



Appeal Decision

Site visit made on 30 November 2022

by Ryan Cowley MPlan (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 December 2022

Appeal Ref: APP/U5930/W/22/3296977

Thomas Lodge, 3 West Avenue, Walthamstow E17 9PU

- 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 A Person, on behalf of Avon Group, against the decision of Waltham Forest London Borough Council.
 - The application Ref 212785, dated 19 August 2021, was refused by notice dated 14 October 2021.
 - The development proposed is one storey extension to existing three storey building. New floor to provide 6 flats. New bike stores.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO), under Article 3(1) and Schedule 2, Part 20, Class A, Paragraph B(15) require the local planning authority to assess the proposed development taking into account any representations received and having regard to the National Planning Policy Framework 2021 (the Framework) so far as relevant to the subject matter of the prior approval, as if the application were a planning application. My determination of this appeal has been made on the same basis.
3. The Patel High Court judgement¹ affirms that prior approval applications must not be determined, expressly or otherwise, on the basis of section 38(6) of the Planning and Compulsory Purchase Act 2004 or as though the development plan must be applied. I have had regard to the policies of the Waltham Forest Local Plan – Core Strategy adopted March 2012 (the Core Strategy) and the Waltham Forest Local Plan – Development Management Policies adopted October 2013 (the DMP) only in so far as they relate to the subject matter of the prior approval as material considerations. However, having regard to the above, these policies have not been decisive in my determination of the appeal.
4. As part of their appeal submission, the appellant has provided formal measurements of the floor to ceiling height of the existing building, carried out by a Chartered Surveyor (CS), which were not part of the original application. The Planning Inspectorate's guidance² provides advice on the circumstances

¹ R (oao Patel) v SSCLG & Johal & Wandsworth BC [2016] EWHC 3354 (Admin)

² Procedural Guide: Planning appeals – England Updated 12 April 2022

whereby new material can be considered. It also provides advice on when amendments can be made, having regard to the Wheatcroft High Court judgement³. An integral part of this is the issue of fairness to third parties.

5. The additional information provided does not seek to amend or evolve the scheme, but to provide clarification on the matter of compliance with the terms of the GPDO. This is a legal test whereby the issue of consultation is not decisive. In any event, the Council and third parties have had an opportunity to comment on the additional information. I therefore consider no party would be prejudiced and I accept the additional information.
6. The Council and the appellant have referred to previous iterations of the Framework in places. A revised version was published in 2021. While paragraph numbers have changed, in so far as they relate to the main issues of the appeal, there have been no substantive changes to the objectives of the Framework referred to by either party. As a result, I have utilised the latest version of the Framework in determining this appeal.

Main Issues

7. 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 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.
8. Paragraph A.1(e) indicates that development is not permitted by Class A if the floor to ceiling height of any additional storey, measured internally, would exceed the lower of (i) 3 metres; or (ii) the floor to ceiling height, measured internally, of any storey of the principal part of the existing building.
9. Paragraph A.2(1) of Class A requires the developer to apply to the local planning authority for prior approval to assess the impact of the proposed development on the external appearance of the building, amongst other specified matters.
10. The Council refused the application for prior approval on grounds relating only to the effects of the proposal on the external appearance of the building. Concerns have also been raised however regarding compliance of the proposal with paragraph A.1(e). The main issues are therefore:
 - Whether the proposal would be permitted development under Schedule 2, Part 20, Class A of the GPDO, with particular regard to whether the requirements of paragraph A.1(e) would be met; and
 - If the proposal is permitted development, whether prior approval should be granted, having particular regard to the effects of the development on the external appearance of the building.

Reasons

Whether the Proposal is Permitted Development

11. Thomas Lodge is an existing residential building comprising 3 levels of flats, with ancillary garaging and storage at ground floor and circulation space to all

³ Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

levels. The submitted drawings before me indicate the floor to ceiling height of the proposed additional storey at 2.3 metres would be no greater than the existing floor to ceiling heights, the lowest of which is the first-floor level, annotated as 2300mm high on the existing and proposed section drawings.

12. The Council included an informative note in their decision notice to advise the appellant to ensure the proposal would comply with the limitations of the GPDO, in light of perceived inconsistencies with a previous application. The CS compares their own measurements against drawings prepared by 'Icelabz', and concludes those drawings were not reflective of the true ceiling height. I understand the drawings prepared by 'Icelabz' relate to the previous application however these are not before me.
13. I have considered the formal measurements provided by the CS and compared these to the 'Brooks Murray Architects' drawings before me and that were considered by the Council. There are discrepancies of 1-8cm between those measurements the CS considered were the true ceiling height and those shown on the appeal plans. However, the CS measurements still demonstrate that the floor to ceiling heights of all 3 existing levels remain above 2.3m in height.
14. Third parties consider the methodology employed by the CS is not appropriate. The CS has referred to the RICS guidance note Code of measuring practice 6th Edition, dated May 2015, as the basis for their measurements. As the inspection was non-invasive, the measurements were taken from the carpeted floor finish to both the underside of the plasterboard ceiling and the highest point of the structural ceiling, which could be reached through the light fittings.
15. The alternative measurements which third parties consider should be used instead are similar to those taken by the CS up to the plasterboard ceiling. However, there is no standard methodology set out in the GPDO for measuring floor to ceiling height in respect of Part 20 Class A development. The RICS guidance indicates that if a false ceiling is installed, the ceiling height to the underside of the structural ceiling may also be quoted, and it is this measurement the CS considers the true ceiling height. Based on the evidence before me I consider the approach taken by the CS to be reasonable.
16. Third parties also maintain however that the appellant has been selective in applying this methodology to the existing floors but not the proposed additional floor. The proposed section drawing shows a gap between the ceiling of the existing second floor and the floor level of the proposed additional floor. It is reasonably likely that this is to accommodate services or for structural reasons.
17. I do not consider it necessary to include this additional space in the floor to ceiling measurement for the proposed additional floor, given that the measurement for the existing floors have been taken from the carpeted floor finish only. Similarly, the internal ceiling height of the proposed additional floor has been measured approximately to the eave's height of the building as extended, where a false ceiling will be required to cover the roof void and comply with the limitations of the GPDO. This internal ceiling arrangement is similar to that of the existing top floor of the building. Given that the floor to ceiling height of the existing top floor was measured only to the existing plasterboard ceiling, and not beyond this into the roof void, it is reasonable to apply the same approach to the proposed additional level.

18. Part 20 Class A of the GPDO relates to 'works' for the construction of up to two additional storeys of new dwellinghouses immediately above the existing topmost residential storey of the building. The provision of space between the existing second and proposed third floors to accommodate existing services or for structural reasons could reasonably be assumed to be part of these works, and the development taken as a whole occurs immediately above the existing building. Furthermore, the GPDO allows such development to be up to 7 metres higher than the highest part of the roof of the existing building, irrespective of whether it is one or two additional storeys, and the proposal remains within this limitation.
19. I therefore conclude that based on the evidence before me, the proposal would be permitted development under Schedule 2, Part 20, Class A of the GPDO, with particular regard to whether the requirements of paragraph A.1(e) would be met, subject to all other relevant limitations and conditions.

External Appearance of the Building

20. Thomas Lodge was constructed in the late 1980s and is a three-storey residential building with a modest hipped roof design. Externally it is finished in red brick at ground and first floor, with dark diagonal timber slats at second floor level. The building is located midway along West Avenue.
21. Neighbouring buildings are predominantly residential in character and appearance. There is a row of modest two storey traditional terraced dwellings to one side, and a semi-detached pair of two storey traditional dwellings to the other. Opposite the site is a collection of detached, semi-detached and terraced dwellings, and other more contemporary three storey flatted development, as well as a nursery. To the rear are more traditional terraces.
22. While the street scene is characterised by a mix of residential buildings of various ages and styles, the height of buildings is generally consistent at 2 or 3 storeys. An exception to this is the church on the corner of West Avenue and Orford Road, which has a higher roof ridge and is a notable landmark on this street corner. In its current form, the external appearance of Thomas Lodge is therefore sympathetic to the prevailing character and appearance of the area.
23. The judgement in *Cab Housing Limited & others*⁴ was confined to the lawfulness of the decisions under that challenge. However, it indicates that the control of external appearance is not necessarily limited to the impact on the subject property itself, but also can include impacts on neighbouring premises and the locality. In respect of this main issue therefore, it is a matter of planning judgment as to whether consideration is given to the effect in terms of the building's intrinsic design and / or to the effect in terms of the building's relationship with adjoining or nearby properties.
24. In the context of the site and its surroundings described above, it is not appropriate to consider the external appearance of the building in isolation as I consider the effect of the proposal upon the character and appearance of the area to be a relevant consideration.
25. The appeal proposal would add an additional storey to the existing building of a similar design and using the same external finishing materials as the existing top floor. However, the increased height of the building would be accentuated

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

by a conspicuous gap in the front elevation between second and third floor windows. This would have a discordant effect and would add an unattractive bulk to the upper portion of the building. The continuation of the existing top floor darker cladding to the additional level would also emphasise the heavy appearance of the extension.

26. At 4 floors, the building as extended would be noticeably higher than the existing buildings along this part of the street. It would loom large adjacent to the traditional dwellings either side given their comparatively modest proportions and proximity. The proposal would also sit conspicuously in the setting of the nearby church in comparison to the existing building's more subservient stature.
27. While there is a 4-storey building located further along West Avenue, adjacent to the railway line, this is considerably set back from the frontage of the street, behind two 3-storey buildings. It therefore has very little presence in the street scene along West Avenue, unlike Thomas Lodge. Larger buildings also exist in the wider area, however again these do not frame West Avenue in the same way as the appeal property or otherwise contribute comparably to the prevailing character and appearance of the immediate area.
28. The appellant has referred to various other planning permissions and appeal decisions for similar development, however each proposal must be considered on its own merits. These examples sit within different contexts to the appeal site. Their relevance to the appeal scheme before me is therefore limited and they do not lead me to a different conclusion on this main issue.
29. I therefore conclude that the proposal would unduly harm the external appearance of the building. It is therefore contrary to paragraphs 119, 120, 126, 130 and 134 of the Framework. These paragraphs, amongst other things, support upward extensions where development would be consistent with the prevailing height and form of neighbouring properties and the overall street scene. They seek to ensure developments add to the overall quality of the area and are sympathetic to local character. They also promote effective use of land while safeguarding the environment, highlight the importance of good design as a key aspect of sustainable development and indicate development that is not well designed should be refused.

Conclusion

30. While I have concluded that the development would otherwise constitute permitted development based on the evidence before me and subject to all other limitations and conditions of the GPDO, due to the identified harm to the external appearance of the building the appeal is dismissed.

Ryan Cowley

INSPECTOR