



Appeal Decision

Site visit made on 5 July 2022

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 September 2022

Appeal Ref: APP/Q5300/W/21/3286099

Clearview Court, 59a Bourne Hill, London N13 4LU

- 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) and Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr M Miltiadous against the decision of the Council of the London Borough of Enfield.
 - The application Ref: 21/03164/PRA, dated 16 August 2021, was refused by notice dated 12 October 2021.
 - The development proposed is described as: Construction of two additional storeys to provide eight new residential dwellinghouses (flats) on the existing purpose-built, detached block of flats.
-

Decision

1. The appeal is allowed, and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the construction of two additional storeys to provide eight new residential dwellinghouses (flats) on the existing purpose-built, detached block of flats at Clearview Court, 59a Bourne Hill, London N13 4LU in accordance with the terms of the application Ref: 21/03164/PRA, dated 16 August 2021, and the plans submitted with it, including drawing numbers: D00 - Site Location Plan; D01 - Existing Site Layout; D02 - Site Layout Plan; D03 Revision B - Proposed Plans; D04 Revision B - Proposed Elevations; D05 - Existing Plans and Elevations; D06 - Site Layout With Distances From Neighbouring Properties; and D07 - Existing & Proposed Section.
2. Prior approval is also granted subject to the following conditions:
 - 1) Prior to first occupation of the development hereby approved, details of opaque glazed privacy screens to be installed to the side elevation of the proposed balconies on the rear elevation of the development shall be submitted to, and approved in writing by, the local planning authority. Thereafter, the privacy screens shall be implemented in accordance with the approved details prior to the first occupation of any of the new flats.
 - 2) Notwithstanding the details shown on Drawing Number D02, prior to first occupation of the development hereby approved, details of 6 additional cycle parking spaces, over and above the 10 new spaces shown on Drawing D02, shall be submitted to, and approved in writing by, the local planning authority. Thereafter, the cycle parking spaces shall be implemented in

accordance with the approved details, and the details shown on Drawing Number D02, prior to the first occupation of any of the new flats.

Preliminary Matters

3. Under Article 3(1) and Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO), planning permission is granted for works for the construction of up to two additional storeys of new dwelling houses immediately above the existing topmost residential storey on a building which is a purpose-built, detached block of flats. This is subject to limitations and conditions set out in Paragraph A.1., Paragraph A.2., and Paragraph B.
4. There is no dispute regarding any of the limitations on permitted development in paragraph A.1. Paragraph A.2 of Part 20, Class A of the GPDO requires prior approval to be sought for the matters listed in that paragraph. Amongst these is a requirement for prior approval as to the impact on the amenity of the existing building and neighbouring premises including overlooking, privacy, and the loss of light. It is this which is the sole matter in dispute between the appellant and the Council.
5. In determining such an application, paragraph B (15) 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 considered the appeal on the same basis. The prior approval provisions do not require regard to be had to the development plan.

Main Issue

6. The main issue in this appeal is the effect of the proposed development on the living conditions of the occupiers of neighbouring premises, with particular regard to outlook, daylight and privacy.

Reasons

7. The appeal building is a modern block of purpose built flats, comprising nine flats over three floors of accommodation with the topmost floor accommodated within the roof space of the building. The appeal proposal seeks to add two additional storeys to the building comprising a further eight flats.
8. To the north west of the appeal building. on the same side of the road, is a short terrace of two storey, traditionally built, houses, numbers 61 to 69 Bourne Hill. To the south east is another, purpose built, two storey block of flats, 1 -7 Kerry Close, and to the south south-west, at the rear of the appeal building is a further block of two storey flats, 8-13 Kerry Close. Opposite the appeal building on Bourne Hill are two storey, semi-detached, houses.
9. The Framework expects development to provide a high standard of amenity for existing and future users.
10. Whilst the resulting building would be taller than the existing, the upwards extension would follow the same footprint as the lower floors. The appeal proposal would, consequently, not project beyond the extent of the existing

external walls of the building relative to the immediately neighbouring properties.

11. I saw when I visited the site that whilst there is a window in the first floor gable to number 61 Bourne Hill, this is a landing window rather than a window to a habitable room. This window presently faces the side wall of the appeal building and although the proposal would increase the height of this side wall, any existing views from this window would already be constrained by the neighbouring building and the increased height would not significantly reduce these. In addition, number 61 has a wider than average single storey garage attached to the side elevation and as a result of the separation distance between main wall of 61, where the landing window is located, and the side wall of the appeal building, the increased height of the appeal building would not have an unduly overbearing effect on this window. I saw when I visited the site that the increased height of the appeal building would not affect the outlook from the windows on the front and rear elevation of number 61 to any greater extent than presently occurs.
12. Part of the front and rear elevation of the flats at 1-7 Kerry Close are set back and sit behind the line of the front and rear walls of the appeal building. There are windows, and a patio door on the ground floor rear elevation, in these set back parts of the elevations. Due to the existing relationship between this building and the appeal building, oblique views from these windows are presently affected by the two storey wall of the appeal building which sits at a higher level. The appeal proposal would not make this existing situation significantly worse.
13. The flats at 8-13 Kerry Close are orientated with the side elevation facing the rear of the appeal building. Whilst there are windows in this side elevation, I noted that these are all small, opaque glazed windows and, consequently, the outlook from these would not be affected.
14. Opposite the appeal building, numbers 68 -74 Bourne Hill face the appeal site. However, these dwellings are located approximately 30 metres from the appeal building. The proposed development would change the outlook from the rooms at the front of these dwellings. However, change does not necessarily equate to harm and, due to the distance between the appeal building and the houses opposite, the increase in height would not appear unduly oppressive.
15. There would be no windows on the proposed upward extension which would afford direct views into windows in the neighbouring properties at 61 Bourne Hill and 1-7 Kerry Close. Although there would be windows on the front and rear elevations facing properties on the opposite side of Bourne Hill and the rear of properties in Crothall Close, the distance between the appeal building and these properties is sufficient that adequate privacy would be maintained.
16. It is proposed that there would be balconies outside some of the new windows, echoing those on the storeys below. The proposed balconies to the rear do have the potential to result in a loss of privacy to the residents to either side and a sense of being overlooked. I observed when I visited the site that opaque glazed privacy screens were fitted to the side of the balconies on the rear elevation facing the neighbouring properties. It is not clear from the submitted drawings whether this feature is included on the proposed new balconies, although they are mentioned in the appellant's submissions.

Nonetheless, this is a matter that could be addressed by an appropriately worded condition.

17. Although the proposal would result in further windows overlooking neighbouring garden areas, these are already subject to a degree of causal overlooking from existing upper floor windows within the appeal building and other neighbouring properties. The proposed development would not result in a significant increase over the existing situation.
18. Consequently, I am satisfied that the proposed development would not result in a loss of privacy to the occupiers of neighbouring properties.
19. With regard to potential loss of daylight and sunlight to the neighbouring properties, a Daylight and Sunlight Report was submitted with the application. This was carried out using the 2011 version of the Building Research Establishment (BRE) Guidance, *Site Layout Planning for Daylight & Sunlight*. An updated version of this was published in July 2022 to take account of the British Standard, Daylight in Buildings (BS EN 17037) published in June 2019, and which replaced the previous British Standard (BS 8206 part 2). The BRE Guidance is not planning policy although it is widely used in assessing the effects of development proposals and in the design of new developments. Although the Daylight and Sunlight Report was carried out using the previous BRE Guidance and the superseded British Standard, its findings are nonetheless useful in assessing the effects of the proposal.
20. From the information provided and from what I saw when I visited the site, I am satisfied that the assessment has been carried out on the appropriate windows on the closest properties at 61 Bourne Hill and numbers 1-7 and 8-13 Kerry Close. I am also satisfied that due to the separation distances, orientation, and position relative to the appeal building that it was not necessary to assess any other properties. The Daylight and Sunlight Report found that only one of the windows assessed, a first floor window in 1-7 Kerry Close, would fail to meet the guidelines. This window is a side window in a projecting bay that contains two other windows serving the same room. The Daylight and Sunlight Report indicates that despite the reduction in light that would be received by this particular window, there would remain a good distribution of light within the room that it serves.
21. The findings of the Daylight and Sunlight Report are fairly unequivocal in that there would be very little perceived effect in terms of sunlight and daylight received in rooms of the closest neighbouring properties. The appellant's evidence is not disputed or gainsaid by any technical evidence from the Council. Based on the evidence provided, I find that the proposed development would not result in an unacceptable loss of daylight or sunlight to the habitable rooms of neighbouring properties.
22. Although not raised by the Council, the potential for noise and light pollution has been raised by neighbouring residents. The proposed development would result in a larger number of occupants present within the appeal building. However, there is no substantiated evidence that would indicate that normal domestic occupation would significantly increase noise in the area. Similarly, no new lighting is proposed and, whilst there would be an increase in the number of windows in the property, I am not persuaded that this would result in an unacceptable level of illumination or light overspill from the site during the hours of darkness.

23. I have noted that the occupiers of a neighbouring property have raised concerns that the proposal may prevent them from installing solar panels at a future date by reducing the amount of sunlight to their preferred location. I do not have any evidence in respect of this potential installation or whether this would require planning permission prior to proceeding. Nor do I have any substantiated evidence that the appeal proposal would entirely preclude the installation of photovoltaic or solar thermal panels at the neighbour's property. I cannot, therefore, attribute any weight to this point.
24. I therefore conclude that the proposed development would not cause harm to the living conditions of the occupiers of neighbouring premises, with particular regard to outlook, daylight and privacy. This would comply with the relevant requirements of the Framework which seeks to protect the amenity of existing occupiers.

Other Matters

25. A number of other points have been raised in representations received from interested persons, both as part of the notification on the original application and as a result of notification of the appeal. These include: the effect of the proposed development on the character and appearance of the area; inadequate parking provision and increased traffic; inadequate drainage; disruption from construction work; and that the proposal would not provide for the Borough's housing need.
26. It should be noted that, because this appeal relates to an application for prior approval and is not an application for planning permission, nor is there any dispute that the proposal would be permitted development, consideration of any other matters must be confined to the matters set out under Paragraph A.2(1) of Part 20, Class A as subject to the determination.
27. The appeal proposal would result in a building that is taller than the predominantly two storey properties that characterise the area. Bourne Hill also slopes downwards from the north west to the south east. There is no doubt that the resulting building would be very visible as a result of the increase in height.
28. That said, in terms of the external appearance of the building, the proposed additional two storeys would, in effect, replicate the design of the existing first floor with the exception of the projecting bay window detail on the front elevation which is omitted from the proposed new fourth storey. The roof would also essentially replicate the profile and form of the existing roof. The proposed external materials would be to match those of the existing building. Taken in isolation, the resulting building would read as a coherent whole with a consistent design approach.
29. The appeal building and its neighbour at 1-7 Kerry Close are recent additions into the street scene that is otherwise comprised of houses dating from the early part of the twentieth century. As such, the appeal building in particular presently stands out as markedly different from its surroundings in the street scene, although it does conform to the general two storey height of the surrounding buildings.
30. The appeal site is not within a conservation area or any other protected or designated area, nor is it within the setting of any listed building or scheduled

monument. I have noted the reference made to the Lakes Estate Conservation Area in one of the representations, however, the appeal building is located some distance from the conservation area boundary and could not be said for practical purposes to be within the setting of the conservation area.

31. Although the resulting built form would be different, this does not automatically mean that it would be harmful. To the south east side of the appeal building is another modern flatted development and there are further modern flats and houses to the rear of the appeal building on Kerry Close and Crothall Close forming an enclave of more recent buildings within the earlier urban form. The appeal building and numbers 1-7 Kerry Close form a part of this group of modern buildings.
32. In any event, the Government considers the permitted development right to extend upwards to provide additional homes is necessary. This is in order to boost housing delivery and increase densities by making effective use of existing buildings and avoiding the need to develop greenfield sites.
33. I have also noted that the Council have not raised any objections to the design of the proposed extension or its effect on the external appearance of the building and the surrounding area. Whilst the resulting building would have a different appearance, in the above context I do not find that this would cause harm.
34. The appeal proposal does would not provide any additional car parking in connection with the new flats. I saw from the submitted drawings and from when I visited the site that 9 car parking spaces are provided at the site at present. I also observed that there is little to no scope for providing additional off-street car parking spaces at the site.
35. No information has been provided by any party in respect of the number of car parking spaces that would be required to serve the resulting development. I have noted that the appeal site lies in an area with a Public Transport Accessibility Level of 1b which indicates very poor public transport connectivity. There are no controlled parking zones operating in the vicinity of the appeal site and, consequently, it would not be possible to render the proposed new flats car free by way of a legal agreement preventing occupation of the flats by persons holding a parking permit. In this context, it is likely that the proposed development would generate an additional demand for parking.
36. No substantive evidence has been put to me in respect of parking stress in the vicinity. Bourne Hill is not subject to any on-street parking restrictions other than short stretches of double yellow lines at junctions with side streets. I observed when I visited the site that whilst most of the nearby properties are provided with driveways or hard standings for off-street parking, some on street parking was occurring. Nevertheless, there were other opportunities for on-street parking nearby, although in many places this is limited by the presence of driveway accesses. I did, however, see that to the south east of Kerry Close there is a section of highway that runs in front of a covered reservoir where the frontage is not built up and there are no residential accesses. At the time of my visit, in the early afternoon, there were no vehicles parked on this stretch of carriageway despite on street parking occurring elsewhere.

37. I accept that this is just a snapshot at the time when I visited and that there will be increased parking demand in the evenings and at weekends. Nonetheless, I am satisfied that any additional parking demand generated by the proposed development could be accommodated on-street in the vicinity of the site. Whilst the appeal proposal would generate additional vehicle movements, there is no substantiated evidence that would indicate that there is insufficient capacity in the road network to accommodate this or that there would be an unacceptable impact on highway safety. I am also mindful that the highways Authority have not raised any objections to the proposal.
38. Concern has been raised in respect of inadequate drainage and sewage disposal in the area to accommodate the development. Whilst flood risk in relation to the building is a prior approval matter, I am advised that the site lies within Flood Zone 1 as identified by the Environment Agency where the flood risk is low and is not an impediment to development. The size of the site is below the threshold where a formal Flood Risk Assessment would be required to determine whether the proposal would result in surface water flooding elsewhere. I would, nevertheless, concur with the Council's assessment that the proposal would not increase the amount of surface water discharge from the site as the area of the roof and other hard surfacing would not be significantly altered. Whether there is capacity in the existing drainage system to accommodate increased foul water discharge is a matter for the developer to ascertain with the relevant water authority. There is no firm evidence before me that it would not be feasible to adequately drain the proposed development.
39. Concern has been also raised over disruption from construction work to build the proposed additional storeys. Paragraph A.2(3) of Part 20 Class A sets out that any development under Class A is permitted subject to the condition that before beginning the development, the developer must provide the local planning authority with a report for the management of the construction of the development, which sets out the proposed development hours of operation and how any adverse impact of noise, dust, vibration and traffic on occupiers of the building and adjoining owners or occupiers will be mitigated. It is inevitable that there will be some noise, disturbance, and disruption during the construction of any development. However, I am satisfied that the operation of a suitable construction management plan as required by the condition would minimise the disruption to the occupiers of the neighbouring properties as far as is practical.
40. Although it has been suggested that the appeal proposal will not provide the type of housing needed in the Borough, the size, type, and tenure of the proposed dwellings is not a matter for determination in an application for prior approval under Part 20, Class A.
41. None of these points, or any other points that have been raised, would lead me to a different overall conclusion in respect of the proposal.

Conditions

42. Under Class A, development is permitted subject to a condition that it must be completed within 3 years starting from the date of this decision. Furthermore, as referred to above, under paragraph A.2(3), the developer must provide the local planning authority with a report for the management of the construction of the development, which sets out the proposed hours of operation and how

any adverse impact of noise, dust, vibration, and traffic on occupiers of the building and adjoining owners or occupiers will be mitigated.

43. The developer must also notify the local planning authority of the completion of the development as soon as reasonably practicable. Paragraph B (17) of Part 20 confirms that development must be carried out in accordance with the approved details.
44. Paragraph B (18) allows for prior approval to be granted unconditionally or granted subject to conditions reasonably related to the subject matter of the prior approval. As set out above, in order to prevent causal overlooking of the rear of number 61 Bourne Hill and numbers 1-7 Kerry Close it is necessary to require the installation of opaque glazed privacy screens to the side of the balconies at the rear of the proposed extension. This is reasonably related to the subject matter of the prior approval. Whilst it is not a condition that has been suggested by either of the main parties, it is a relatively minor matter and would not be a matter that the appellant would be unaware of given the presence of similar screens on the appeal building at present and that the appellant's submissions indicate that such screens would be installed.
45. Although the Council have not specifically suggested any conditions that may be required if the appeal is allowed, the Highway Authority have suggested that, if prior approval is granted then the provision of additional cycle parking facilities will be required for the new development. The appellant has not objected to this suggestion. There are currently 6 cycle parking spaces at the site which are shown on the existing site plan. Whilst details of an additional 10 cycle parking spaces are shown on the submitted drawings, the Highway Authority have advised that 16 new spaces are required. In order to encourage a modal shift to forms of transport other than the private car, the provision of safe and convenient cycle parking is necessary and, consequently, I have included a condition that requires the provision of a further 6 spaces over and above those shown on the submitted drawing.

Conclusion

46. For the above reasons, I conclude that the appeal should be allowed.

John Dowsett

INSPECTOR