



Appeal Decision

Site visit made on 12 September 2022

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 October 2022

Appeal Ref: APP/U5930/W/21/3279947

Hedgemoor Court, 24 Castle Avenue E4 9QE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under 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 Property Warehouse Limited against the decision of Waltham Forest London Borough Council.
 - The application Ref 211631, dated 20 May 2021, was refused by notice dated 13 July 2021.
 - The development proposed is two additional storeys to provide six flats.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The wording of the title of the decision notice does not accurately describe the relevant elements¹ of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) for this appeal. Furthermore, the title refers to the *Enlargement of existing dwellinghouse by construction of additional storey*, which is not the appeal proposal.
3. Nevertheless, the relevant elements of the GPDO are referenced subsequently and in the first two reasons for refusal², and the *Description of work* accurately describes the proposal shown in the evidence. I have considered the appeal as set out in the banner heading above, and on the basis of the submitted evidence.
4. Under Article 3(1) and Schedule 2, Part 20, Class A of the GPDO, planning permission is granted for new dwellinghouses on detached blocks of flats subject to limitations and conditions.
5. A prior approval appeal should not be determined, expressly or otherwise, on the basis of s38(6) of the Planning and Compulsory Purchase Act 2004 or as though the development plan must be applied. The principle of development is established through the grant of permission by the GPDO.
6. However, for Prior Approvals under Schedule 2, Part 20 of the GPDO, regard should be had to the National Planning Policy Framework 2021 (the Framework) so far as relevant to the subject matter of the prior approval, as if

¹ Schedule 2, Part 1, Class AA of the GPDO is listed in the title.

² The first two reasons for refusal on the decision notice are both listed as No 2.

the application were a planning application³. I have determined the appeal on this basis.

Main Issues

7. The main issues are:

- Whether the proposal would be permitted development with regard to Schedule 2, Part 20, Class A, paragraph A.1.(l); and, Schedule 2, Part 20, Class A, paragraph A.1.(e), of the GPDO;
- The character and appearance of the building and the area; and
- The living conditions of nearby occupiers with particular regard to overlooking.

Reasons

Permitted Development

8. The Council has not submitted an appeal statement and so has not responded to the points made in the appellant's Statement of Case regarding whether the proposal would be permitted development with regard to Schedule 2, Part 20, Class A, paragraph A.1.(l) and Schedule 2, Part 20, Class A, paragraph A.1.(e) of the GPDO.
9. With reference to the appellant's letter dated 7 May 2021 that accompanied their application, together with the scaled existing and proposed elevation drawings, I am satisfied that the existing rooftop plant would be replaced on a like-for-like basis on the proposed roof and so would not conflict with Schedule 2, Part 20, Class A.1.(l) of the GPDO.
10. The Council's second reason for refusal concerns the proposed internal floor-to-ceiling heights, which should be no greater than 3 metres or the floor-to-ceiling height of the existing floors, whichever is the lower. The existing internal floor-to-ceiling heights were not originally provided by the appellant, and from the proposed elevation drawings it appears that the proposed third floor could have a greater internal floor-to-ceiling height than the existing lower floors.
11. However, the appellant has provided existing and proposed section drawings showing internal floor-to-ceiling heights as part of their appeal, which show that the proposed internal floor-to-ceiling heights would not exceed the existing internal floor-to-ceiling heights and would also be less than 3 metres.
12. From the evidence before me I am satisfied that the proposal would not conflict with Schedule 2, Part 20, Class A, paragraph A.1.(l) and Schedule 2, Part 20, Class A, paragraph A.1.(e) of the GPDO. Consequently, in this regard, the appeal proposal would be permitted development.

Character and appearance

13. Hedgemoor Court is a 3-storey building containing self-contained flats on the south-east side of Castle Avenue, which is a predominantly residential street. The building is located at 24 Castle Avenue and is constructed primarily from bricks with some cladding panels, and fenestration typical of such a residential building. The building has a flat roof containing various items of plant

³ Schedule 2, Part 20, Paragraph B.(15)(b).

- associated with the current use. The building is set in its own landscaped grounds, which also contain some garages to the rear.
14. Castle Avenue contains a variety of dwelling types, designs and sizes, including two storey houses and three storey blocks of flats, such as the appeal building. There are mature trees within the footways and together with planting in front gardens, this provides a pleasant verdant character to the street.
 15. Chapter 12 of the Framework provides policy guidance in relation to achieving well-designed places and notes that *The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve* (paragraph 126). Further direction is provided at Paragraph 130, *to ensure that developments...will...add to the overall quality of the area...; and are visually attractive....*
 16. Paragraph 134 of the Framework states that *Development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design⁴, taking into account any local design guidance and supplementary planning documents such as design guides and codes.*
 17. As I have previously noted, the principle of extending the appeal building by up to two storeys is established through the GPDO. However, Condition A.2(1)(e) of Schedule 2, Part 20, Class A concerns *the external appearance of the building*, and so further assessment of the proposal is required.
 18. Whilst the Framework cannot provide specific design guidance for individual schemes, the overarching principles it contains are relevant to the consideration of the external appearance of the building.
 19. The principle of a two storey extension upon a block of flats such as is proposed has been deemed acceptable by the Government. The proposal would replicate much of the design of the host building, including in terms of materials, fenestration design, and the second floor 'footprint'.
 20. However, it is apparent from the elevations that there would be an increased gap between the windows of the existing second and proposed third floors in comparison to the gaps between the windows of the existing ground, first and second floors, and the proposed third and fourth floors.
 21. Whilst I note that the appellant states this is caused by the removal of the existing parapet and that the difference would be two (courses of) bricks the visual impact would be considerable, particularly given the otherwise very similar appearance of the extension to the existing elevation.
 22. The 'extra' courses of bricks would make the building appear to have been 'stretched' upwards, disrupting the rhythm of the fenestration and detracting from the appearance of the building. In views from Castle Avenue in particular, this would be visually prominent and, in contrast to the regular patterns of fenestration on the existing elevations of the building, discordant.
 23. In seeking to replicate the design of the existing elevations for the proposed third and fourth floors, the design of the proposal would highlight this visually

⁴ Contained in the National Design Guide and National Model Design Code.

awkward arrangement, which would detract from the host building and consequently from the wider area.

24. I note the appellant's comments as to what may be considered in this regard given the principle of development is established, and to the four appeal decisions submitted with their Statement of Case. I am not familiar with these appeals, and in any event, each proposal should be considered on its individual merits.
25. Whilst I have no reason to doubt the approach of the Inspectors in those cases, in my view, the consideration of how the external appearance of a building is assessed is a matter of planning judgement. In this case, my approach has included both the effect of the proposal on the external appearance of the building and the consequent effect of this on the wider area.
26. For these reasons the proposed development would adversely affect the character and appearance of the building and the area. It would, therefore, conflict with the Framework, in this regard.

Living conditions of nearby occupiers

27. Condition A.2(1)(g) of Schedule 2, Part 20, Class A concerns the *impact of a proposal on the amenity of...neighbouring premises including overlooking, privacy...* In this case, the Council is concerned that a total of 8 new windows on the proposed third and fourth floors would harmfully increase the overlooking of 22 Castle Avenue, a two storey semi-detached house next door to the south west of the appeal building. The Council does not identify which windows it is concerned with.
28. Whilst a two storey building, the loft of No 22 has been converted into two bedrooms. On the gable wall facing the appeal property are two bedroom windows in the loft, with a first floor study window also present towards the rear.
29. There is a substantial coniferous hedge along part of the boundary, which rises past first floor height and towards second floor level. This hedge largely screens the windows of the three habitable rooms in the gable elevation of No 22, from views from the windows in the existing appeal building.
30. The appellant has identified 8 windows in the flank elevation of the proposed third and fourth floors and assessed these in terms of overlooking. Two of the windows identified by the appellant, one on each floor, would serve bathrooms and so would be obscure glazed. It is unlikely that harmful overlooking of No 22 would occur from these windows.
31. Two more windows on each floor would serve the living room of the proposed rear flats and face towards No 22. I note that notwithstanding their position relating to overlooking and loss of privacy, the appellant has offered for these to be obscure glazed. I also note that the outlook from these rooms would not be significantly affected as a result, due to the much larger windows in the rear elevation.
32. Government guidance is clear that the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which

interested people's views were sought⁵. However, with reference to the Wheatcroft principles I am satisfied that conditioning the four side windows in the living rooms of the proposed rear flats to be obscure glazed would not be prejudicial to interested parties, were the appeal to be allowed.

33. The appellant has identified two further windows on the third and fourth floors facing towards No 22, serving the stairwell and next to the entrances to four of the proposed six flats. I also note that there would be two windows, in Bedroom 01 of flat 12 and Bedroom 01 of flat 15, facing away from Castle Avenue. The appellant has not addressed overlooking from these windows directly in their Statement, despite their position and elevation relative to No 22.
34. Notwithstanding the distance between the appeal building and No 22, the boundary hedge, and for the bedroom windows the oblique angle of view, the design, position and elevation of these windows would allow for overlooking of habitable rooms at No 22 and would cause a significantly greater and harmful loss of privacy for the occupiers than exists at present. This would detract from amenity and the health and well-being of the occupiers of No 22.
35. The appellant does not consider that there would be any harmful overlooking, including due to the lack of alignment between the windows. It is not possible from the evidence for me to be certain that the windows do not directly align. However, I am satisfied that the design, position and elevation of the proposed stairwell and bedroom windows on the third and fourth floors would allow for harmful overlooking, as set out above.
36. For these reasons, the proposed development would adversely affect the living conditions of nearby occupiers with particular regard to overlooking. It would, therefore, conflict with the Framework, in this regard.

Conclusion

37. I am satisfied from the evidence that the proposed development would not conflict with Schedule 2, Part 20, Class A, paragraph A.1.(l) and paragraph A.1.(e) of the GPDO. However, the proposed development would detract from the character and appearance of the building and the wider area and would harm the living conditions of nearby residents.
38. For the reasons given above I conclude that the appeal is dismissed.

A Parkin

INSPECTOR

⁵ Paragraph M.2.1 Procedural Guide Planning Appeals, April 2022