



Appeal Decision

Site visit made on 23 May 2022

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 October 2022

Appeal Ref: APP/Y5420/D/21/3279459

17 Franklin Street, London N15 6QH

- 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 1, Class AA of the Town and Country Planning (General Permitted Development)(England) Order 2015, as amended.
 - The appeal is made by Mr Menachem Reicman against the decision of the Council of the London Borough of Haringey.
 - The application Ref HGY/2021/1717, which was received by the Council on 9 June 2021, was refused by notice dated 20 July 2021.
 - The development proposed is the erection of one additional storey immediately above the existing building.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Menachem Reicman against the Council of the London Borough of Haringey. This application is the subject of a separate Decision.

Preliminary and Procedural Matters

3. Schedule 2, Part 1, Class AA of the Town and Country Planning (General Permitted Development)(England) Order 2015 (hereafter "the GPDO") allows for the enlargement of a dwellinghouse by construction of additional storeys, subject to the exclusions and conditions described in Paragraphs AA.1. and AA.2.
4. Paragraph AA.2.(3)(a) requires that, before beginning the development, the developer must apply to the local planning authority for prior approval. The provisions of the GPDO require the Local Planning Authority to assess the development proposed on the basis of a limited number of considerations, including the effect of the development upon the external appearance of the host building. Procedures for applications for prior approval are set out in Paragraph AA.3., with the interpretation of relevant terminology provided in Paragraph AA.4.
5. Paragraph AA.3.(12)(b) requires the local planning authority to have regard to the National Planning Policy Framework ("the Framework") when determining an application for prior approval, although there is no requirement to have

regard to the development plan in such cases. I have therefore had regard to the policies of the development plan to which the Council referred only insofar as they are material considerations relevant to matters of appearance.

6. Since the application was determined and this appeal submitted, a single judgment relating to the interpretation of Class AA of Part 1 of the GPDO was handed down by the High Court in respect of challenges to three appeal decisions¹. Both main parties were given the opportunity to comment on the relevance of the *CAB Housing* judgment to this appeal.

Main Issue

7. The main issue is whether or not prior approval should be granted, having regard to the effect of the proposed development on the external appearance of the host dwelling.

Reasons

8. The appeal property is a two-storey dwelling within a short terrace of four properties on the west side of Franklin Street. Because of the gentle slope of the land along Franklin Street from south to north, there is a small step down in the building between No 17 and No 15 to the south. The appeal property has a deeper porch than its neighbours, but this aside the street frontage of the block as a whole has a considerable uniformity of design and appearance. Within Franklin Street there are other short terraces similar to that including the appeal property, as well as a small number of single-storey dwellings. Three-storey blocks of purpose-built flats on Albert Road overlook the northern end of Franklin Street; these are reasonably close to the appeal site, but at least partly screened by mature trees.
9. The proposed development is the erection of an additional floor on top of the existing dwelling; this would replace existing rooms on the loft floor which are accommodated, in part, within a box dormer extending across almost the whole of the rear roof slope. The exterior elevations of the new floor would be of brick to match those below, and the roof pitch would be the same as that of the existing dwelling; in these respects the development would comply with the requirements of the GPDO. However, the height of the additional storey and the raised pitched roof would give No 17 a bulky and dominant appearance, making it a visually jarring and unsympathetic addition to the appeal property itself, especially when seen alongside the essentially modest scale and regular form of the other dwellings within the same terrace block and in Franklin Street more generally. The taller buildings in the wider area, including the flats on Albert Road, are sufficiently distant from the appeal site and the surrounding part of Franklin Street that they do not define its visual context or character.
10. The appellant argues that, in considering the impact of the proposal on the appearance of the host building with regard to its wider setting and context, the Council exceeded its powers in respect of an application for prior approval under Part 1, Class AA of the GPDO. However, this matter was addressed in *CAB Housing*, in which the judge “reject[ed] submissions that the ‘external appearance’ control is confined to an assessment of the impact of that appearance on the subject property itself, as opposed to its surroundings” [98],

¹ *CAB Housing Limited v SSLUHC & Broxbourne; Beis Noeh Limited v SSLUHC & London Borough of Haringey; Mati Rotenberg v SSLUHC & London Borough of Haringey* [2022] EWHC 208 (Admin).

and instead concluded that it “also includes impact on neighbouring premises and the locality” [102].

11. The appellant referred to Lindblom LJ’s conclusions on the correct interpretation of the wording of the GPDO in *Mawbey*², although the implications of that earlier judgment were taken into account by Holgate J in *CAB Housing*. While I note that an appeal against the *CAB Housing* judgment is expected to be heard in the Court of Appeal in November 2022, at present the case law to which I have been directed does not support the appellant’s assertion that the Council’s determination of the prior approval application was *ultra vires*.
12. The judge in *CAB Housing* also noted that “individual decision-makers will make their own planning judgments applying the prior approval controls, correctly interpreted, to the materials before them”, and that there was no evidence that this would in practice “make it impossible or difficult for developers to rely on these permitted development rights” [101]. In this case however, although the appellant considers that the proposal is “acceptable in design terms”, the appeal submissions did not address the Council’s substantive objections in any significant detail. Other cases nearby (although not within the same local planning authority)³ where prior approval for additional storeys was granted were brought to my attention by the appellant, but the submitted material provides little to none of the relevant surrounding context and does not weigh in favour of the proposal before me.
13. For the reasons which I have explained in paragraph 9 above, I consider that the additional storey would be harmful to the external appearance of the host dwelling. The proposal would therefore conflict with the provisions of Part 12 of the Framework which seek to create high quality places, and which require development to be visually attractive and sympathetic to local character.
14. While not a determinative factor in my decision, the proposal would also conflict with Policy SP11 of the 2017 Haringey Local Plan, with Policies DM1 and DM12 of the 2017 Haringey Development Management DPD, and with Policy D6 of the London Plan 2021. Together, and among other things, these policies seek to ensure that development (including residential extensions) is of the highest standard of design and respects local context and character.

Conclusion

15. For the reasons set out above I conclude that the appeal should be dismissed.

M Cryan

Inspector

² *R (Mawbey) v Lewisham London Borough Council* [2019] EWCA Civ 1016

³ 9 Fairholt Close, Hackney (LPA Ref: 2021/0452); 15A Amhurst Park, Hackney (LPA Ref: 2020/4200); 17A Amhurst Park, Hackney (LPA Ref: 2020/4072)