



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: 06 June 2022

Appeal Ref: APP/A5840/W/21/3280778

Wellesley Court, 15 Rockingham Street, London SE1 6PD

- 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 Empyrean Developments against the decision of London Borough of Southwark.
 - The application Ref 21/AP/1331, dated 13 April 2021, was refused by notice dated 4 June 2021.
 - The development proposed is a prior approval notification for the construction of an additional two storeys to create 3 new residential 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. Development is not permitted by Class A if, amongst other things, the engineering operations that are reasonably necessary to construct the additional storeys and new dwellinghouses, would consist of engineering operations other than works within the existing curtilage of the building to, amongst other things, strengthen existing walls.
4. 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.
5. 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 the works involved in 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 fire safety. I therefore consider these to be the main issues in the appeal.

Main Issues

6. The main issues are whether prior approval should be given, having particular regard to 1) the limitations of Class A, and 2) fire safety.

Reasons

Whether the proposed development exceeds the limitations of Class A

7. The appellant has submitted a Structural Loading Assessment¹ that outlines that in order to allow for the additional two storeys, it is a structural requirement that the existing timber framed penthouse storey at sixth floor level is removed, allowing for the installation of a new steel framed structure forming the proposed two additional storeys in order to achieve the necessary structural capacity for both the vertical loading and horizontal wind loading.
8. The Council are of the view that these works exceed the limitations of Class A as they go beyond what is considered reasonably necessary engineering works, resulting in the creation of a new storey rather than strengthening of the existing walls. The appellant considers the works fall within the limitation.
9. In reference to works permitted under Class A.(a) of Part 20, the appellant is of the view that such works can be deemed to be 'engineering operations reasonably necessary to construct the additional storeys and new dwellinghouses'. Even if I agreed that the works are 'engineering operations that are reasonably necessary' this is not, however, the sole factor that is required to be satisfied.
10. Paragraph A.1. of Part 20 outlines the circumstances where development is not permitted under Class A. One such instance is (j)(i) where the development under Class A.(a) would consist of engineering operations other than works within the existing curtilage of the building to strengthen existing walls. The works to the sixth floor involve the removal of the existing timber frame and replacement with a steel frame. It also involves the construction of entirely new walls mainly in the place of the existing balconies to the two uppermost flats.
11. The works that are proposed comprising the new outer walls to the sixth floor do not constitute the strengthening of existing walls. They go beyond what is permitted, that being a closed list of works.
12. The appellant suggests that regardless of the closed list in A.1.(j) the works would fall under the initial part of Class A that 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'.
13. It is explicit that what is permitted is 'up to two additional storeys of new dwellinghouses *immediately above the existing topmost* residential storey'. What Class A does not allow, however, is for the existing top floor to be demolished and rebuilt, as there has to be an existing topmost storey to be built upon. Demolition would remove the existing topmost residential storey

¹ Shear Design, Ref 20108.02.03-D001

and thereby it would remove the right as there has to be an existing floor to build upon.

14. Although the topmost floor will be existing prior to the commencement of development, it will not be the part of the building above which the additional storeys will be constructed, as it is required to be demolished and rebuilt. The two additional storeys will not therefore be constructed immediately above the existing topmost residential storey.
15. In this case, therefore, the removal and rebuilding of the existing topmost floor, followed by an additional two storeys would not, when considered as a whole, be permitted development. Arguably the existence of paragraph A.1.(j) adds weight to this view, otherwise it would be superfluous.

Fire safety

16. Part 20, Class A was introduced by SI 2020/632 with effect from 1 August 2020. The requirement for applications for prior approval and the original prior approval matters were set out under A.2(1).
17. 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.
18. 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).
19. 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).
20. So, 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).
21. In the appeal case, the application for prior approval was submitted on 13 April 2021. Therefore, the requirements of A.2(1)(i) are applicable, but not A.2(1)(j).

22. For the proposed development, as the existing building is 18 metres or more in height this means the 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 the fire safety of the external wall construction of the existing building.
23. The Order outlines that where the application for prior approval relates to the requirement mentioned in paragraph A.2(1)(i) a report from a chartered engineer or other competent professional confirming that the external wall construction of the existing building complies with paragraph B4(1) of Schedule 1 to the Building Regulations 2010 must accompany the application.
24. The appellant has submitted correspondence² from a chartered engineer which states that the external wall construction of the existing building complies with paragraph B4(1) of Schedule 1 to the Building Regulations 2010.
25. The Council consider that the submitted information is required to be assessed in consultation with the Health and Safety Executive (HSE) to demonstrate that fire safety has been adequately considered in accordance with the Gateway One requirements.
26. The requirement to consult the HSE was made in SI 2021/814 which also amended the Order to include the requirement of A.2(1)(j) as outlined above. Given the transitional and saving arrangements in SI 2021/814, also referred to above, I have concluded that there is not a requirement to consult the HSE in this instance.
27. I am therefore satisfied that the application complies with the necessary requirement in relation to fire safety.

Conclusion

28. Although I have found that the application complies with the necessary conditions in relation to fire safety, I have found that the proposed development would exceed the limitations of Class A. Therefore, 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

² Letter from Survey 7 dated 10 March 2021 – ref FR20-0005