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# Appeal Decision

Site visit made on 29 November 2022

**by V Simpson BSc (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 15 December 2022**

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**Appeal Ref: APP/T1410/W/22/3295860**

**Bradford Court, Firle Road, Eastbourne BN22 8DT**

- 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 – as amended.
  - The appeal is made by Farzin Sobhanpanah against the decision of Eastbourne Borough Council.
  - The application Ref 220021, dated 6 January 2022, was refused by notice dated 15 March 2022.
  - The development proposed is the construction of two additional storeys of dwellinghouses immediately above the existing topmost storey of Bradford Court, Eastbourne, to provide eight further 2 bedroom 3 person apartment dwellings.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The application form includes a description of proposed works. However, I have condensed it in the above banner to include only the proposed acts of development.
3. The Council have confirmed that the site is not within an archaeological notification area, or in proximity to the Torfield Conservation Area, nor is it adjoining 'The Cottage' locally listed building.
4. It is not disputed by the main parties that the proposal would not conflict with the requirements of A.1 of Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 – as amended (the GPDO).
5. Accordingly, the dispute before me solely centres on Condition A.2 (1) (e) dealing with the prior approval of the external appearance of the building, which was considered by the Council as required and was subsequently refused for reasons relating to harm to the character and appearance of the area as defined in the submitted decision notice. There is no disagreement between the main parties that prior approval is required.

## Main Issue

6. At B.(3) of Schedule 2, Part 20, Class A of the GPDO it is indicated that the local planning authority may refuse an application where the proposed development does not comply with any conditions, limitations or restrictions specified as being applicable to the development in question.

7. The main issue is the effect of the development on the character and appearance of the host dwelling and surrounding area having regard to the requirements under Class A.2(1)(e).

## Reasons

8. The appeal site is occupied by a 3-storey detached block of flats, which has a substantial bulk and massing when compared with neighbouring development. It is in a built-up part of Eastbourne, adjacent to the junction of Firle Road and Hoad Road. The properties immediately neighbouring the appeal site, on Firle and Hoad Road are 2 storey terraced properties. They are of a similar height to the building subject of this appeal. The prevailing pattern of development within the local area off Seaside Road, is of terraces of two storey dwellings, interspersed with occasional 3 and 4 storey apartment buildings and buildings in commercial use. Their modest scale is a positive element of the character and appearance of the area.
9. Within their submissions both main parties refer to the *Cab Housing Ltd* ruling<sup>1</sup>. In that case, the Hon. Mr Justice Holgate ruled that the issues in that case also affect the proper construction and ambit of permitted development rights granted by Part 20 Class A of the GPDO. The claimant's submission in that case, that the "external appearance" control should be confined to an assessment of the impact of that appearance on the subject property itself, as opposed to its surroundings, was rejected. Instead, it was ruled that the LPA is empowered to assess and control all relevant aspects of that external appearance, and not simply those which impact on the subject building. Whilst A.2(1)(e) does not include the wording "the impact" in respect of external appearance, on the basis of Justice Holgate's findings, it is appropriate to consider the external appearance of the development in respect of both the building itself and in relation to its setting.
10. A number of appeal decisions have been provided<sup>2</sup>. Although, in these decisions, and in respect of the external appearance of the buildings, the Inspectors limited their reasoning to the external appearance of the building itself, these cases were all determined prior to the *Cab Housing Ltd* ruling. As such they can only be accorded limited weight.
11. Notwithstanding the horizontal emphasis to the fenestration, and the mansard style roof of the existing building, which are features atypical of prevailing development in the area, the building is not conspicuous within its setting. This is in part, due to it being set back from the rear of the pavements, and because it is of a similar height to surrounding development.
12. The proposed materials and fenestration would match that of the existing building. However, the proposed additional 2 storeys would result in the overall building having a height, bulk and massing which is considerably greater in extent than, and which would dwarf, neighbouring development. This when combined with the atypical design detailing, would result in the proposed development having a dominant appearance within the street scene. It would be inharmonious and harmful to the prevailing more modest appearance of surrounding development within the area.

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<sup>1</sup> *Cab Housing Ltd & Ors v SSLUHC & Ors* [2022] EWHC 208 (Admin)

<sup>2</sup> APP/M3835/W/21/3269452, APP/M3835/W/21/3269455, APP/Q1445/W/21/3268238, APP/Q3630/W/20/3263767 and APP/T1410/W/20/3263486

13. I note that the significance of number 186 Seaside, (as a grade II listed building) is its historic fabric, and its historic community use as a cinema then bingo hall. Although sharing a small part of the rear boundary with the appeal site, the buildings at number 186, and Bradford Court, address different streets in an area with a generally high density of development. As a result, the buildings are functionally and visually separate from each other. I have been presented with no compelling evidence from which to conclude that the development proposal would cause harm to the significance of the heritage asset or its setting.
14. I accept that permitted development rights can provide a more streamlined planning process, and that they include measures to incentivise, speed up and boost housing delivery. However, those arguments do not alter my overall assessment of finding harm.
15. In so far as they are relevant to the external appearance of the building, the proposal would conflict with the objectives of policies B2 and D10A of the Core Strategy and UHT1 of the Borough Plan, where they seek to ensure development will; harmonise with the appearance of the local environment; contribute towards local distinctiveness; and reflect local character. It would also conflict with paragraphs 120(e) and 130(c) of the Framework, where they indicate that development should be consistent with the prevailing height and form of neighbouring properties and the overall street scene, and that it should be sympathetic to the surrounding built environment.
16. For the afore mentioned reasons, the proposed development would cause unacceptable harm to the external appearance of the building.

### **Conclusion**

17. For the reasons given above, I conclude this appeal should be dismissed.

*V Simpson*

INSPECTOR