladding and are set back from the more dominant and pronounced three storey element of the building. The effect of this approach is that the upper floors, despite rising above the buildings either side, display a lightweight approach, with themselves appearing as extensions to the main bulk of the building.
20. The proposed development, to provide an additional two storeys in continuation of the existing upper floors, would somewhat thwart this approach. The resulting external appearance of the building would appear disproportionate, insofar that the continuous upper floors would appear the visually dominant

element. Despite the continuation in the design and the wide use of glazing, the resulting building would appear overbearing in its context and incongruous in the street, which although being behind the taller buildings on the corner junction, has a clear reduction in height when moving back from the junction.

21. The appellant considers that the appeal building already displays a considerable contrast between the height of the host building and the neighbouring three storey buildings, and that the existing height would be accentuated by the proposed development but not fundamentally altered.
22. I agree that the appeal building as existing sits evidently higher than the neighbouring three storey buildings, however as I have identified the building has been designed so where it is higher than the neighbouring buildings, the approach is lightweight, set back and different to the remainder of the building. This softer approach reduces the impact of the height difference. This approach is however only effective to a limited extent. The proposed development would continue this for an additional two storeys whereby it would no longer appear as a soft and lightweight transition to accommodate the uplift in height from its neighbours.
23. I have considered the thorough Design and Townscape assessment submitted by the appellant. However, for the reasons outlined above, I do not agree with the conclusions of the assessment that the proposed development is sympathetically designed and would cause no harm by virtue of its design.
24. I therefore find that the proposed development would cause significant harm to the external appearance of the building. The proposal would be contrary to the requirements of Policy D4 of The London Plan (2021) and the National Planning Policy Framework (2021) in respect of the matter of external appearance and the requirement for good design.

Fire safety

25. Part 20, Class A was introduced by SI 2020/632 with effect from 1 August 2020. The requirement to apply for prior approval and the original prior approval matters were set out under A.2(1).
26. There are two prior approval matters relating to fire safety: A.2(1)(i) which was introduced by Article 2 of SI 2020/1459, which came into force on 30 December 2020: where the existing building is 18 metres or more in height, the fire safety of the external wall construction of the existing building; and A.2(1)(j) introduced by Article 9 of SI 2021/814 which came into force on 1 August 2021: where the development meets the fire risk condition, the fire safety impacts on the intended occupants of the building.
27. In 2020/1459, the transitional and saving arrangements are set out in Article 3. The amendment made by article 2 of this Order does not have effect in relation to development under Class A or AA of Part 20 to Schedule 2 to the GPDO where a prior approval application is submitted before 30 December 2020. That applies only to the requirement to seek prior approval in respect of A.2(1)(i).
28. In 2021/814, the Schedule sets out the transitional and saving arrangements. The relevant paragraph of the Schedule is 4: Where development— (a) was permitted under a provision of Schedule 2 to the GPDO as the provision had effect immediately before 1 August 2021 (“the previous provision”), and (b) is

permitted—(i) under a provision of that Schedule as the provision has effect on or after 1 August 2021, and (ii) subject to a condition (“the new condition”) which is not the same, or substantially the same, as a condition which applied under the previous provision, and (c) began, or in respect of which a prior approval application was made, before 1 August 2021, the development may proceed irrespective of whether the new condition has been complied with (but the development must comply with any other condition imposed by the previous provision). That applies to A.2(1)(j).

29. Therefore, if a prior approval application was made before 30 December 2020, the prior approval matters would not include A.2(1)(i) or (j). If the application was made between 30 December 2020 and 1 August 2021, the prior approval matters would include A.2(1)(i) but not (j).
30. In the appeal case, the application for prior approval was submitted on 11 December 2020 and therefore the requirements of A.2(1)(i) and (j) do not apply to the application.

Other Matters

31. The appellant considers that the Council’s approach to their consideration of the proposed development would frustrate the intentions of the legislation in providing more homes. Reference is made to case law¹ as to when it would be permissible to consider ministerial statement on permitted development rights. I do not consider that the Council’s approach in considering the matter of the external appearance of the building was incorrect. It is clear in the legislation that approval of the form of development proposed is not a *fait accompli*.
32. The appellant has referred to case law² in the approach to the interpretation of the wording in legislation, that should be given its ordinary and natural meaning unless the Courts have stated otherwise. For the reasons given above, I consider that this is what the Council did in this case.

Conclusion

33. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

A M Nilsson

INSPECTOR

¹ Pepper (Inspector of Taxes) v Hart, [1993] A.C. 593 (1992)

² Duport Steels Ltd. and Others v Sirs (C.A.) (1980)