



Appeal Decision

Site visit made on 12 September 2022

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 September 2022

Appeal Ref: APP/N5090/W/22/3291989

Flats 1-6, St Edwards Court, Finchley Road, London NW11 7NB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required 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).
 - The appeal is made by Acestar Consultants Ltd against the decision of the London Borough of Barnet.
 - The application Ref 21/4990/PNV, dated 14 September 2021, was refused by notice dated 3 December 2021.
 - The development proposed is Additional storey at third floor level to provide 2no self-contained flats.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs has been made by Acestar Consultants Ltd against the London Borough of Barnet. This matter is the subject of a separate decision.

Preliminary Matters

3. This application for Prior Approval is proposed by virtue of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)(GPDO). The provisions of Schedule 2, Part 20, Class A of the GPDO do not require regard to be had to the development plan. However, I have had regard to the policies of the development plan only in so far as they are a material consideration where relevant to the main issue. Paragraph B(15)(b) of Part 20 requires that regard is had to the National Planning Policy Framework (the Framework), so far as relevant to the subject matter of the prior approval, as if it were a planning application.
4. Schedule 2, Part 20, Class A permits 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. I concur with the Council that the proposal meets all of the criteria contained in paragraph A.1 (a-o) of the GPDO for it to be considered as permitted development. Nevertheless, in considering the proposal against Paragraph A.2(e) of the GPDO, the Council refused its prior approval due to its considered effect on the external appearance of the existing building and its local context.

5. The relevant condition, found in Paragraph A.2(e) of the GPDO, is whether it is undesirable for the external appearance of the building to be altered. The Appellant asserts that the GPDO is worded such that the Council's assessment should solely focus on the resulting appearance of the host building. Several appeal decisions, from 2021, have been submitted that confirm that assessment of this matter should be limited to the external appearance of the building rather than its effect on the wider area.
6. Nevertheless, the High Court issued judgement in the case of *CAB Housing Ltd v SSLUHC* [2022] EWHC208 (Admin), earlier this year. This concerned the operation of Class AA of Schedule 2, Part 1 of the GPDO, but included comments that 'the issues in this case also affect the proper construction and ambit of permitted development rights granted by GPDO 2015 under Classes ZA, A, AA, AB, AC and AD of Part 20.' This concluded that the issue of 'principle', does not crystallise until that procedure is completed. It also found that "the Order does not contain any language to the effect that the decision-maker may only assess the impact of the external appearance on the dwellinghouse itself. That interpretation involves reading additional words into the legislation when there is no legal justification for doing so". I see no reason why this judgement would not be applicable to the appeal before me.

Main Issue

7. The main issue is whether the proposal complies with Schedule 2, Part 20, Class A, Paragraph A.2 (e) of the GPDO with respect to the external appearance of the building.

Reasons

8. The existing building is a modern, three-storey block of flats. It has a shallow pitched roof and brick walls. Its window arrangement is uniform and includes two vertical groups with rendered panels beneath which form interest within the front elevation. The site has a relatively open frontage and is located on a corner site, giving it heightened prominence in the street. The area consists of housing of various styles and heights. These predominantly consist of two-storey housing and three-story blocks of flats. The existing building therefore complements the height of local development and, as such, makes a positive contribution to the character and appearance of the area.
9. The proposed addition would replicate the design and materials of the existing building and would therefore complement the existing building when taken by itself. However, the majority of local development forms a comparatively uniform scale that the proposed height would exceed.
10. There are only limited examples of buildings that extent above this general characteristic. Grafton Court, opposite the site, is a largely three-storey building with a small four-storey front gable that adds variety to the main mass without introducing a scale that dominates the frontage. Wohl Lodge is also a three-storey block of flats opposite the site. Both of these buildings are taller than the appeal building purely due to their tall but recessive pitched roofs. Therefore, the adjacent buildings do not establish a scale that would enable the proposed addition to the height of the host building to integrate well with the local area.

11. St Edward the Confessor Church is a tall ecclesiastical structure that has a dominant presence in the street. It stands much taller than neighbouring development. This forms an important local landmark that is distinctly different to the established pattern of development. A four-story building stands on the corner of Hoop Lane and Finchley Road but is some distance from the site. Accordingly, these buildings do not establish a context close to the appeal site, that would enable the proposal to integrate well with the predominant height of buildings within the area.
12. Taking the wider context into account the proposed addition would result in a building that would be taller than most local development. Consequently, its additional height and increased bulk would harmfully emphasise the building. This would introduce a discordant feature into the streetscene within a relatively prominent corner site. As the proposed scheme would not accord with the prevailing height in the area, it would not integrate well with the established pattern of development.
13. Furthermore, the appeal site is adjacent to a two-storey hipped roof building. This is modest in mass in comparison to the overall scale of the proposal. Due to its proximity and scale, the proposal would result in an awkward juxtaposition of forms with a resultant strident and harmful impact on the neighbouring building and the wider area.
14. Consequently, although the proposal would in itself complement the existing building, its wider effect would outweigh this merit. As such, the proposal would have an adverse impact on the character and appearance of the site and the wider streetscene. The Framework encourages making effective use of land. Nevertheless, the proposed upward extension would conflict with its requirement for development to be consistent with the prevailing height and form of neighbouring properties and the overall streetscene.
15. Insofar as it is a material consideration, I have also had regard to policy CS5 of the Barnet Core Strategy, policy DM01 of Barnet's Development Management Plan Document and the Council's Residential Design guide. These policies seek, among other matters, for development to respect the local context.
16. Accordingly, the proposal would not comply with paragraph A.2(e) of the GPDO.

Conclusion

17. For the above reasons the appeal is dismissed.

Ben Plenty

INSPECTOR