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# Appeal Decision

Site visit made on 5 December 2022

**by L Wilson BA (Hons) MA MRTPI**

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

**Decision date: 16 December 2022**

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**Appeal Ref: APP/N5090/W/22/3302204**

**1-9 Richard Court, Alston Road, Barnet, London EN5 4EZ**

- 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) (GPDO).
  - The appeal is made by Quadron Properties Limited against the decision of the Council of the London Borough of Barnet.
  - The application Ref 21/6136/PNV, dated 19 November 2021, was refused by notice dated 31 December 2021.
  - The development proposed is additional storey at third floor level to provide 3no self-contained flats with associated cycle parking.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The postcode and description in the heading above are taken from the appeal form and decision notice as the postcode provided on the application form is incorrect and in the interests of clarity.
3. Schedule 2, Part 20, Class A of the GPDO establishes that new dwellinghouses immediately above the existing topmost residential storey on a building which is a purpose-built, detached block of flats is permitted development subject to several restrictions and conditions. For development to be permitted by Class A, it must satisfy limitations set out at paragraph A.1, and conditions at paragraph A.2.
4. The reasons for refusal relate to Policies CS5 and CS9 of the Barnet's Local Plan (Core Strategy): Development Plan Document (2012), Policy DM01 and DM17 of the Barnet's Local Plan (Development Management Policies): Development Plan Document (2012), the Council's Residential Design Guidance: Supplementary Planning Document (2016) and the Council's Planning Obligations: Supplementary Planning Document (2013).
5. The principle of development is established by the GPDO. The prior approval provisions do not require regard to be had to the development plan as there would be for development requiring planning permission. I have therefore only taken into account these policies insofar as they are relevant to the prior approval matters under consideration. In determining an application, the local planning authority must take any representations made into account and have regard to the National Planning Policy Framework (the Framework) so far as

relevant to the prior approval matters, as if the application were a planning application. The same approach will be taken in deciding the appeal.

6. A similar appeal has also been submitted in relation to 10-15 Richard Court<sup>1</sup>. I have determined both appeals. The nature of the appeals overlap and, for clarity, I have issued a separate decision in relation to each appeal.
7. The main parties refer to the Cab Housing Ltd High Court judgement<sup>2</sup> which was issued since the Council determined the application, and I have taken this into account in making my decision.

## **Main Issues**

8. There is no dispute regarding any of the limitations on permitted development in paragraph A.1. Consequently, the main issues are whether, or not, prior approval should be granted having regard to:

- the external appearance of the building (A.2(1)(e)); and
- transport and highways impacts of the development (A.2(1)(a)).

## **Reasons**

### *External appearance*

9. The appeal site comprises a three-storey, detached residential block of flats. Adjacent to the site is 10-15 Richard Court which is also a three-storey building. These two buildings are uncharacteristic of the area as the surrounding area is primarily characterised by traditional, two-storey terraces which in some cases have accommodation within the loft. The buildings have a flat roof and are set back from the highway on larger plots.
10. My attention has been drawn to Alston Works. This is a complex of buildings which vary in height. Alston Works does not form part of Alston Road and is sited at a lower level towards the rear of the appeal site. It clearly reads as a group of buildings which are of a different era and architectural style to Richard Court. Alston Works includes a four-storey building with a pitched roof but there are lower buildings between that building and the appeal site. The buildings are primarily visible where there are gaps between development and the single storey garages adjacent to the appeal site.
11. The principal elevation of Richard Court faces towards Alston Road rather than Alston Works and there are intervening trees. In my view, the four-storey building at Alston works is not visually dominant or prominent within this part of Alston Road's streetscene and Richard Court has a greater visual connection with the two-storey terraces.
12. The proposal follows a refused application for a similar development<sup>3</sup>. The design and materiality of the additional floor seek to replicate that of the existing building and the placement of windows matches the existing fenestration of the building.
13. I recognise that both blocks at Richard Court would be extended and they are already incongruous. However, the proposal would further exacerbate the

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<sup>1</sup> APP/N5090/W/22/3302205

<sup>2</sup> CAB Housing Ltd, Beis Noeh Ltd & Mati Rotenberg v SSLUHC [2022] EWHC 208 (Admin)

<sup>3</sup> 21/2997/PNV

buildings uncharacteristic nature. The additional storey would result in the building being taller and, due to its design, would significantly increase its massing and scale. This would be out of character and inconsistent with the modest two-storey buildings in the surrounding area. Whilst the proposal would not be wholly out of keeping with the existing building, the scheme would magnify the prominence and uncharacteristic form of the building to the detriment of the area. Consequently, the building would be unduly obtrusive and would relate poorly to the area due to its height, massing and scale.

14. The appellant has drawn my attention to similar applications either granted by Barnet Council or allowed at appeal, which they consider have set a precedent. Based on the evidence presented, it appears that Avenue Court is located in an area where development varies in scale and appearance, and it has a closer visual relationship with the more varied development, including a number of fairly large buildings.
15. The highlighted decisions cannot be directly compared to the scheme before me. This is because I have found that Richard Court has a greater visual connection with the two-storey terraces rather than the four-storey building at Alston Works. In any event, each case is treated on its own merits, and I have made a planning judgement based on the site specific context on the ground.
16. For these reasons, the external appearance of the building would be unacceptable and would have a harmful effect (A.2(1)(e)). As such, there would be conflict with paragraphs 120 and 130 of the Framework which supports upward extensions where the development would be consistent with the prevailing height and form of neighbouring properties and the overall street scene, and is well designed.

#### *Transport and highway impacts*

17. A transport note was submitted with the original application which included an on-street car parking survey. No car parking is proposed, and the proposals are being promoted as 'car-free'. In order to ensure that the proposal would not unacceptably increase on-street parking stress, the Council set out that the proposal would be acceptable subject to a Legal Agreement to amend the Traffic Order that regulates the schedule of addresses for the CPZ where the site is located.
18. I understand that no opportunity was given to the appellant to provide a legal agreement during the course of the application, and they have provided a Unilateral Undertaking (UU) with the appeal. This is to secure appropriate mitigation by restricting future occupiers of the proposed development from obtaining parking permits within the CPZ. The Council therefore confirms that this reason for refusal is conceded, and there is no robust evidence before me to take an alternative view.
19. I am satisfied that the UU would provide an adequate means of controlling parking in the area and future occupiers of the flats could use non-car related modes of transport (such as cycling, walking and the use of public transport). Based on the information presented, I am satisfied that the legal agreement meets the relevant tests<sup>4</sup>. Therefore, the UU addresses the transport and highways impacts of the development and overcomes the second reason for

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<sup>4</sup> Paragraphs 55 and 57 of the Framework

refusal by providing a signed legal agreement to secure the development as car-free.

20. For these reasons, the transport and highways impacts of the development would be acceptable (A.2(1)(a)).

### **Other Matters**

21. The appellant highlights a number of other matters. These include that the proposal would contribute to much-needed housing and the Framework promotes the optimisation of underutilised land, including through using the airspace above existing buildings to meet housing needs and states that decisions should not prevent or discourage appropriate innovation or change (such as increased densities). The other matters highlighted do not change my findings on the main issues in this appeal.

### **Conclusion**

22. I have found that the proposal would comply with condition A.2(1)(a) (transport and highways impacts of the development) but would fail to comply with condition A.2(1)(e) (the external appearance of the building). For the reasons given above, and having regard to the other matters raised, I conclude that the appeal does not succeed.

*L Wilson*

INSPECTOR