



Appeal Decision

Site visit made on 11 April 2022

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 September 2022

Appeal Ref: APP/C5690/W/21/3283771

Anayah Apartments, Trundleys Road, London SE8 5FB

- 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 20, Class A of the Town and Country Planning (General Permitted Development)(England) Order 2015, as amended.
 - The appeal is made by Mr Imran Patel of IFBAA Investments Ltd against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/21/122628, dated 10 July 2021, was refused by notice dated 16 September 2021.
 - The development proposed is described as "the construction of 2 additional storeys to 54B Trundley's Road, SE8 to provide 4 x 2-bed and 1 x 3 bed flats to a height no more than 18 metres high, together with an additional 10 cycle spaces under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) – Schedule 2, Part 20, Class A".
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Imran Patel of IFBAA Investments Ltd against the Council of the London Borough of Lewisham. This application is the subject of a separate Decision.

Procedural Matters

3. Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (hereafter "the GPDO") permits development consisting of works for the construction of up to two additional storeys of new dwellinghouses immediately above the existing topmost residential storey on a building which is a purpose-built, detached block of flats, as well as certain associated works. This is subject to the proposal satisfying limitations set out in Paragraph A.1 and conditions set out in Paragraph A.2.
4. The Council was satisfied that the proposed development complied with the requirements of Paragraph A.1. Paragraph A.2 then requires that "prior approval" must be applied for, and the impacts of the development assessed against a number of matters including, of greatest relevance in this appeal, the effect on the external appearance of the building.

5. The principle of development is established by the provisions of the GPDO, which also¹ requires the provisions of the National Planning Policy Framework ("the Framework") to be considered. The provisions of the GPDO do not require regard be had to the development plan in this case. I have therefore had regard to the policies and related guidance of the development plan to which the main parties referred only in so far as they are relevant material considerations.

Main Issues

6. The main issue is the effect of the proposed additional storeys on the external appearance of the host building.

Reasons

7. Anayah Apartments is a detached, modern, purpose built, two-to-five storey block situated on the western side of Trundleys Road. It currently contains 27 flats; the proposed development is the construction of two further storeys to create a further 5 flats. The building has buff brickwork elevations and extensive areas of glazing to its lowest four storeys, with balconies and terraces recessed behind brick pillars. The fifth storey is set back behind the main front elevation, and is finished in dark grey zinc cladding.
8. The surrounding area is predominantly residential. Vida House, the building immediately to the north of the appeal property, is an apartment block similar in height to Anayah Apartments (which also steps back at fifth floor level), although that building extends for a much greater length of Trundleys Road. Other than Vida House, most of the immediate surroundings comprises low-rise (predominantly two-storey) terraced houses. Anayah House also backs onto a large area of railway land to its south-west, and I saw on my site visit that it is visible from passing trains on a variety of routes.
9. The appeal building steps down in height towards its southern end, closest to the adjoining two-storey housing on Trundleys Road. This stepping down, combined with the set-back of the fifth-floor level, means that although Anayah Apartments is a taller building than most of the surrounding houses, it does not dominate them. While much of the building's existing fenestration and the brickwork columns has a vertical emphasis, the overall effect of the massing of the building and its detailed design, in particular the balconies, accentuates the horizontal and ensures that it does not visually dominate its lower neighbours. I found Anayah Apartments to be a smart and attractive building, generally in keeping with the low-rise character and appearance of most of the surrounding streetscape, while also complementing (and sympathetically stepping up to) the greater massing of the adjacent Vita House.
10. The proposed sixth and seventh floors would be an upward extension of the entire footprint of the existing fifth floor, using the same dark grey zinc cladding. The fenestration would also follow the proportions, materials and layout of the fifth floor. However, while the existing fifth floor is (because of the different materials and its set-back from the main elevation) a discreet and subordinate part of the building as a whole, the bulk of the additional two storeys would draw attention to the height of the building. The proposal would shift the visual emphasis of Anayah Apartments to the vertical, which would set

¹ At Paragraph B.(15)(b) of Schedule 2, Part 20

the building at odds with the prevailing lower-rise massing of the surrounding housing.

11. Notwithstanding the proposed use of matching, and high-quality, materials, the proposed two additional floors would be a jarring and incongruous addition. In my view the development would be harmful to the external appearance of the host building and would undermine its current successful visual relationship with the surrounding area. This would not only be apparent when viewed from Trundleys Road itself, but from other places nearby including Sybil Phoenix Close (from where the existing fifth floor is already visible above the low-rise housing) and from trains passing on the nearby railway lines.
12. The appellant drew my attention to a number of appeal decisions in which the Inspectors did not consider the effect of the proposal on the wider area to be a relevant consideration within Schedule 2, Part 20, Class A. The appellant also provided a copy of legal advice they had received which supported taking such a narrow view as being the “correct” interpretation of the GPDO. However, a recent High Court judgment² has confirmed that consideration is not necessarily limited to the effect of the proposal on the external appearance of the host building but can also include the effect on the wider area³. In this case, I find that the visual relationship of Anayah Apartments with its surrounding buildings, and the effect of the proposed development on the wider streetscene, is a relevant matter in considering the impact on the external appearance of the host building.
13. The appellant has already secured planning permission for a one-storey extension to the additional building⁴. I have not been provided with the full details of the Council’s determination of that planning application, but it does not follow that because one further storey has been found to be acceptable, the same conclusion should therefore be reached where two (or more) additional storeys are proposed. While I acknowledge that the existing permission represents a fallback position for the appellant, it is my view that it would not cause the same harm to the external appearance of the host building as the scheme now before me. The fallback position does not therefore carry significant weight in support of the scheme for which prior approval is now sought.
14. I conclude that the proposed development would cause significant harm to the external appearance of the building. The proposal therefore conflicts with the requirements of the Framework which seek to achieve well-designed places, notably the provisions of paragraphs 126 and 130.
15. I have also had regard to the provisions of the development plan to the extent that they are a material consideration, and find that the proposal would not comply with the provisions of Policy 15 of the 2011 Lewisham Core Strategy or DM Policy 30 of the 2014 Lewisham Development Management Local Plan. Together, and among other things, these policies seek to ensure that new development is sensitive to local context.

² *CAB Housing Ltd, Beis Noeh Ltd & Mati Rotenberg v SSLUHC* [2022] EWHC 208 (Admin)

³ As that judgment was handed down after this appeal had been submitted, I afforded the main parties the opportunity to comment on its relevance to this appeal.

⁴ LPA Ref: DC/20/119188

Conclusion

16. For the reasons given above, I conclude that prior approval should not be granted. The appeal is therefore dismissed.

M Cryan

Inspector