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## 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**

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**Appeal Ref: APP/U5930/W/22/3295322**

**De La Warr Court, 21 Church Avenue, Higham's Park, London E4 9QY**

- 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 Warren Shaw, on behalf of St John Development Ltd, against the decision of Waltham Forest London Borough Council.
  - The application Ref 213924, dated 12 December 2021, was refused by notice dated 1 February 2022.
  - The development proposed is described in the Council's decision notice as "construction of a roof extension on a 3-storey residential block of flats to create third and fourth floor levels providing six self-contained flats (6 x 2-bed) (Class C3) and associated secure cycle storage in the basement."
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. In the banner heading, I have referred to the description of the proposal set out in the Council's decision notice, omitting any text which is unnecessary to accurately describe the scheme. This is more precise than the description provided within the application form.
3. 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.
4. 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), the Waltham Forest Local Plan – Development Management Policies adopted October 2013 (the DMP) and The London Plan adopted March 2021, 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.

5. The Council refers to the 2019 version of the Framework. A revised version was published in 2021. In so far as it relates to the main issues of the appeal however, there have been no substantive changes to the parts of the Framework referred to by the Council in their decision. As a result, I have utilised the latest version in determining this appeal.

## **Main Issues**

6. 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.
7. 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 transport and highways impacts of the development, the external appearance of the building and the impact on the amenity of the existing building and neighbouring premises, amongst other specified matters.
8. The Council refused the application for prior approval on grounds relating only to these three matters. The main issues are therefore whether prior approval should be granted, having particular regard to the effects of the proposal on i) the external appearance of the building, ii) the amenity of neighbouring premises and iii) the transport and highways impacts of the development

## **Reasons**

### *External Appearance of the Building*

9. The appeal site is a corner plot located at the junction of Handsworth Avenue and Church Avenue. It is located towards the brow of a hill, with Handsworth Avenue generally decreasing in elevation in both directions as it moves away from the site. Similarly, Church Avenue meanders around the site, decreasing in elevation to the south. The existing building is therefore somewhat prominent in views locally, particularly when approaching from the south along Church Avenue or from the east along Handsworth Avenue.
10. The surrounding area is characterised by traditional detached and semi-detached two storey dwellings interspersed with low-rise blocks of flats. These blocks typically feature 3-storeys with flat or shallow pitched roofs which, from street level, are similar in height to the ridge level of the traditional dwellings. The height of buildings locally is therefore generally consistent and follows the areas topography. Though the existing building already features a third-floor element, this is set back from the edge of the main roof and is modest in size.
11. The appeal proposal comprises an upward extension of the existing building, including an extended third floor, and additional fourth floor. The proposed extension would not be set back from the north, south or east elevations of the existing building. It would therefore be largely contiguous with the existing building on three elevations. In plan view, it would occupy the majority of the existing footprint of the building. Though it is set back on its western elevation, the proposed extension is square in form and does not reflect the curved features of this part of the existing building.

12. The windows and balconies of the proposal would largely align with those below, save for the predominantly blank west elevation. However, there would be a conspicuous area of brickwork in the proposed south and west elevations between the second and third floor stairwell windows. The proposed finishing materials would be white render, in contrast with the yellow brick of the main building but in keeping with the existing third floor. A new aluminium barge board between the two finishing materials would further distinguish the proposed extension from the main building.
13. Despite the change in finishing materials and barge board, the proposal would fail to read as a sympathetic and subservient extension to the existing building due to the lack of a set back on three elevations. On the other hand, the separation provided by the barge board, divergence in finishing materials and failure to reflect its curved form would also prevent the proposal from convincingly appearing as an integral part of the existing building.
14. At five storeys high, the building as extended would be an unduly dominant and incongruous feature in the locality. This would be exacerbated by the unsympathetic nature of the proposed extension and its relatively elevated position. It would therefore be at odds with the prevailing character and appearance of the area described above. A significant number of representations from third parties raise similar concerns.
15. The effect of the extension would therefore be harmful to the external appearance of the building. The proposal would therefore conflict with the aims of chapter 12 of the Framework, in respect of achieving well-designed places. It would also be contrary to Policies CS15 of the Core Strategy and DM29 of the DMP, which seek to ensure new development provides a high standard of architecture and urban design, reinforces local character and distinctiveness, and addresses issues of height and scale sensitively.

#### *Amenity of Neighbouring Premises*

16. Paragraph A.2(1) of Class A indicates that prior approval must be sought as to the impact on the amenity of the existing building and neighbouring premises including overlooking, privacy and loss of light. Such provisions should be interpreted on the basis that 'including' denotes that the list is not closed. Matters of overbearingness and sense of enclosure relate to the outlook from neighbouring premises and are of the same kind as those listed, in the sense of being clearly relevant to the amenity of adjoining premises.
17. The existing building sits adjacent to a smaller two-and-a-half storey block of flats at 36 Handsworth Avenue. The upper floor of this neighbouring building features patio doors with a Juliet balcony overlooking the appeal site. Views toward the existing building from this opening are largely oblique, however are at relatively close distance. Given its height, the existing building therefore somewhat curtails the outlook from this neighbouring property in this direction.
18. The provision of an additional two floors would appear overbearing from this neighbouring property given the proximity of the existing building and would increase the sense of enclosure. This would further erode the outlook from the patio doors to the detriment of the amenity of this neighbouring property.
19. The external amenity space serving this neighbouring property appears modest. However, its relationship to the appeal building is less direct, with

most of the space to the rear, away from the shared boundary. I observed on site there is an intervening tree in the space to the side that would also provide an element of screening between the proposal and this neighbouring external amenity space. The harm to this space would therefore be limited.

20. Overall, however, I consider that the effect of the extension would be harmful to the amenity of the neighbouring premises at 36 Handsworth Avenue for the reasons set out above. The proposal would therefore conflict with paragraph 130 of the Framework, which seeks to create places with a high standard of amenity for existing and future users.
21. It would also be contrary to Policies CS13 of the Core Strategy and DM32 of the DMP which, amongst other things, require that new development ensures satisfactory amenity is provided and outlook is maintained for surrounding occupiers.

#### *Transport and Highways Impacts of the Development*

22. The existing building is served by a basement car park with 10 parking bays, accessed via Church Avenue. No additional parking spaces are proposed. While the appeal site is opposite a school and there are some local services and facilities close by, it is in a location with a low PTAL rating and so dependence on the private car is likely to be high. The site is not within a Controlled Parking Zone and therefore on street parking is not restricted.
23. The application to the Council was supported by a parking survey which confirms there is high parking stress in the area at certain times of day. While the survey did demonstrate some capacity close to the site, it provides only a snapshot of the parking situation.
24. The local highway authority does not support the proposal due to the potential impact of parking overspill increasing existing parking stress in the surrounding area. Representations from third parties also indicate there is already considerable parking stress locally.
25. The appellant maintains that the proposed development has been designed in favour of sustainable development where the use of personal cars is discouraged in favour of public transport, walking, cycling or the use of other greener modes of transportation. However, the number of residential units proposed combined with the lack of additional onsite parking provision and low PTAL rating will result in additional parking pressure on surrounding streets. This would further erode the already limited parking capacity in the area and increase the risk of conflict between vehicles and pedestrians.
26. For these reasons, I consider that the transport and highway impacts of the development would be unacceptable. The proposal would therefore conflict with paragraph 111 of the Framework, which indicates development should be prevented or refused on highways grounds if there would be unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
27. The proposal would also be contrary to Policies CS7 of the Core Strategy, DM13 and DM16 of the DMP and T4 of The London Plan. These policies, amongst other things, seek to manage parking requirements effectively to ensure the provision of safe and attractive parking facilities, and ensure development

proposals integrate with the current transport network and capacity and do not increase road danger.

28. In respect of this main issue, I have not found direct conflict with Policy DM14 of the DMP or CS13 of the Core Strategy which concern environmental standards, the encouragement of sustainable travel and promotion of health and wellbeing.

### **Other Matters**

29. The appellant has provided examples of other consents granted in the area that they consider are material in this case. The full details of each of these are not before me and so it is difficult to draw comparisons to the appeal proposal. In any event, the context of each site is different and ultimately each proposal must be considered on its own merits.
30. While the appellant has sought to address previous reasons for refusal, this does not lead me to a different conclusion on the main issues in this case.

### **Conclusion**

31. For the reasons given above I conclude that the appeal should be dismissed.

*Ryan Cowley*

INSPECTOR