



Appeal Decision

Site visit made on 26 September 2022

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 October 2022

Appeal Ref: APP/N5090/W/22/3292882

Blocks 7-9 Chandos Way and Blocks 1-6 Britten Close, London NW11 7HW

- 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 B and C Crestpearl Ltd against the decision of the London Borough of Barnet.
 - The application Ref 21/3001/PNV, dated 18 May 2021, was refused by notice dated 16 September 2021.
 - The development proposed is the erection of single storey rooftop extension across all blocks to create 48no. self-contained flats with provision of 16 additional car parking spaces and 50 cycle spaces.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. 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.
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, in considering the proposal against Paragraph A.2(1) of the GPDO, the Council refused its prior approval due to it not complying with paragraphs A.2(1)(a), (e) and (g). These relate to (a) traffic and transport impacts, (e) the external appearance of the building and (g) amongst other matters, the effect on daylight for existing occupiers.
4. A s106 Legal Agreement¹, in the form of a Unilateral Undertaking (UU), has been submitted in support of the proposal. This commits the Appellant to

¹ Unilateral Undertaking, dated 9 June 2022

ensure that future occupiers do not apply for a Resident Parking Permit for the purpose of parking a motor vehicle within the Controlled Parking Zone (CPZ) and to apply such a requirement within any sales covenant for each unit. The UU also commits the Appellant to pay a CPZ contribution to mitigate against traffic impacts arising from the development from those entitled to an on-street parking permit (such as blue badge holders). As such, the transport and traffic impacts of the proposal have been overcome to the satisfaction of the Council.

5. The site has been subject to a series of previous decisions for Prior Approval for roof top additions. An appeal was dismissed² in 2019 ('the first appeal') for the erection of part 1, part 2 storey rooftop extensions to seven existing blocks to create nineteen flats with external lift shafts to each block. The appeal concluded that the proposal would harm the external appearance of the host buildings but would not result in harm to the heritage assets nor the existing occupants of the flats in terms of access to daylight.
6. A further appeal was dismissed³ in 2021 ('the second appeal') for the erection of single storey rooftop extensions across all blocks, with external lift shafts to create forty-eight flats. This appeal concluded that the proposal would not be permitted development in conflict with paragraph A(c). It was also concluded that the proposal would have a negative effect on the character and appearance of the buildings and on existing occupier's outlook and daylight.

Main Issues

7. The main issues are whether the proposal would comply with the relevant sections of Schedule 2, Part 20, Class A, Paragraphs A.2(1) of the GPDO with respect to:
 - the external appearance of the building; and
 - the impact on the amenity of occupiers of the existing building including in terms of loss of light.

Reasons

External appearance

8. Chandos Way and Britten Close form nine blocks of flats that are similar in design and scale. These are arranged in two horseshoe groups. These four storey blocks have brick elevations with mansard roofs that encompass the windows of the upper floors. The mansard roofs create a recessive design for the higher levels with the top floor stepping back from the façade. Stairwells are placed ahead of the front elevation of each block within enclosed brick towers, these features are striking and punctuate the elevations of the blocks with bold projecting elements.
9. Between the towers, the window form and roof design of the elevations form a strong horizontal emphasis with recessive features at higher levels that balance the design of the blocks and form a roof design that is proportionate to the scale of the building. The existing mansard roof creates two linear components with a row of windows located between these. These three elements combine to form a clearly defined roof profile for each block. The existing top floor therefore creates the sense of being within a roof feature with the three floors

² Planning Appeal Reference: APP/N5090/W/19/3229368

³ Planning Appeal Reference: APP/N5090/W/21/3269709

- beneath forming the base of the building. The proportions of each block form a pleasant balance between the roof and base which sit comfortably together.
10. The proposal would add a floor to each block. This would include a mansard roof feature within the inner courtyard elevations. The recess of the proposed floor, set away from the mansard roof below, would disaggregate the proposed roof form from the roof below. Accordingly, the proposed windows and railings, would introduce features that would distort the rhythm and design of the existing roof scape. The proposal would be a prominent and awkward addition that would be highly visible from the public realm. This would emphasise the roof component of the building and unbalance the overall form of the blocks. It would distort the appearance and composition of the blocks and would introduce development that would not integrate well with the existing form or appearance of the blocks.
 11. Also, the mansard roof, with standing seam leadwork, may not successfully integrate well with the existing roof of the building. Although proposing a similar material to that of the existing blocks, this would take a substantial period of time to blend in with the existing roofs due to its nature. This visual disconnect of material colour would emphasise the prominence of the proposed additional floors.
 12. I recognise that, in exercise of this permitted development right, it would be inevitable that the appearance of the building would change. Nonetheless, the existing blocks are a considered design with a clearly defined visual balance between their roof and base. The blocks stand in groups where height and materiality make strong contributions to the successful form of the buildings. As such, the overall effect of the proposal would be to place substantial and harmful emphasis on the roof level and create blocks with a base that would appear squat due to the top-heavy proportions of the proposal.
 13. The proposal is different to the scheme subject to the second appeal following the removal of the lift shafts, projecting balconies and in recessing the front elevations to create an external walkway. Nonetheless, the harm found in that case was due to design features beyond the effect of these components. The decision found that the effect of the additional height, by the mansard roofs, would be dominant and give the blocks a top-heavy appearance. The proposed scheme, the subject of this appeal, would be less obtrusive being slightly recessed. Nonetheless, the proposed addition level would be an overt extension that would not successfully harmonise with the existing built form.
 14. The Framework seeks to boost the supply of housing. It encourages making effective use of land and supports the use of the airspace above existing residential premises for new homes. However, the proposed upward extensions would conflict with its requirement for development to be well designed and add to the overall quality of the area. Accordingly, the external appearance of the proposed additions would have an adverse impact on the character and appearance of the buildings.
 15. Insofar as they are material considerations, I have also had regard to policy CS5 of the Barnet Core Strategy (CS), policy DM01 of Barnet's Development Management Plan Document (DMP) and the Council's Residential Design Guide (RDG) SPD (2016). These policies seek, among other matters, for development to deliver high quality design, respect the local context and locally distinctive character.

16. Accordingly, the proposal would not comply with paragraph A.2(1)(e) of the GPDO.

Living conditions – existing

17. Paragraph A.2(1)(g) requires a decision maker to take into account the impact of development on the amenity of the existing building, including whether there would be a loss of light. Paragraph B(9) states that the Local Planning Authority must refuse prior approval if adequate natural light is not provided in all the habitable rooms of the dwellinghouses. The GPDO defines 'habitable rooms' by "any rooms used or intended to be used for sleeping or living which are not solely used for cooking purposes, but does not include bath or toilet facilities, service rooms, corridors, laundry rooms, hallways or utility rooms".
18. The existing blocks have rooflights that serve various rooms within the top floor of the maisonettes. During my visit I observed the effect of the proposal from several maisonettes. I noted that the maisonettes at second and third floor level have varying room layouts. As such, the rooftop skylights serve a variety of rooms including bathrooms, stairwells and kitchens. Some kitchens have a skylight as a sole source of light whilst, in other kitchens, the skylights are part of a larger living space with access to natural light through main windows.
19. The Appellant's Daylight and Sunlight Assessment⁴ was undertaken in 2018 in support of a previous scheme. This found that in terms of the effect on roof lights all habitable rooms were considered to meet the British Research Establishment (BRE) Guidelines in daylight terms. I concur with this in so far that the kitchens within living rooms would retain reasonable levels of natural light solely from main windows.
20. Interested parties have argued that the Inspector of the first appeal incorrectly concluded that the kitchens were not habitable rooms being less than 13sqm as defined by the CS and RDG. I am cognisant that the Inspector of the second appeal found that even if the kitchens were not classed as habitable rooms, in planning terms, they formed an important part of the space within each relevant flat. This assertion is reinforced by BRE Guidance⁵ which states that daylight distribution should consider each of the main rooms, including within living rooms, dining rooms and kitchens, without reference to size. I am therefore inclined to concur with the comments made within the second appeal, rather than the first appeal and find the kitchens even if below 13sqm could make an important contribution to each dwelling as a habitable space.
21. During my visit I observed that the kitchen of a maisonette, with only a rooflight for natural light, appeared to be smaller than 13sqm. Nevertheless, the kitchen would be of sufficient size to accommodate a small table and could readily be used for more than just cooking. I note that several interested parties comment that their kitchens are used for eating and some spend prolonged periods in their kitchen undertaking various tasks. Consequently, I find that the affected kitchens would be habitable rooms as defined by the GPDO. Their skylights make an important contribution to the use of the affected dwellings and provide substantial benefit to the living conditions of existing occupiers.

⁴ Daylight and Sunlight Assessment, April 2018, Delva Patman S

⁵ Site layout planning for daylight and sunlight

22. The Appellant's BRE Test Report (Appendix A9) states that the existing rooflights provide and Average Daylight Factor (ADF) of 1.9% and each light pipe would generate an ADF of 0.5%, with four such pipes directed to each skylight. However, this assertion was compared to an existing skylight with an opaque finish whereas I observed that some skylights have been replaced with clear glass that would be likely to gain greater light levels than this datum. Furthermore, the proposed layout plan shows ten light pipes to deliver replacement light to up to four maisonettes.
23. As such, the evidence contains insufficient detail to illustrate how the light pipes would be directed to specific rooms, on a per unit basis, to deliver adequate natural light. It is therefore unconvincing that existing occupiers would not experience a significant reduction in light levels in the affected kitchens. Moreover, this matter cannot be resolved by the imposition of a condition as a revised design and layout may be necessary to satisfy this matter. Consequently, due to insufficient evidence, the proposal does not adequately illustrate that the proposal would not have a deleterious effect on daylight levels or prevent substantial harm to the living conditions of existing occupiers.
24. The proposal would therefore fail to satisfy the requirements of the Framework for development to achieve a high standard of amenity for existing and future occupiers. Insofar as it is a material consideration, I have also had regard to CS policies CS1 and CSNPPF, DMP policies DM01 and DM02 and the Council's Residential Design Guide and Sustainable Design and Construction SPD (2016). These policies seek, among other matters, for development to be designed to allow for adequate daylight and sunlight for adjoining occupiers and users.
25. Accordingly, the proposal would not comply with paragraph A.2(1)(g) of the GPDO.

Other Matters

26. The Framework seeks to make efficient use of land and supports the use of airspace above existing residential premises for upward extensions. However, the proposal would be poorly designed and would harm the living conditions of existing occupiers. These matters outweigh the benefits of the scheme.
27. Furthermore, interested parties have raised a series of matters including concerns in regard to overlooking, effect on the significance of heritage assets, over shadowing, parking provision, infrastructure impact, overheating, noise, flooding and drainage. However, as I am dismissing the appeal for other reasons it has not been necessary for me to address these matters.

Conclusion

28. For the reasons given above, the appeal is dismissed.

Ben Plenty

INSPECTOR