



Appeal Decision

Site visit made on 30 September 2022

by Lewis Condé BSc (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 November 2022

Appeal Ref: APP/J0350/W/22/3299835

Chancellor House, Farnburn Avenue, Slough SL1 4EH

- 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 Mr Taghi Oraee, Euroreach Limited, against the decision of Slough Borough Council.
 - The application Ref Y/01014/020, dated 10 March 2022, was refused by notice dated 25 April 2022.
 - The development proposed is Prior approval for the addition of 2 additional storeys over the existing 3 storey block of flats and creation of 8 no. new flats.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the proposed development in the above banner heading is taken from the Council's decision notice as opposed to the appellant's original application form, as this more accurately and succinctly describes the proposal. I note the appellant has also used this description on the appeal form. It is on this basis that the appeal has been determined.
3. The appeal proposal relates to a prior approval notification made under Schedule 2, Class A, Part 20 of the Town and Country Planning (General Permitted Development) Order 2015, as amended (GDPO). This permits development consisting of up to two additional storeys of new dwellinghouses on detached blocks of flats, where (amongst other matters) the existing building is more than two-storeys in height.
4. One of the Council's reasons for refusing the prior approval application was that it was unable to meet the conditions for permitted development specified at paragraph A.1 of Class AA (*sic*), Part 20, of the GDPO. This was due to the building being considered to not measure more than two-storeys in height, as well as a proposed bike store being located in an area that was considered beyond the curtilage of the site. The Council has subsequently confirmed that this reason for refusal was included in error, as the appeal property is indeed a 3-storey building, whilst it is not contesting the location of the cycle parking falls within its the curtilage. From the evidence before me and my observations on site, I find no reason to disagree with the Council's updated position.

5. Accordingly, the dispute before me solely centres on Condition A.2(1)(g) of the GDPO, concerning whether prior approval should be granted having regard to the proposal's impact on the amenity of neighbouring premises.
6. Development plan policies and the National Planning Policy Framework (the Framework) can be considered relevant in prior approval cases, but only insofar as they relate to the development and prior approval matters. I have proceeded on this basis.

Main Issue

7. In light of the above, the main issue is whether prior approval should be granted having regard to the impact on the amenity of neighbouring premises in relation to overlooking, privacy and loss of light.

Reasons

8. The appeal site is a modern, detached block of flats, set within an urban context. The immediate surrounding area is predominantly residential in character and the site shares a relatively close relationship with surrounding residential properties. This includes 177 to 183 Farnham Road, which are located on the upper floors of Ambassador House directly to the east, a mix of two and three storey dwellings located on Silverhill Court to the south, and two-storey dwellings along Farnburn Avenue to the west.
9. Additionally, residential development is currently taking place opposite the site to the north of Farnburn Avenue, following a grant of planning permission (ref: P00419). I understand that the development involves the delivery of a four-storey block of flats (referred to as 'Fieldview Court').
10. The appellant has provided a Daylight and Sunlight Report (the report) that considers the proposed development's potential impacts on neighbouring properties in respect of light. The report has been prepared based on the good practice guidance¹ of the Building Research Establishment (BRE) and appears to have been prepared by a suitably competent surveyor. It is noted that the design of the proposal was amended from the scheme that the report was based upon, albeit confirmation has been received that due to the minor nature of the changes, the findings of the report would not be materially affected.
11. Notably, the report finds that windows serving several neighbouring properties would not achieve the recommended levels of daylight and sunlight under BRE tests. Twelve infringements of the vertical sky component test (VSCT) have been identified concerning windows at 177 to 183 Farnham Road and the emerging Fieldview Court development. Under the terms of the VSCT, two of the affected windows (a living room window and 'domestic' window) would experience significant reductions of daylight in excess of 30% against current conditions (0.68 ratio). The BRE guidelines indicate a permissible target as being a reduction of 20% (0.8 ratio).
12. In terms of the daylight distribution test, the report demonstrates that second floor windows at 177 to 183 Farnham Road, serving a living/dining/kitchen, would experience a 28% reduction in daylight compared to existing conditions (0.72 ratio), which is a sizeable reduction compared to with the BRE guidelines

¹ Building Research Establishment (BRE) guide 'Site Layout Planning for Daylight and Sunlight: a guide to good practice, 2nd Edition' by P J Littlefair 2011.

- of 20% (0.8 ratio). A further bedroom at first floor level of the building would also experience a reduction in daylight of the order of 22% (0.78 ratio).
13. It is also indicated that the proposal will affect sunlight to three windows serving both a bedroom and living rooms in the emerging Fieldview Court building, which would not meet BRE guidelines in relation to total annual probable sunlight hours (APSH). The affected living room windows are shown to have a generally low baseline provision of total sunlight hours, while the proposal would exacerbate this further, beyond the identified BRE parameters.
 14. It is recognised that BRE guidelines, are guidance that should be applied sensibly with some flexibility. I also acknowledge that where windows have failed the relevant tests, some of the associated shortfalls against the BRE guidance are generally modest in nature. Nevertheless, the BRE guidelines contain nationally applicable best practice and provide the most appropriate basis on which to assess the proposal's impacts in terms of loss of light. Furthermore, in this case, the loss of daylight and sunlight to several identified windows would be significant and therefore unacceptably harmful to the amenity of adjoining premises in terms of loss of light.
 15. Only limited weight is given to the appellant's arguments that the predominant impact would be on bedrooms, which the BRE guidelines state are less important. The appendices to the submitted Daylight & Sunlight Report demonstrate that some of the windows that would be most acutely affected serve living rooms. In several instances, windows that would not meet the BRE recommendations are stated as being for 'domestic' purposes, as their use is not known. Additionally, the level of potential loss of light to some of the identified bedroom windows remains significant.
 16. Accordingly, based on the evidence before me, it is considered that the proposed development would result in harm to the amenity of neighbouring premises through a loss of light.
 17. Turning to overlooking and privacy, the appeal property and neighbouring Ambassador House building already share a close relationship, with windows of residential properties on the upper floors of the two buildings facing towards one another. Consequently, there is already a high degree of overlooking between dwellings in the two buildings. The proposal would marginally increase the overall level of overlooking experience by some of the properties within Ambassador House. However, it would not significantly exacerbate the current relationship or result in a harmful degree of overlooking or loss of privacy.
 18. The Council also refer to overlooking and a loss of privacy to the rear gardens of 1 and 3A Farnburn Avenue. Again, these garden spaces are already significantly overlooked both from existing units within the upper floors of the appeal property, and other neighbouring residential properties. As such, the limited increase in overlooking that would arise from the proposed development would not result in a significant change in existing circumstances.
 19. I do not have full details of the planning permission in respect of the emerging Fieldview Court development to the north of the appeal site. However, at the time of my site visit, the external extent of the building appeared to be substantially complete. Therefore, the relationship between the appeal site and that development could largely be appreciated. With respect to overlooking and loss of privacy, I understand that the Fieldview Court development is set to be

four-storeys with balconies that face towards the three-storey appeal site. The current proposals to add a further two storeys to the appeal property would therefore result in the relationship between the two sites being of a very similar nature to the emerging arrangement. As such, the current proposal would not result in harmful overlooking or loss of privacy to the emerging neighbouring development.

20. No specific concerns have been raised by the Council in respect of overlooking and loss of privacy to the properties at Silverhill Court or any further neighbouring properties. From my observations on site and due to the design of the proposal, I see no reason to disagree with the Council.
21. Whilst I have not found that the proposed development would result in harmful effects in terms of overlooking or loss of privacy, the proposal would cause harm to the amenity of neighbouring premises in relation to loss of light. Therefore, overall, the proposal would not comply with the condition set out at paragraph A.2(1)(g), Class A, Part 20 of Schedule 2 of the GDPO.
22. Whilst not determinative, in so far as it is relevant to the appeal, the proposal would conflict with Core Policy 8 of the Core Strategy and Saved Policies EN1 and EN2 of The Local Plan for Slough (adopted 2004). These policies amongst other matters seek to deliver high-quality development that respects its surroundings, including ensuring that extensions to buildings do not result in significant loss of sunlight. Similarly, the proposal would conflict with paragraph 130 of the Framework which seeks, amongst other things, that planning decisions should ensure developments create places with a high standard of amenity for existing and future users.

Other Matters

23. It is recognised that the purpose of introducing the permitted development rights (PDR) under Part 20 was to contribute towards the supply of new homes. This is both through helping to increase housing densities and speed up delivery by providing developers with greater levels of certainty. Similarly, given that the PDR allows for up to two additional storeys, it is recognised that developments of this scale would come forward.
24. However, the PDR do not provide complete freedom for qualifying development, hence, the requirement for prior approval which includes the consideration of site-specific conditions. The fact that the Council has not sought to introduce an Article 4 direction to remove permitted development rights only reinforces that site specific circumstances should be considered through the prior approval process.
25. The proposal will provide economic and social benefits associated with the provision of additional housing, while I am aware that the authority cannot demonstrate a five-year housing land supply. However, my consideration of the case is solely limited to matters set out in the GPDO.

Conclusion

26. As the proposal would not comply with the requirements of Schedule 2, Part 20, Class A of the GPDO, prior approval cannot be given for the proposal and the appeal should therefore be dismissed.

Lewis Condé

INSPECTOR