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# Appeal Decision

Site visit made on 28 June 2022 by S Witherley CIHCM MRTPI

## Decision by H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8<sup>th</sup> August 2022

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### Appeal Ref: APP/V5570/D/22/3292550

#### 3 Aspen Close, London N19 5XE

- 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 Richard O'Mahony against the decision of the Council of the London Borough of Islington.
  - The application Ref P2021/2861/PRA, dated 23 September 2021, was refused by notice dated 22 November 2021.
  - The development proposed is: Notification of prior approval for the erection of an additional storey above the existing dwelling house<sup>1</sup>.
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## Decision

1. The appeal is dismissed.

## Appeal Procedure

2. 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

3. The Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order) 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.
4. As a prior approval there are two stages to assessment – the first being eligibility. The Council conclude that the proposal is eligible to be considered under the prior approval process and has 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 host property. My consideration of the appeal shall therefore focus on this matter.
5. 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

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<sup>1</sup> Description taken from the appellants appeal form and Council decision notice.

established through the grant of permission by the Order. The Council has referenced the following development plan policies and guidance in its refusal reason: Policy CS8 of Core Strategy (2011), Policy DM2.1 of Development Management Policies (2013) and the Islington Urban Design Guide (UDG) (2017). These policies and the UDG guidance, amongst other things, seek development to be of a high standard of design and be reflective of the existing character and appearance.

6. 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**

7. Whether prior approval should be granted having regard to the external appearance of the dwellinghouse.

### **Reasons**

8. No. 3 Aspen Close is a two-storey dwelling located in a planned estate that is set back from and accessed via an entranceway taken from Hargrave Park. It forms part of a group of buildings which is formed around a small courtyard. It is located in the corner of the courtyard and traverses either side of its corner setting. It backs onto and adjoins a similar courtyard known as Alder Mews.
9. At the front the roof has a valley section where the property straddles both sides of its corner courtyard setting. This results in the main front elevation overlooking the entrance into the courtyard and is flanked by No. 4 Aspen Court. The rear of this section is attached to the rear of No. 4 Alder Mews. The other side section is flanked by No. 2 Aspen Court and this section has a reduced front elevation with a wider rear section which overlooks the main garden of the appeal property.
10. The proposed additional floor would be built with a similar roof profile, design, and materials to those of the existing building. However, notwithstanding those matters, the additional storey would appear more prominent on the skyline and would significantly disrupt the uniformity created by the consistent scale and form of the courtyard properties. As a three storey property within a courtyard terrace arrangement of two storey dwellings, its scale and form would appear at odds within its surrounding context. The resulting dwelling would appear particularly disjointed across one section of its corner profile and unduly elongated across another, resulting in large areas of masonry which would emphasise its overall excessive height.
11. Furthermore, the proposed three-storey side elevation which would face outwards towards the entrance from Hargrave Park would become an imposing and featureless façade that would be unattractive in architectural terms at such a prominent position on the entrance to the close. Consequently, having regard to the original design of the property and the shared characteristics of the surrounding courtyard properties and the deliberateness of the planned courtyard arrangement, the additional storey would appear harmful and incongruous.

12. Given the above, I conclude that the proposal would cause unacceptable harm to the external appearance of the dwellinghouse which would appear incongruous in the surrounding streetscape.

### **Other Matters**

13. The appellant has referred to other Inspectors<sup>2</sup> decisions. I note that the site circumstances of these previous appeals appear very different to the appeal before me. The proposal at Turner Street relates to a property in a traditional terrace row, and the appeal in London Road relates to a detached dwelling.
14. Since the determination of those appeals, the following High Court Judgement has been handed down: *CAB Housing LTD v SSLUHC & Broxbourne; Beis Noeh LTD v SSLUHC & LB Haringey; Mati. Rotenberbg v SSLUHC & LB of Haringey* [2022] EWHC 208 (Admin). This judgment amongst other things concluded the 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.
15. Furthermore, it states that it is for the Inspector, as the decision maker, to determine each appeal based on the details before them and also whether the effect of the proposal is considered in the context of the wider area. This is a matter of planning judgment. The high court judgement is clear in this respect and is clear that it is open to the decision maker to consider the wider area in the assessment. For the reasons set out above, the proposal has been found to harm the external appearance of the dwellinghouse which would appear incongruous in the surrounding streetscape.
16. By introducing Class AA permitted development rights the Government clearly intended a degree of change to residential properties in certain situations. However, that right is qualified by the need to apply for prior approval for a range of matters. When assessing the external appearance of a proposal it is difficult to do so in isolation of the context of the surroundings and I find it is reasonable to take account of the design of the dwelling and neighbouring properties in making my assessment. I have no doubt that there will be situations where an upward extension would be suitable but, for the reasons set out, this is not one of them.
17. I note the comments regarding the need for the development. However, whilst I have sympathy with the appellant, these personal circumstances are not matters that can be taken into consideration as part of the prior approval regime. Similarly, the lack of objections does not outweigh the visual harm which has been identified.

### **Conclusion**

18. For the reasons given above, the additional storey would represent a harmful and incongruous extension and I conclude that prior approval should not be granted having regard to the external appearance of the dwellinghouse. I recommend that the appeal should be dismissed.

*S Witherley*

APPEAL PLANNING OFFICER

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<sup>2</sup> APP/E5900/D/21/3271042 – Turner Street & APP/X1735/D/21/3269472 – London Road

**Inspector's Decision**

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

*H Nicholls*

INSPECTOR