



Appeal Decision

Site visit made on 30 November 2022

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th December 2022

Appeal Ref: APP/N5090/W/22/3300216

Flats 1-6, St Edwards Court, Finchley Road, London NW11 7NB

- 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 Class A of Part 20 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Acestar Consultants Ltd against the decision of the Council of the London Borough of Barnet.
 - The application Ref 22/1705/PNV, dated 25 March 2022, was refused by notice dated 12 May 2022.
 - The development proposed is additional storey at third floor level to provide 2no self-contained flats.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Under Article 3(1) and Class A of Part 20 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) planning permission is granted for new dwellinghouses on detached blocks of flats. Paragraph A.2(1) of Class A sets out that developers must apply for prior approval for a range of matters. The Council's single reason for refusal has been reflected in the main issue, below.
3. The Council have referred to a number of development plan policies. However, prior approval appeals are not determined on the basis of s38(6) of the Planning and Compulsory Purchase Act 2004. Nevertheless, I have taken the development plan policies into account insofar as they are relevant to subject matter of the prior approval under consideration.
4. Reference has been made to the National Planning Policy Framework (the Framework). In line with paragraph B(15)(b) of Part 20 of Schedule 2 of the GPDO, I have had regard to the Framework so far as relevant to the subject matter of the prior approval under consideration.
5. Paragraph A.2(1)(e) of Class A of Part 20 of Schedule 2 of the GPDO refers to the external appearance of the building. In this regard, the *CAB Housing Ltd*¹ judgment confirmed that the control of the external appearance of the dwelling house is not limited to impact on the subject property itself, but also includes impact on neighbouring premises and the locality². Whilst that judgment primarily related to Class AA of Part 1, the judge confirmed that the issues also

¹ *CAB Housing Ltd, Beis Noeh Ltd & Mati Rotenberg v SSLUHC* [2022] EWHC 208 (Admin)

² Paragraph 102 (vi) of *CAB Housing Ltd*

affect the proper construction and ambit of permitted development rights granted by Class A of Part 20³.

6. I have not been referred to any specific paragraph within the *CAB Housing Ltd* judgment which supports the proposition that a proposal must be of an 'excessive' height, bulk, or scale, for conflict to arise under paragraph A.2(1)(e). Rather, the judgment confirms that individual decision-makers will make their own planning judgements applying the prior approval controls, correctly interpreted, to the materials before them⁴. I have assessed the proposal on this basis.
7. I note that this case is currently before the Court of Appeal, and I have had regard to the Order made by the Rt. Hon. Lord Justice Lewison in this respect, but the High Court judgment represents the current state of the law in this area. I have therefore had regard to the judgment of the High Court in *CAB Housing Ltd* in my determination of this appeal.

Main Issue

8. The main issue in this appeal is whether prior approval should be granted under Class A of Part 20 of Schedule 2 of the GPDO, having particular regard to the effect of the proposal on the external appearance of the building (paragraph A.2(1)(e)).

Reasons

9. The appeal site relates to a 3 storey detached block of flats situated in a predominantly residential area. It is situated at the end of a parade of buildings which, although of mixed styles and designs, are generally consistent in terms of their overall heights. Exceptions to this are St Edward the Confessor Roman Catholic church, which clearly contrasts with the rest of the parade in terms of its architectural style and massing, and 698 Finchley Road, which due to its position at the other end of the parade, next to Hoop Lane, does not alter the fact that the existing height and scale of the appeal building complements the rest of the parade as a whole, and particularly those buildings in close proximity to it.
10. I observed all the properties on Finchley Road, identified under the 'local character' section of the prior approval application document⁵. I also observed 748 Finchley Road and the buildings along Finchley Road stemming from that point towards the site, including their roof forms. In this regard, whilst there is some variation in terms of architectural designs, styles, and materials, 2 storey detached and semi-detached properties and 3 storey blocks of flats are commonplace in the vicinity. Although many of these buildings have been subject to alterations such as loft conversions, and the 2 blocks of flats opposite the site from some viewpoints appear marginally taller than the appeal building, there is still a notable consistency in terms of the overall heights of buildings in the locality.
11. In this context, whilst the proposal to add an additional storey to the appeal building would replicate the design, materials and fenestration of the existing building, with an appropriately-designed shallow pitched roof, the resulting

³ Paragraph 9 of *CAB Housing Ltd*

⁴ Paragraph 101 of *CAB Housing Ltd*

⁵ Prior approval application document: 1-6 St Edwards Court, 1 Storey (Lipton Plant Architects) (February 2022)

- height of the 4 storey building would be out-of-keeping with the locality, and especially the buildings in the parade which are close to the site.
12. Moreover, although it is set-back from Finchley Road with soft landscaping to its frontage on that side, considering its prominent corner position on a junction between Finchley Road and St Edward's Close, the noticeable increase in scale and massing that would result via the proposal would mean that the extended building would appear overly-dominant in its context. Its visual incongruity in this respect would be particularly apparent from within St Edward's Close, due to numerous 2 storey properties of modest scale being in view in that location.
 13. Furthermore, as the height of the building would be noticeably increased, with a corresponding increase in scale and bulk, but its width and length would remain the same, it would have a rather cumbersome appearance, which would be most evident on the elevation facing St Edward's Close due to the extension of the prominent central portion of the building on that elevation.
 14. The site is within the same parade of buildings as St Edward the Confessor Roman Catholic church, a Grade II listed building. I observed that the significance of the listed building derives in part from its aesthetic interest arising from its nave with 2 octagonal towers and its square tower, both of which are prominent in the street scene and which contain distinctive decorative brickwork. The predominantly modest scale of surrounding properties in the setting of the listed building contributes to the significance of the listed building by enabling its visual qualities to be appreciated in the street scene.
 15. I have had regard to the representations of the Council and interested parties with regards to the potential effect of the proposal on the skyline and the streetscape near the listed building. However, considering the distance of the site from the church and that the proposal relates to one additional storey only, in my view the visual experience of the church would be largely unaffected by the proposed development within its setting, meaning that the proposal would not result in harm to the contribution which the setting makes to the significance of the listed building.
 16. Thus, taking account of Policy DM06 of Barnet's Local Plan (Development Management Policies) (adopted 2012) (DMP) and Policy HC1 of The London Plan (published 2021), referred to in the Council's decision notice, which collectively provide that, amongst other things, development proposals affecting heritage assets, and their settings, should conserve their significance, by being sympathetic to the assets' significance and appreciation within their surroundings, I find that the significance of the listed building would be preserved by the proposal. This lack of harm identified to the significance of the listed building in heritage terms does not however off-set the visual harm that the proposal would cause to the street scene and the character and appearance of the surrounding area, identified above.
 17. I have had regard to the appeal decisions referred to by the appellant⁶. However, those decisions were issued before the *CAB Housing Ltd* judgment. As the reasoning and conclusions of the Inspectors were not based upon the

⁶ Including APP/T1410/W/20/3263486, APP/U5930/W/21/3271846, APP/N5090/W/21/3278632 & APP/N5090/W/21/3278639

law as it currently stands those decisions carry limited weight in my consideration of this appeal. They do not outweigh the harm identified above.

18. Although an increase in height is an inevitable consequence of implementing the permitted development right, and the appellant has asserted that the principle of the maximum additional height and mass atop the existing building is established, and the appellant could potentially seek consent for 2 additional storeys rather than one, the *CAB Housing Ltd* judgment held that the right, and the principle it recognises, is contingent upon the grant of prior approval for a specific proposal⁷. As such, considering the demonstrable conflict with respect to the requirements of paragraph A.2(1)(e), identified above, none of these considerations changes my findings.
19. I therefore find that the proposal would have an unacceptable and harmful effect on the external appearance of the building, in conflict with paragraph A.2(1)(e) of Class A of Part 20 of Schedule 2 of the GPDO. Whilst not determinative, I have had regard to Policy CS5 of Barnet's Local Plan (Core Strategy) (adopted 2012), Policy DM01 of the DMP, and Policy D3 of The London Plan. To the extent that they are relevant considerations within the terms of the GPDO, the proposal would conflict with their collective aims that, amongst other things, proposals should preserve or enhance local character and respect the appearance, scale, mass, height and pattern of surrounding buildings, spaces and streets.
20. The proposal would conflict with paragraph 120 e) of the Framework which provides that, amongst other things, planning decisions should allow upward extensions where the development would be consistent with the prevailing height and form of neighbouring properties and the overall street scene. It would also conflict with paragraph 130 c) of the Framework which provides that, amongst other things, planning decisions should ensure that developments are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities).

Other Matters

21. The appellant has referred to a number of benefits which would arise via the proposal, including (amongst others) adding to the amount of accommodation in the locality, and using the airspace above the existing residential premises for new homes. However, the GPDO offers no discretion where conflict is found with its requirements; its requirements are a matter of law. As such, the various purported benefits of the proposal do not change my findings on the main issue in this appeal.

Conclusion

22. As the proposal would not comply with paragraph A.2(1)(e) of Class A of Part 20 of Schedule 2 of the GPDO, prior approval cannot be given for the proposal, and the appeal should therefore be dismissed.

Alexander O'Doherty

INSPECTOR

⁷ Paragraph 72 of *CAB Housing Ltd*