



Appeal Decision

Site visit made on 8 November 2022

by H Jones BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th December 2022

Appeal Ref: APP/T5150/W/22/3298958

Morritt House, 1 Talbot Road, Wembley, London HA0 4XD

- 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 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr John Lyons against the decision of the Council of the London Borough of Brent.
 - The application Ref 21/4519, dated 10 December 2021, was refused by notice dated 3 February 2022
 - The development proposed is construction of a total of 4 no. 1 person, 1 bedroom flats and 4 no. 2 person 1 bedroom flats on the 4th and 5th floor of a 4 storey purpose built block of flats.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered. Neither of the main parties has provided written confirmation that a revised description of the development has been agreed. I have therefore based the description of the development in the banner heading above on that stated on the submitted application form, however, I have adopted a more concise wording, removing some superfluous elements. In doing so I am satisfied that I have not prejudiced the interests of either main party.
3. 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 GPDO), planning permission is granted for 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 together with certain associated works subject to limitations and conditions.
4. Paragraph A.1 of the GPDO sets out the circumstances when development would not be permitted development. Of these, the Council cites that a proposed refuse/cycle storage facility would extend beyond the curtilage, be situated on land forward of a wall forming the principal elevation of the existing building and be situated on land forward of a wall fronting a highway and forming a side elevation of the existing building, and therefore, not comply with paragraph A.1(n) and not constitute permitted development.

5. Furthermore, Article 3(9A) states that Class A does not authorise the development of any new dwellinghouse where it would not comply with the nationally described space standard (NDSS). In its determination, the Council objected to the proposal on the basis that the storage space requirements for the 1 bed 2 person flats did not meet the NDSS.
6. Where any development under Class A is proposed, paragraph A.2 of the GPDO requires the developer to apply to the local planning authority for prior approval of the authority to assess the impact of the proposed development in relation to a number of matters. Of these, the Council has refused the development on the basis of the transport and highways impacts of the development and the external appearance of the building.
7. The appeal submission includes drawings 1149P 200B and 1149P 500 which depict the location of proposed bicycle storage lockers. These drawings are not referenced on the Council's decision notice, however, on the basis of the evidence before me these plans were received by the Council prior to it making its decision. It has not been shown to me that there are reasons to disregard these plans, and therefore, I have taken them into account in my determination.
8. The appeal submission also includes revised plans (drawing nos. 1149P 20B, 1149P 210B, 1149P 211B, 1149P 212B, 1149P 2013B, 1149P 203B and 1149P 204B) modified after the Council made its decision subject to this appeal. The amendments to the scheme depict adjusted positioning of a bicycle store and additional annotations in its regard, additional annotations in regard to a refuse and recycling store, and amended cupboard storage to flats 17, 19, 21 and 23.
9. The Planning Inspectorate's guidance¹ provides advice on the circumstances whereby amendments proposed during the appeal process can be taken into account having regard to the Wheatcroft High Court judgement². It established that the main, but not the only, criterion is whether the development is so changed that to grant it would deprive those who should have been consulted on the changed development of the opportunity of such consultation. An integral part of the legal test is the issue of fairness to third parties.
10. Notwithstanding the above, the purpose of the amendments was to demonstrate that the proposal constituted permitted development. This is a legal test whereby the issue of consultation is not decisive. Furthermore, the Council has had opportunity to comment on the amendments and do so in their appeal submissions. In these particular circumstances I consider no party would be prejudiced and I accept the revised plans and determine the appeal with regard to them.

Main Issues

11. Having regard to the above, the main issues are therefore:

- Whether the proposed development would be permitted development with particular regard to whether the requirements of Schedule 2, Part 20, Class A.1(n) and Article 3(9A) of the GPDO would be met;

¹ Procedural Guide: Planning appeals – England Updated 12 April 2022

² Wheatcroft (Bernard) Ltd v Secretary of State for the Environment and Harborough DC (1982)

- Whether prior approval should be granted under Schedule 2, Part 20, Class A of the GPDO, having particular regard to the effects of the development on the external appearance of the building; and
- Whether prior approval should be granted under Schedule 2, Part 20, Class A of the GPDO, having particular regard to the transport and highways impacts of the development.

Reasons

Whether the proposal would be permitted development

12. The Council has separately granted planning permission for an enlarged refuse and recycling store together with a bicycle store beside Morritt House³. This existing planning permission is referenced on plans and documents accompanying the application for prior approval subject to this appeal. These plans and documents included those which the Council confirmed as having been taken account of in their decision. The layout of the enlarged refuse and recycling store with planning permission may have been incorrectly drawn on the prior approval plans, and this matter may not have been addressed until the appeal process but, nevertheless, the cross referencing to the existing planning permission was clear.
13. On the basis of the evidence before me, I find that the external refuse, recycling and bicycle store did not form a part of the prior approval application. As a result, and with no such ancillary external facilities proposed as a part of this application, there is no breach of Schedule 2, Part 20, Class A.1(n) of the GPDO.
14. Having regard to the NDSS, four of the flats proposed constitute 1 bedroomed 2 person occupancy dwellinghouses. The NDSS requires, as a minimum, each of these flats to contain 1.5m² of built-in storage. The amended plans submitted during the appeal process show that the four flats would be provided with built-in storage in excess of 1.5m². In turn I have no reason to conclude that the development would not meet the requirements of the NDSS.
15. As a result, I conclude that the development would constitute permitted development having particular regard to whether the requirements of Article 3(9A) and Schedule 2, Part 20, Class A.1(n) of the GPDO would be met.

The external appearance of the building

16. Morritt House is a 4 storey, flat roofed block of flats. It is situated on the corner of Talbot Road and Harrow Road. Next door to the site, on Harrow Road, is a further 4 storey flatted accommodation block whilst on the opposite side of Harrow Road are 3 and 4 storey blocks of flats. Neighbouring properties on Talbot Road are generally 2 and 3 storey flats and houses. There is variety to the design of residential properties in the area with more traditional and contemporary approaches represented. The front and rear elevations of Morritt House exhibit a high degree of consistency in the appearance of the fenestration whilst a number of large windows serve the flats within the property. The side elevation facing west is blank but that facing east contains a window on each floor.

³ Application reference 21/2844

17. Although the judgement in *Cab Housing Limited & others*⁴ was confined to the lawfulness of the decisions under that challenge, given its content, it is appropriate in this case to adopt a broader approach to the assessment of the effects of the proposal upon the external appearance of the building whereby the effects of the proposal upon the character and appearance of the area are a relevant consideration.
18. In the proposal, Morritt House would become a 6 storey building, far greater in height than the adjacent 2, 3 and 4 storey properties. Owing to the corner plot positioning of Morritt House, its rear elevation facing Harrow Road and side elevation adjacent to Talbot Road are readily apparent in approaches on Harrow Road east of the site. In these views the disparity in the height of the extended Morritt House and the neighbouring properties would appear jarring.
19. The extended part of the side elevation facing Talbot Road would contain no windows and would therefore be a largely blank and featureless expanse of brick. This would be at odds with the existing elevation which has windows on each floor in a symmetrical form which assists in breaking up the mass of the elevation. I accept that the amenity terraces would be visible and a horizontal band is proposed between the 3rd and 4th storeys but, nevertheless, I do not find that these would be effective at breaking up the mass of the extended side elevation. The design of this side elevation would exacerbate the effects of the height of the extended building, making it appear top heavy. It has not been shown to me why the incorporation of windows within this side elevation could not be achieved close to the corner of the building and in conjunction with the amenity terraces and, furthermore, I note that a window has been incorporated within the approved prior approval scheme⁵ for the addition of a single storey extension.
20. The extended west elevation would also be blank, however, this is the case at present and therefore the proposal would be consistent with this. Furthermore, owing to the proximity of the neighbouring block of flats and the partial screening that this affords I do not find that the west facing elevation would be as prominent as the east.
21. West of Morritt House there is some change in character, there are more commercial buildings and there are taller buildings such as the fire station training tower and those within the police station complex. However, those at the police station are farther from the site than the lower buildings and do not provide the most important context for Morritt House. The training tower is closer to the site, but it serves a particular purpose, is quite unlike the other buildings in the area and I find that it is not a strong influence over the prevailing character of the area.
22. In some views from the west, tall buildings at Wembley Central would be seen in the backdrop to the development and this would mitigate the effects of the height and mass of the development in these views to some extent. However, within shorter range views and in views of the site from the east, the buildings at Wembley Central would provide no mitigation. Tree coverage in some views provides screening of the site but it would not be effective enough to mitigate the harm I have identified and it is particularly ineffective in some views from the east, views which concern me the most.

⁴ *Cab Housing Limited & others v SSLUHC and others* [2022] EWHC 208 (Admin)

⁵ Application reference 22/2046

23. Full details of the developments cited at Eastfield Place, South Park Road, Oakbraes and Raffles House are not before me and therefore I cannot make a fully informed comparison of the effects of those schemes and those which would occur in this case. I do note that in the Oakbraes case the Inspector found that factors such as the separation from neighbouring buildings mitigated the effects of the development and contributed to their conclusion that any harm to the character and appearance of the area was insufficient to warrant the dismissal of the appeal. Furthermore, I note that in some of those cited cases, the Inspectors appear to have adopted a narrower approach to the assessment of the impacts of the proposal in relation to the external appearance of the building. For the reasons set out earlier I have adopted a different approach.
24. The site may be located within an identified intensification corridor in the development plan within which 5 storey buildings may be considered appropriate. There may also be a growth area situated to the east of the site. However, full details of any policies in respect of these designations have not been submitted for my consideration. Notwithstanding, the proposal seeks a building of 6 storeys rather than 5 and I note that the growth area is closer towards Wembley Central which contains a commercial centre and is quite different in character to the immediate surrounds of the site. Moreover, as a prior approval appeal, determination is not made on the basis of Section 38(6) of the Planning and Compulsory Purchase Act 2004 or as though the development plan must be applied.
25. In the rear elevation, the windows to shower rooms and bathrooms within the additional storeys would not follow the window design adopted on storeys below. However, the design of the proposed bedroom windows would match the lower floors and this would ensure that there would be significant cohesion across all floors, albeit not symmetry. I find that the deviation from the existing fenestration design within the rear elevation would be modest and would represent an acceptable variation of an existing design theme rather than a harmful juxtaposition.
26. The proposed material palette matches the existing building however, the use of appropriate materials is a necessary part of achieving good design and would not outweigh the harm which would be caused by the height and mass of the proposal.
27. Although under Article 3(1) and Schedule 2, Part 20, Class A of the GPDO planning permission is granted for the construction of up to two additional storeys of new dwellinghouses on a block of flats such as Morritt House, this is subject to limitations and conditions. This includes that the development is subject to the prior approval procedure which is an essential component embedded in the permitted development right. In this particular case, and for the reasons given, I have identified that the effects of the external appearance of the building would be unacceptably harmful.

Transport and highways

28. Morritt House is served by a car park, accessed via Talbot Road. No additional parking spaces are proposed. I note from the submitted evidence that a controlled parking zone is in operation in the area and that the site is located within a Transport for London Public Transport Accessibility Level 5 area reflecting the ready availability of public transport options. I note that the

Council have not objected in principle to the development being car-free and I have no reason to disagree. However, a mechanism would be required so as to ensure occupiers of the new flats would not be eligible to apply for a residents parking permit unless they were a blue badge holder. I note the Council's suggestion of a condition to this end whilst the appellant has submitted a unilateral undertaking under section 106 of the Town and Country Planning Act 1990 (as amended). Given that I am dismissing the appeal for the reasons set out in the second main issue, it is not necessary for me to assess in detail the acceptability of either the suggested condition or planning obligation.

29. In addition to cycle storage granted planning permission under application reference 21/2844, the proposal includes cycle storage lockers beneath stairwells within Morritt House. The Council has accepted the principle of the provision of additional storage beneath the stairwells and I have no reason to disagree. Even if I were to accept that the spacing between the cycle stands granted under the separate planning permission were inadequate, on the basis of the evidence before me, 8 spaces would be provided within that store with a further 4 being proposed beneath the stairwells. Provided that mechanisms were deployed which ensured their delivery I consider that such a level of cycle storage provision would be acceptable for the 8 flats proposed.
30. For these reasons, I consider that the transport and highways impacts of the development would be acceptable.

Other Matters

31. The Council has not raised any objection to the development on the basis of the effects of the development upon any nearby heritage assets including the Grade II listed Wembley Fire Station. However, whilst it may be the development does not harm individual heritage assets, it does not necessarily follow that the effects of the external appearance of the building are, more generally acceptable and, within the second main issue, I have identified harm.

Conclusion

32. Whilst I have concluded that the development would constitute permitted development and that the transport and highways impacts would be acceptable, due to the harm which I have identified would be caused by the external appearance of the building the appeal is dismissed.

H Jones

INSPECTOR