



Appeal Decision

Site visit made on 17 August 2022

by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th August 2022

Appeal Ref: APP/A1910/D/21/3282662

Arewa, Shootersway Lane, Berkhamstead, Herts HP4 3NP

- 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 1, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Tim Falla against the decision of Dacorum Borough Council.
 - The application Ref 21/02373/UPA, dated 14 June 2021, was refused by notice dated 29 July 2021.
 - The development proposed is described as 'additional floor, the existing design and fenestration will be replicated with a mansard roof above London stock brickwork the materials will match the existing.'
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. There is no debate between the main parties as to how the appeal scheme would stack up with the provisions of Class AA insofar as the description of permitted development. The crux of the case relates to prior approval matters, specifically those concerning the external appearance of the proposed development.

Main Issue

3. With the above in mind, the main issue is whether the external appearance of the dwellinghouse, including the design and architectural features of the principal elevation of the dwellinghouse, and any side elevation of the dwellinghouse that fronts a highway would be acceptable, as per the requirements of condition AA.2 (3) (ii) (aa) and (bb).

Reasons

4. The appeal building is a detached two storey dwelling of some substance and thus presence in the street scene. Its front (principal) elevation is set back from and facing the road. The side elevations face the immediate neighbours.
5. It is one of a row of three south east facing buildings of a strikingly similar design, size, scale and presentation to the street. These factors, as well as architectural details such as their mansard style roofs, decorative eaves and consistent fenestration rhythm lend a high quality uniformity to the street. For these reasons, and along with two other similarly designed and scaled buildings that face south around the corner, the appeal building contributes positively to the character and appearance of the area.

6. The proposed development would replicate the window style, eaves detail and roof design of the existing dwelling and thus the two that flank it. However, the additional height in particular, coupled with the span of what would be the new second floor, would stand the building noticeably proud of the others, resulting in a more prominent street scene presence. Even though the buildings are on marginally different land levels and thus their overall heights side by side are different, their scale and height as buildings are consistent, read as two storeys in each case. The proposed additional floor, whilst perhaps not significant alone in scale terms, would nonetheless appear more than modest. The appeal scheme would, for these reasons, disrupt the pleasant homogeneity of the street's uniform appearance at this point and thus cause harm to the character and appearance of the area.
7. The external appearance of the dwellinghouse would therefore be unacceptable and thus the proposed development would not accord with the prior approval matters of Schedule 2, Part 1, Class AA of the Town and County Planning (General Permitted Development) (England) Order 2015 (as amended).

Other Matters

8. The appellant has drawn my attention to the wording of Class AA with regard to the main issue of the appeal. Specifically, in that it limits the design assessment to the design and architectural features of the front and side elevation only and does not empower the decision maker to assess the development in its wider context.
9. I disagree. In this regard, Class AA sets out that prior approval must be sought as to, amongst other things, the external appearance of the dwellinghouse, including the design and architectural features of the principal elevation of the dwellinghouse, and any side elevation of the dwellinghouse that fronts a highway. In the case of the appeal scheme, I have focussed on the principal elevation, which is the front for the purposes of the appeal building. I have explained that the side elevations do not face the highway.
10. That aside, I would find it difficult to divorce consideration of the quality and thus acceptability of a design in and of itself from how it would then appear in its context. As I have acknowledged above, the use of matching materials and features in the proposed development may be acceptable for the dwelling, but not, as I have also explained, for its context. Class AA is clear in that prior approval is required as to the design and architectural features. It does not say that such a consideration of that design cannot or should not have regard to its context. Otherwise, it would explicitly say so. For me, and for a design to be acceptable, its context is as important as what it might be in isolation.
11. Also, and with regard to the approach endorsed by the CAB Housing judgement¹, by using the word 'including' in its assessment of the design of any works so pursued, one would naturally conclude that such an assessment can go wider than solely the dwelling itself. Indeed, the judgement explained that the control of the external appearance of the dwelling is not limited to impact on the subject property itself, but also includes impact on neighbouring premises and the locality. For the purposes of my explanation above, it's context.

¹ CAB Housing Ltd, Beis Noeh Ltd and Mati Rotenburg v SSLUHC [2022] EWHC 208 (Admin)

12. My colleague's decision in 3266264² does speak of the narrowness of the assessment of the external appearance of the dwelling. Albeit I note they had regard, as have I, to the context of the proposals. Specifically saying 'the additional storey would add 2.2 metres to the building, however, no. 3 The Cedars is already slightly taller than the appeal site. The flank elevation, which fronts Brook Road, is noted as being set back from the road frontage and I note that house on the opposite corner of the junction is more prominent than the appeal site as a result of it being much closer to the road. The appeal site is afforded a level of screening by trees and shrubs to the South and West.' A different approach was taken by my colleague in regard to 3263486³. Both this and 3266264 were however issued prior to the clarification passed down by the CAB Housing judgement in 2022.

Conclusion

13. The proposed development would not comply with the prior approval matters of Class AA for the reasons I have given. The appeal cannot therefore succeed.

John Morrison

INSPECTOR

² APP/J1535/D/21/3266264 1 The Cedars, Buckhurst Hill, Essex IG9 5TS

³ APP/T1410/W/20/3263486 Seaforth Court, 91 Victoria Drive, Eastbourne BN20 8LA