



Appeal Decision

Site visit made on 27 April 2022

by Rory MacLeod BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 June 2022

Appeal Ref: APP/A5840/W/22/3291568

104 Choumert Road, London, SE15 4AA

- 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) Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
 - The appeal is made by Mr G Gurvits against the decision of the London Borough of Southwark.
 - The application Ref 21/AP/2353, dated 22 June 2021, was refused by notice dated 8 September 2021.
 - The development proposed is two storey extension.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Following the appellant's submission of a daylight and sunlight study the Council has withdrawn its second refusal reason relating to an amenity impact on surrounding properties.
3. There have been many representations from interested parties raising issues other than that covered by the Council's remaining refusal reason.

Main Issues

4. The main issues therefore are:
 - (a) whether the 2 proposed dwellings constitute "*flats*" in relation to the limitation at A.1.(f) of Part 20; and if they do,
 - (b) whether the proposal satisfies the conditions for permitted development set out at A.2.(1).

Reasons

Whether the dwellings constitute flats

5. The appeal relates to a 3-storey building of flats in a backland location. The plans show an 8-bedroom unit suitable for 14 persons for both new floors.
6. Paragraph A.1 of Part 20, Class A sets out a list of preclusions whereby development is not permitted by Class A. Preclusion A.1.(f) states, "*the new dwellinghouses are not flats*". The Council contend that the units would be large scale houses in multiple occupation (HMOs), a 'sui generis' use, and therefore not flats, a contention disputed by the appellant.

7. In support of their case, the Council refer to Condition A.2.(6) to Part 20 which states *"Any new dwellinghouse created under Class A is to remain in use as a dwellinghouse within the meaning of Class C3 of the Schedule to the Use Classes Order and for no other purpose, except to the extent that the other purpose is ancillary to the primary use as a dwellinghouse"*. The Council assert that the Use Classes Order limits the definition of a Class C3 dwellinghouse to not more than 6 residents living together as a single household. The proposed 8-bedroom flats would appear to enable this limitation to be exceeded.
8. However, Class C3 to the Schedule to the Use Classes Order (1987) (as amended) has 3 subsections. Whilst sections (b) and (c) refer to *"not more than six residents living together as a single household"*, section (a) does not. Class C3(a) refers to *"a single person or by people to be regarded as forming a single household"*. There is no limit on household numbers in Class C3(a). Nor is there in S.258 of the Housing Act 2004 to which Class C3 refers. A family of 2 adults and 5 children would not cease to be a single household just because there would be more than 6 residents living together.
9. Whilst the submitted floor plans show layouts that could be occupied as HMOs, it is still possible that the units could be occupied by two households, each with more than 6 persons, up to 14 persons across the 8 bedrooms proposed. It is common practice for appeals to be determined on the basis of what is applied for and shown on the plans. But it is clear that use as a large HMO is not use as a dwellinghouse. If the proposed units are not subsequently occupied for C3 purposes, in accordance with Class AA and paragraph A.2(6), then the development would not be permitted development, and any grant of prior approval would not prevent the Council from taking enforcement action.
10. The 2 proposed dwellings constitute *"flats"* in relation to the limitation at A.1.(f) of Part 20. There is no evidence before me that other limitations listed at A.1. are not satisfied. The proposal would constitute permitted development. It is therefore necessary to consider whether the conditions listed at A.2 relating to applying for prior approval are satisfied.

Whether conditions at A.2.(1) are satisfied

11. 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 whether the conditions listed at A.2.(1) are satisfied.
12. Paragraph B (15) of Part 20, Class A of the GPDO requires the local planning authority to take into account any representations made to them as a result of consultation, and to have regard to the National Planning Policy Framework (the 'Framework'), so far as relevant to the subject matter of the prior approval, as if the application were a planning application. I have taken account of representations received and the updated Framework (2021).
13. Interested parties contend that the proposal would not satisfy prior approval requirements under Part A.2(1) relating to (a) transport and highway impacts, (e) the external appearance of the building, (f) the provision of adequate natural lighting in all habitable rooms of the new dwellinghouses and (g) impacts on the amenity of occupiers of the existing building and neighbouring premises. There is no evidence before me in relation to the conditions listed at (b), (c) and (d).

Transport and highways impacts

14. The site presently has some 13 parking spaces for the existing 12 flats. No additional parking spaces are proposed. One space would be lost through the provision of a timber bike shed. At the time of my visit adjacent roads were heavily parked. There is no survey data before me on the take up of parking spaces by existing residents or confirmation that provision of additional waste and cycle storage for the development would not have an adverse impact on the availability of car and cycle parking within the site or on on-street parking.

External appearance

15. Paragraph 120(e) to the Framework states that planning decisions should support opportunities to use the airspace above existing residential premises for new homes, particularly where the development would be consistent with the prevailing height and form of neighbouring properties and the overall street scene. Several of the representations submitted comment that the external appearance of the resulting building would not fit well into the site's context.
16. In a recent High Court judgement¹ in relation to the interpretation of Class AA of Part 1 of Schedule 2 to the GPDO, a conclusion was reached that "*the control of the external appearance of the dwelling house is not limited to impact on the subject property itself, but also includes impact on neighbouring premises and the locality*". The same logic can be applied to upward extensions at Part 20 Class A.
17. The context for the site is set by surrounding terraces either of houses or of mixed uses rising to 2 or 3 floors, mainly with a pitched roof. The existing building reflects the height of adjacent development but has an extensive flat roof. The additional height and massing proposed would result in a dominant and incongruous development in relation to its scale. Whilst the top floor would have a contrasting zinc cladding finish, it would not be recessed to mitigate the impact of the massing. The plain utilitarian appearance would reflect the design of the existing building but would not respect the character of the locality. The majority of views of the enlarged building would be private from surrounding buildings, but there would be a clear view of the development from Choumert Road by the site entrance.
18. Having regard to all relevant considerations relating to external appearance, and to the need for additional homes referenced in the Framework, it is my judgement that prior approval should not be granted in relation to condition A.2.(1)(e) on the external appearance of the building.

Natural light

19. The windows for the new dwellings would be similar in position and size to those on the floors below, but the size and nature of the rooms they serve would differ. The single bedrooms would be deep but served by small north facing windows of the same size used to serve shallow en-suite bathrooms in the floors below. Small windows in recessed return walls would serve larger and deeper bedrooms than on the floors below. As there is not an internal daylight assessment for the proposed habitable rooms, doubt remains that adequate natural light levels can be achieved.

¹ Paragraph 102 of *Cab Housing Ltd and others v Secretary of State for Levelling Up, Housing Communities and others* [2022] EWHC 208 (Admin)

Neighbouring premises

20. Condition A.2.(g) relates to the impact on neighbouring premises. It is the issue covered by the Council's withdrawn second refusal reason. The appellant's daylight and sunlight report concludes that the proposal would not reduce the amount of available daylight and sunlight to adjoining buildings in Choumert Road, Chadwick Road and Bellenden Road. There would be a separation distance of approximately 20 metres to facing dwellings. Whilst the proposal would result in a higher building it would not result in significant overlooking or loss of privacy additional to that arising from existing relationships. The proposal would result in additional persons and activity at the site, but this would be unlikely to have a material adverse impact on the living conditions of existing occupiers. The proposal would satisfy the requirements of condition A.2.(g).

Conclusion

21. The proposal would result in the provision of additional housing in accordance with the objective to significantly boost the supply of homes as set out at Paragraph 60 of the Framework. However, this benefit would be outweighed by the harm I have identified in relation to the external appearance of the building. From the information available to me, doubt also remains that the proposal would satisfy the conditions relating to the transport and highways impacts of the development and on the provision of adequate natural light in all habitable rooms of the new dwellinghouses.
22. For the reasons given above I conclude that the appeal should be dismissed.

Rory MacLeod

INSPECTOR