



Appeal Decisions

Site visit made on 9 September 2022

by D.R McCreery MA BA (Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 03 October 2022

Appeal Ref: APP/U5360/W/21/3279660

17 Shacklewell Lane, Dalston, London E8 2BY

- 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 Mr E Reich against the decision of the Council of the London Borough of Hackney.
 - The application Ref 2021/1018, dated 24 March 2021, was refused by notice dated 10 June 2021.
 - The development proposed is prior approval for the erection of an additional storey above the existing mixed-use building to provide two additional residential units.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Approval was sought under Schedule 2, Part 20, Class AB of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). For development to be permitted it must satisfy the limitations set out at paragraph AB.1 and the conditions at AB.2.
3. Whether the proposal would accord with the limitation at paragraph AB.1 (k) in relation to engineering operations is a matter in dispute between the Council and the Appellant. That the other limitations in AB.1 would be fulfilled is not a matter of dispute. I do not have evidence that leads me to take a contrary view.
4. The conditions at paragraph AB.2(1) require developers to apply to the local planning authority for their prior approval in relation to a number of specified matters, set out at subparagraphs 'a to j'.
5. The Council has indicated an unwillingness to give their prior approval in respect of the condition at AB.2(1)(e) (external appearance). As set out below, the condition at AB.2(1)(g) (amenity) is also of relevance.

6. Paragraph B of Part 20 sets out the procedure for prior approvals. It requires the local planning authority (and by extension, Inspectors on Appeal) 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). I have considered the appeal on the same basis. For the avoidance of doubt, I have not decided this appeal on the basis of the duty in s38(6) of the Planning and Compulsory Purchase Act 2004.
7. The Council's reason for refusal refers to limitations contained in paragraph AA.2 of Class AB, Part 20 to the GPDO. This appears to be a typo that is made clear when read alongside the Council's officer report, which correctly refers to paragraph AB.2(1)(e) as being relevant to external appearance. I have considered the Appeal on this basis as no issues of procedural unfairness arise from the typo.
8. A signed unilateral undertaking has been submitted under section 106 of the Town and Country Planning Act 1990 (s106). The s106 makes an obligation relating to car free development. I am satisfied that the obligation is necessary to manage the transport and highways impacts of the development, and therefore addresses a prior approval matter. The obligation meets the relevant tests in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 and paragraph 57 of the Framework¹. I have taken the obligation into account in reaching a conclusion on this appeal, although it is not central to the main issues.
9. In the interests of clarity I have used the description of development as it appears on the Council's decision notice.

Main Issues

10. The main issues are whether, or not:
 - prior approval should be granted for the proposed development when regard is paid to the requirements of Part 20, Class A paragraph AB.2(1)(e) relating to external appearance.
 - prior approval should be granted for the proposed development when regard is paid to the requirements of Part 20, Class A paragraph AB.2(1)(g) relating to impact on the amenity of neighbouring premises.
 - the proposal would accord with the limitation at AB.1(k) in relation to engineering operations.

¹ Including national planning guidance at - Paragraph: 009 Reference ID: 23b-009-20190315

Reasons

External appearance

11. 'External appearance' is not defined within the GPDO. Paragraph AB.2(1)(e) specifies what is included in the consideration. However, this list is not a closed one and does not, therefore, have the effect of limiting the assessment to just those aspects of external appearance. Giving definition to the scope of the consideration is a matter of planning judgement based on the specific proposal, context, and evidence that has been presented.
12. To my mind, height is an issue that is part and parcel of assessing external appearance. I am not persuaded by the arguments that it should not be. As the development right given by the GPDO is subject to a number of limitations and conditions, it would be wrong to regard additional building height as a matter of automatic entitlement.
13. I have considered the question of whether my assessment should be limited to the effect on the building viewed in isolation, or if the wider context is also relevant. In this case, the proposal relates to a building that sits within a built up area and has prominent street facing elevations with a close visual relationship to its neighbours. As such, it is appropriate to consider effects on external appearance that result from a change in its relationship with the wider context. This is, however, a narrower and more specific consideration of built relationships on external appearance than a more general assessment of setting.
14. In reaching a view, I have considered the previous appeal decisions put forward by the Council and the Appellant in support of their respective positions². The decisions relate to a mix of different sites, proposals, local areas, issues under consideration, and relevant parts of the GPDO. There is some difference of approach, which is to be expected given the differences between them and the issue under consideration, which is fundamentally one of planning judgement to be reached on the specifics of the proposal and the other evidence. As mentioned above, the relevance of the wider context in the consideration of external appearance will differ greatly from site to site based on the relationships between built forms.

² Including APP/U5360/W/21/3268645, APP/Y5420/W/20/3262412, APP/Y5420/D/21/3268817, APP/D1265/D/21/3271373, APP/Q1445/W/21/3267608, APP/E5900/W/21/327087, APP/E5900/W/21/3270877, APP/U5360/W/16/3143102, APP/E5900/W/21/3285215, APP/N5090/W/21/3283645, APP/L2250/W/21/3279975, APP/Z5630/W/21/3277999, APP/Z5630/W/21/3278016

15. The site sits within an area that includes a mixture of residential and commercial buildings of various ages, with a number of commercial buildings that have lively active frontages at ground floor level, giving the general area a varied character. Shacklewell Lane itself carries a degree of pedestrian and vehicular traffic which adds further to the sense of activity.
16. The large red brick mosque of Edwardian origin is a focal point within the street scene, including its central roof dome of later addition. The prominence of the mosque is particularly evident when travelling from the west along Shacklewell Lane, where the dome can be seen in full context with the building. This is due to the longer views afforded as a result of the townscape gap created by lower rise buildings within the curtilage of the mosque itself and to the rear of the terrace that faces Stoke Newington Road.
17. The main mosque building sits close to the boundary of the site, and therefore has a close visual relationship with the 5 storey building that currently occupies it. Discounting the roof access, which is inconsequential in terms of visual impact due to its size and set back, the proposal would raise the overall height of the building from a relative position roughly adjacent to the drum beneath the mosque dome to being in line with the dome itself.
18. The set back of the proposal from the front edge of the roof would result in limited impact on external appearance when publicly viewed from immediately outside the site. However, when more extensively viewed from the west it would be fully seen alongside the mosque at upper levels as part of its built backdrop. The result would be a cluttered and uncomfortable visual relationship that would impact on the ability to fully appreciate the mosque as a prominent feature in the street scene. The dome would be particularly affected as the opportunities to appreciate it fully against an unincumbered skyline would be significantly diminished. The effect on external appearance would therefore be a negative one.
19. This issue would not be assisted by the choice of materials for the proposal, which would visually compete with the mosque, rather than complement it as stated in the Appellant's Design and Access Statement.
20. I acknowledge that the building on the other side of the appeal site to the mosque is already one story higher. Given the distance between this building and the mosque, it does not share the same relationship as the site. As such, it does not present the issues discussed above relating to the relationship with the mosque and the effect in terms of external appearance. Aiming to achieve consistency of height between the appeal building and its taller neighbour would not be a beneficial design outcome that would outweigh the negative effect on the other side.

21. For the above reasons, the proposal would have a harmful effect on external appearance. As such, prior approval should not be granted for the proposed development when regard is paid to the requirements of Part 20, Class A paragraph AB.2(1)(e) relating to external appearance.

Amenity

22. Paragraph AB.2(1)(g) relates to impact on the amenity of neighbouring premises, including loss of light. The scope of this prior approval matter is not limited to residential neighbouring premises. Given the close proximity to the mosque, consideration of potential effects on worshippers and other users of it is within scope.
23. Although the Council do not address this issue in their reasons for refusal the potential impacts of the proposal in terms of light loss have been raised by other interested parties, and particularly the significance of the loss of light from the east in a religious context. This arises as a result of the proximity of the proposal to the drum beneath the dome, which has windows around its circumference.
24. I have paid regard to the Appellant's Daylight/Sunlight Report. However, the scope of that evidence is limited to examining the impact on principal neighbouring residential properties. In the absence of persuasive evidence, due to the proximity of the proposal to the drum windows, I am not satisfied that the proposal would be acceptable when regard is paid to impacts on the amenity of users of the mosque, in relation to loss of light.
25. In light of my conclusion in relation to external appearance, this issue has not had a bearing on the final outcome of the appeal. As such, it is not expedient to pursue this matter further with the parties within the life of this appeal.
26. For the above reasons, in the absence of further evidence, prior approval should not be granted for the proposed development when regard is paid to the requirements of Part 20, Class A paragraph AB.2(1)(g) relating to impact on the amenity of neighbouring premises.

Engineering operations

27. The Council have not elaborated further on their concerns relating to the extension of the parapet. From the evidence provided, and as a matter of fact and degree, these works appear to be of a nature more closely associated with building works, rather than engineering operations. As such, conflict with the limitation at AB.1(k) has not been established.
28. For the reasons set out, the proposal would accord with the limitation at AB.1(k) in relation to engineering operations.

Conclusion

29. For the reasons explained above, prior approval should not be granted for the proposed development when regard is paid to the requirements of the GPDO relating to external appearance and, in the absence of further evidence, the amenity of neighbouring premises.
30. As the mosque is a locally listed building, I have considered the effects against Paragraph 203 of the Framework and applied the balanced judgement. Although the Council and the Appellant have provided limited evidence relating to the significance of the mosque, its significance in the local area is apparent from my site visit and also the comments of other interested parties. Even when the issues relating to the amenity of neighbouring premises are discounted, the modest contribution to housing supply and related benefits that would result from the proposal do not outweigh the harm.
31. For the reasons given, and taking into account all the other points made, I conclude that the appeal should be dismissed.

D.R. McCreery

INSPECTOR