



Appeal Decision

Site visit made on 8 August 2022

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 September 2022

Appeal Ref: APP/U5360/W/21/3282261

14 Lordship Road, London N16 0QT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Avon against the decision of London Borough of Hackney.
 - The application Ref 2021/1855, dated 24 May 2021, was refused by notice dated 23 August 2021.
 - The development proposed is prior approval application for the erection of an additional single storey to the existing three-storey residential building to a maximum height of 11.5m. The proposed extension accommodates 1 additional residential unit.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development above has been taken from the appeal form and the Council's decision. Even though it differs to that in the application form it nevertheless provides greater clarity on what is being sought.
3. The appellant has submitted copies of other appeal decisions¹ for my consideration. Those decisions were issued following the appellant's statement of case and the Council has been notified of their receipt. Accordingly, I consider it reasonable in this instance to accept them as late evidence.

Main issue

4. The main issue is whether or not the proposal would constitute permitted development under Schedule 2, Part 20, Class A (Class A) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO), with particular reference to the building being a detached, purpose-built block of flats.

Reasons

Permitted development

5. Paragraph A of Class A of the GPDO permits construction of up to two additional storeys of new dwellinghouses immediately above the existing topmost storey on a building which is a purpose-built, detached block of flats.
6. Where an application is made for a determination as to whether prior approval is required for development, Paragraph B(3) of Part 20 provides that the local

¹ APP/U5930/W/21/3271846 - 26 Chingford Mount Road, allowed on 8 November 2021;
APP/K5600/W/21/3281734 - Logan House, 1 Logan Place, dismissed on 22 February 2022;
APP/U5930/W/21/3276027 - 71 Oliver Road, dismissed on 9 February 2022.

planning authority may refuse the application where it considers the proposed development does not comply with, or the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, any conditions, limitations or restrictions specified in this Part as being applicable to the development in question.

7. The Council considers that there is insufficient evidence to demonstrate that the building is a detached and purposed built block of flats in accordance with the terms of Class A, Part 20 of the GPDO.

Whether or not a purpose-built block of flats

8. For the purposes of Part 20 of the GPDO, the interpretation of "purpose-built" in relation to a building (whether a block of flats or a dwelling), means built as such and remaining as such. Whereas a "block of flats" is a building which is divided horizontally and consists of separate and self-contained premises constructed for use for the purposes of a dwellinghouse, and any ancillary facilities constructed solely for use by occupiers of the building².
9. The appellant's statement of case (SOC) indicates that the appeal building has been solely used as a block of flats since at least 1964. The accompanying Party Wall Surveyor's report ('the Surveyor's report') estimates it was built in the 1980s. Therefore, the appellant's evidence is somewhat inconsistent regarding the construction of the building. Nonetheless, there is no documentary evidence such as a construction notice or planning decision to support those claims. Similarly, I have no proof that the building was formerly in use as a warehouse, as suggested by the Council.
10. The appellant has provided an HMRC document indicating that the ground floor flat within the block has been in registered tenancy since March 2021, while previously registered in January 2018. That document also indicates that tenancy of the ground floor flat commenced in 1964, which would roughly align with the construction date indicated in the SoC. However, there is no confirmation or evidence whether the upper floors were in use as flats at that time, therefore I cannot be certain that the whole of the building has been solely used and built specifically as flats following its construction.
11. The Land Registry title confirms that three flats were registered within the building in 2000 for a term of 999 years. Whilst this confirms that the building has been in use as flats for some 20 years, it is not clear whether those leases extend back to the time the building was constructed. Therefore, I cannot be sure that the building has always been in use as flats.
12. Guidance relating to the determination of lawful development certificates has been referred to by the appellant as relevant in this case³. This scheme, however, comes under a different consenting process and is subject to separate procedures for determination. Even if that guidance was relevant, the appellant's evidence would fail to be sufficiently precise and unambiguous to justify granting the scheme.
13. Given the somewhat limited and conflicting level of information/ documentary evidence regarding the use of the whole building as a purpose-built block of

² Paragraph C, Interpretation of Class A of Part 20 of the GPDO

³ Paragraph: 006 Reference ID:17c-006-20140306, Revision date: 06 03 2014, Guidance - Lawful development certificates, Ministry of Housing, Communities & Local Government

flats, I cannot conclude with certainty that it was constructed for that intended use. Accordingly, it would not comply with Class A of Part 20 of the GPDO where it requires the building to be a purpose-built block of flats.

Whether or not detached

14. For the purposes of the GPDO “detached” means that the building does not share a party wall with a neighbouring building.
15. There is no definition of what constitutes a party wall within the GPDO, however, the Ministry of Housing, Communities and Local Government’s Planning Portal defines a wall as a “party wall” if it stands astride the boundary of land belonging to two (or more) different owners. The dictionary definition is of a wall that divides two buildings that are joined together and belongs to both of them⁴. My understanding of those definitions is that a building does not necessarily need to be a visibly separate or standalone structure in its appearance to be considered ‘detached’, rather it’s dependent on whether a “party wall” exists.
16. The Council does not consider that the building is detached, as it is not open on all sides or standing independently of other buildings. They also state there is insufficient evidence that the building is detached. This position is informed, in part, by evidence submitted by a third party i.e. whether or not a chimney breast and a porch receive structural support from the appeal building and No 18 Lordship Road (No 18).
17. The Surveyor’s report provides contrasting measurements between the building’s internal and outer walls to the window casement as they relate to the adjoining buildings. Those distances, supported by drawings and photographs, are consistent with the existence of a separate independent enclosing wall at the appeal site as opposed to a shared party wall. The appeal building’s taller outer walls, age and use of materials also support this view.
18. The appellant’s Surveyor considers that the chimney breast at No 18 is supported by its own outer wall, rather than the appeal building. Whereas the ground floor porch is cantilevered and tied into the appeal building’s structure thereby not benefiting from any support from No 18.
19. Having carefully considered the evidence of both parties and carried out my own external inspection via the Lordship Road frontage, I am satisfied that it has been demonstrated that the appeal building is detached for the purposes of assessment against Paragraph A of Part 20 of the GPDO.

Conclusion on the main issue

20. I have found that the appeal building would be detached when assessed against the terms of the GPDO. However, there is conjecture between the parties and insufficient veracity in the evidence regarding the building’s status as a purpose-built block of flats. This provides enough reason to conclude that the proposal would not be permitted development in accordance with Paragraph A of Class A, Part 20, of Schedule 2 of the GPDO.

⁴ Cambridge Dictionary definition

Other Matters

21. Given that I have concluded above that the proposed development is not permitted under Class A, Part 20 I have no need to consider the further issues in terms of the criteria contained within A.2(1) (a) to (j) inclusive of Class A of the GPDO.

Conclusion

22. For the reasons given above I conclude that the proposal is not permitted development and that the appeal should be dismissed.

RE Jones

INSPECTOR