



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/22/3295295

Pallester Court, Wayside, LONDON NW11 8QY

- 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 Pallester Court Ltd against the decision of the London Borough of Barnet.
 - The application Ref 21/6332/PNV, dated 2 December 2021, was refused by notice dated 19 January 2022.
 - The development proposed is Additional storey at fourth floor level to provide 2no self-contained flats.
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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 an additional storey at fourth floor level to provide 2no self-contained flats at Pallester Court, Wayside, LONDON NW11 8QY in accordance with application 21/6332/PNV made on 2 December 2021 and the details submitted with it, including plans 19078-S102, 19078-S101 REV A, 19078-P220 REV C, 19078-P210 REV B and 19078-S103, subject to the additional conditions set out in the attached schedule.

Preliminary Matters

2. The appeal is pursuant to Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)(GPDO). The provisions 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.
3. 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, the Council refused prior approval due

to its considered effect on the external appearance of the existing building and its local context.

4. The Council's Reason for Refusal included finding that the proposal would lead to transport and highways impacts in conflict with Paragraph A.2 (a) of the GPDO. Nevertheless, the appellant's parking survey¹ found that on- street parking stress was only 48%, with 109 parking spaces found to be locally available. Although offering only a snap-shot in time these findings aligned with my own observations during my visit. This demonstrates that sufficient on-street parking capacity exists to accommodate the limited demand of future occupiers, and this is no longer a matter of dispute between main parties. Consequently, I am satisfied that the proposal would accord with Schedule 2, Part 20, Class A, Paragraph A.2 (a) of the GPDO and shall not consider this matter further.
5. Paragraph A.2(e) of the GPDO, relates to whether it is undesirable for the external appearance of the building to be altered. 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 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".
6. I see no reason why this judgement would not be applicable to the appeal before me. I am therefore convinced that appropriate considerations of this case would include both the effect of development on the host building and its effect on the wider area.

Main Issue

7. Accordingly, 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. Pallester Court is a four-storey residential block with garaging at ground floor. It stands within a corner plot and is alongside both Hendon Way (A41) and Wayside. Hendon Way is a major route through the area and consists of three-lane carriageways. The appeal site is also alongside the three-storey building of Aylan Court. Due to its tall and relatively bulky roof, this neighbouring building's ridgeline stands higher than the appeal building.
9. The proposed scheme would add a further storey above the existing building. This would continue the size and shape of lower levels of the building with a window configuration that would replicate the pattern of fenestration on the existing building. The proposed top floor would be clad in a grey zinc cladding and represents a new material to the building. This would provide a feature to the upper floor that would add interest to the building and aid its visual transition to the lower-level development to its rear and side. Consequently,

¹ Green Rhino Planning, Hybrid Parking Survey, no date

- the overall form, design and choice of materials would result in an addition that would complement the appearance of the existing building.
10. In terms of the wider area, the building can be viewed from several viewpoints. These provide different views of the site which influence the contribution it makes to the local context. Wayside is a traditional residential street, with a streetscene that includes two storey housing and large sections of rear garden boundaries. The character of the street is diverse with a variety of form that increases as the road approaches Hendon Way. Near the junction of Wayside and Hendon Way, Aylan Court and the appeal building make a significant contribution to the wider area. These are relatively large format buildings that show an increase in overall scale of development adjacent to Hendon Way. Hendon Way is a wide carriageway with buildings set apart over the wide and dominant highway affording wide views of the appeal site from this vantage.
 11. As such, whilst the proposed additional height may appear strident from Wayside, Pallester Court makes a greater contribution to views along Hendon Way. From the wide vantages along Hendon Way, the extended building, whilst relatively tall would be diminutive in views and would be partly screened by existing trees around its side and front boundary. Therefore, although the building would be the tallest structure in the local area, it would be read in a broad context amongst various roof heights. As such, the difference in height between the proposal and neighbouring development would not be significant and the proposal would complement and integrate well with existing views.
 12. The GPDO and National Planning Policy Framework (The Framework) seek to encourage upward extensions. The Framework states these would be supported where they would be consistent with the prevailing height and form of neighbouring properties and the overall streetscene. The proposed additional floor would not substantially alter the contribution the building makes to views of the site from Hendon Way. Furthermore, the proposal would enable it the building to be slightly taller than Aylan Court. This would facilitate the creation of a stepped transition to the two-storey housing further along Hendon Way beyond Aylan Court. As such, due to its corner position the proposal would integrate well with the local pattern of development.
 13. Consequently, the proposal would make a positive contribution to views of the wider streetscene especially within views from Hendon Way. The Framework seeks to boost the supply of housing. It encourages making effective use of land and supports the use of airspace above existing residential premises for new homes. The proposed upward extension would accord with these requirements. The proposal would be in a location with a variety of building heights, alongside a major highway where the proposal would harmonise with the local pattern of development. Accordingly, it would complement the prevailing height and form of neighbouring properties and the overall streetscene.
 14. Insofar as they are material considerations, 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.
 15. Accordingly, the proposal would comply with paragraph A.2(e) of the GPDO.

Conditions and Conclusion

16. Development is permitted under Class 20, subject to the conditions A.2(2) and (3) that the development must be completed within a period of three years of this decision date and for the Appellant to submit a construction management report prior to the commencement of development. Part 20, Paragraph B (18) provides for additional conditions to be attached that are reasonably related to the subject matter of the prior approval. I have considered the Council's list of suggested conditions in this light, and with regard to the advice set out in the Framework. I have not included conditions that would replicate the requirements of the GPDO as they would not pass the test of necessity, this includes any requirement for further details of materials as these are listed on the annotated plans.
17. A condition to secure details of cycle storage provision is necessary in the interests of promoting sustainable travel choices to positively influence the scheme's transport and highways impact. Also, a condition is necessary for details of refuse storage in the interests of the character and appearance of the area and to maintain the living conditions of the existing occupiers. It is also necessary for the kitchen and bathroom windows, of the southern-most flat, to be obscurely glazed in the interests of the privacy of neighbouring occupiers.
18. I am not satisfied that the evidence provided by the Council justifies their suggested condition relating to air pollution or that this is relevant to the prior approvals set out in paragraph A.2. Furthermore, a condition to survey and repair damage to the highway post construction would be unnecessary as the Council has not adequately explained what harmful impact the condition would be imposed to avoid. Also, a condition to require noise attenuation for the benefit of future occupiers would be outside the matters listed in paragraph A.2(g) and is therefore not required. As such, I consider that these conditions are unnecessary and imposing them would be unreasonable.
19. For the reasons given above, I conclude that the appeal should be allowed, and prior approval granted subject to conditions.

Ben Plenty

INSPECTOR

Schedule of conditions

- 1) Prior to the occupation of the development, details of cycle parking including the type of stands, gaps between stands, location and type of cycle store proposed shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, before the development hereby permitted is occupied, 4 (long stay) cycle parking spaces shall be provided and shall not be used for any purpose other than parking of cycles in connection with the approved development.
- 2) Prior to the occupation of the development, details of the refuse collection arrangements shall be submitted to and approved in writing by the Local Planning Authority. Once agreed these shall be installed in accordance with the agreed details and maintained for the duration of the development.

- 3) Before the building hereby permitted is first occupied the proposed kitchen and bathroom windows in the southeast elevation of the building shall be fitted with obscure glass only, of Pilkington level 3 or equivalent, and shall be permanently retained as such thereafter. These shall be permanently fixed shut with only a fanlight opening.