



Appeal Decision

Site visit made on 20 December 2022

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th January 2023

Appeal Ref: APP/N5090/W/22/3300233

7-9 St Edwards Court, Finchley Road, London NW11 7NB

- 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 Acestar Consultants Ltd against the decision of the Council of the London Borough of Barnet.
 - The application Ref 22/1702/PNV, dated 25 March 2022, was refused by notice dated 12 May 2022.
 - The development proposed is additional storey at third floor level to provide 1no self-contained dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Class A of Schedule 2, Part 20 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO') contains a permitted development right for the construction of up to two additional storeys of new dwellinghouses immediately above the existing topmost residential storey on a purpose-built, detached block of flats, as well as certain associated works. This right is subject to limitations which are specified at paragraph A.1, and conditions which are set out at paragraph A.2. The conditions establish a requirement for developers to apply to the local planning authority for a determination as to whether prior approval will be required in relation to a number of specified prior approval matters.
3. In determining such an application, the local planning authority are required to take into account any representations made to them as a result of consultation, and to have regard to the National Planning Policy Framework ('the Framework'), so far as relevant to the subject matter of the prior approval, as if the application were a planning application. I have considered the appeal on the same basis.

Main Issue

4. The main issue is whether or not prior approval should be granted having regard to the external appearance of the building.

Reasons

5. The appeal site includes a detached three-storey building which is positioned within a run of buildings along Finchley Road between the St Edward the

Confessor Roman Catholic Church ('the Church'), and the junction with St Edwards Close which runs to the rear of the site. These buildings are of varied form and appearance with a wide range of architectural styles and materials, and include a mix of two and three-storey buildings, but are nevertheless of broadly similar maximum height which gives the group a fairly consistent roofline and a sense of cohesion overall. The Church is of much more substantial scale, but together with its distinctive Gothic style architecture and detailing, this gives the building a clearly different character, and it forms a landmark feature in the street scene.

6. The GPDO does not stipulate what assessment of the prior approval matter of the 'external appearance of the building' should entail. The appellant suggests that reference to prevailing building heights should not form any part of the determination of the prior approval, contending that the permitted development right expressly allows the construction of additional storeys on top of an existing detached block of flats, regardless of consistency with the height of neighbouring buildings. However, the GPDO does not specify that assessment should be limited only to the building itself, nor that it should not take into account the height of the building.
7. Furthermore, both main parties refer to the judgement in the case of *Cab Housing Ltd v SSLUHC* [2022] EWHC 208 (Admin) as providing further guidance on the scope of assessment. Of relevance to the current appeal, the judgement confirmed that the control of external appearance is not limited to impact on the subject property itself, but also includes impact on neighbouring premises and the locality. This judgement post-dates a number of appeal decisions cited by the appellant in support of their view that prevailing building heights should not be a consideration, and while I note that permission has been granted for the judgement to go before the Court of Appeal, it represents the position at the current time.
8. In this case, the appeal building has close visual relationships with its neighbours which are apparent in the street scenes of both Finchley Road and St Edwards Close. Given these relationships, I consider that the external appearance of the development could not in this case reasonably be considered in isolation from its surroundings.
9. The proposed additional storey to the appeal building would be constructed in line with the floors beneath. The arrangement and proportions of the fenestration, the external materials and the flat roof design would also all be consistent with the host building such that I agree with the appellant that the development would appear as a continuation of the lower storeys. However, the existing building is of fairly modest depth and overall footprint. Against these proportions, the greater height of the development would give the building a much greater vertical emphasis, and would in my judgement cause it to appear somewhat unbalanced. While it would be of like design, I find that the development would therefore adversely affect the appearance of the building, albeit that I consider the detriment would be slight.
10. In addition, the development would increase the height of the appeal building relative to the neighbours to either side and the others up to the junction with St Edwards Close. I acknowledge that these neighbours have pitched roofs with some ridges that are taller than the appeal building, but the difference is relatively slight. The proposal would result in a much more pronounced height

difference, and even if not by a full storey, it would sit notably above the rooflines of its neighbours. The flat roof design to the entirety of the extension would also add considerably greater bulk to this highest part of the building in comparison to the sloping roofs of the others in this group, including 706 Finchley Road which has a large flat roof dormer, but only to the rear.

11. I acknowledge that there is variety in the height of buildings within the wider Finchley Road street scene. Nevertheless, there is greater consistency in the vicinity of the appeal site where the generally more modest height and scale of the buildings results in a fairly suburban character which contrasts with development towards the higher density centres of Temple Fortune or Golders Green. The Church is taller, but as I have already identified, it is a landmark of notably different character to the surrounding buildings. The appellant has referred to residential blocks opposite the site which they say are markedly higher, but this does not seem to me to be consistent with the two-storey semi-detached buildings that I saw across from the site. I did note some residential blocks at Wohl Lodge and 983 Finchley Road, but while these are of large overall scale, they did not appear to me to be of significantly greater height than other buildings nearby. Moreover, they are located to the opposite side of the road, and do not form part of the immediate context of the appeal site. Similarly, 698 Finchley Road which is beyond the Church is of different orientation to the appeal building, and is seen in the context of its prominent position on the crossroad junction of Finchley Road with Hoop Lane.
12. Despite some variation in the height of development along Finchley Road, I find that the greater height and upper bulk of the appeal building when seen in amongst the group of fairly consistent height between the Church and St Edwards Close would be striking. The contrast in such close proximity to its neighbours would cause the building to appear unduly prominent and incongruous in this street scene. Seen from St Edwards Close where most of the buildings are of more modest two-storey scale, and there is less diversity in overall height than in the wider Finchley Road street scene, the development would be even more conspicuous and visually jarring. Irrespective of the mixed character of the area, I cannot therefore agree with the appellant that the external appearance of the development would sit comfortably on the site.
13. The Framework includes an objective to significantly boost the supply of housing, and encourages upward extensions of premises for housing. However, the Framework qualifies this by indicating that such extensions should be well-designed and consistent with the prevailing height and form of neighbouring properties and the overall street scene. Similarly, while it advises that innovation or change such as increased densities should not be prevented or discouraged, this is dependent on the innovation or change being 'appropriate'. For the reasons above, the proposal would not achieve those aims.
14. Furthermore, the Church is a Grade II listed building. In my view, the significance of the Church depends in part on its setting, with its position amongst buildings of typically more modest scale and height affording it prominence and a degree of status that reflect its communal role and purpose. The lower height of the surrounding development also allows views of the building, including of the Church tower with its distinctive arched windows, chequered parapets with crenellations and octagonal turrets which I saw are appreciable above the roofline of the appeal building and the adjacent

Presbytery in views on the approach from Finchley Road from a point approximately around the junction of Ravenscroft Avenue, as well as from the closest part of Ravenscroft Avenue. These views enable an appreciation of the architecture and aesthetic interest of the building, further contributing to its significance.

15. I acknowledge that the Church sits forward of the appeal building, but from my observations at my visit, the greater height and bulk of the development in such close proximity would be a conspicuous element in the foreground of views on the approach from Temple Fortune, and it would at least partly obscure the existing views towards the Church and particularly its tower. In my assessment, the height of the development would compete with the listed building resulting in an uncomfortable visual relationship, and whether or not these are designated as 'protected views', the proposal would diminish the ability to fully appreciate the Church. Although statutory duties relating to the listed building would not be engaged, the Framework sets out that great weight should be given to the conservation of heritage assets. I find for the above reasons that the external appearance of the development would not conserve the significance of the Church that derives from its setting, albeit that the harm would be less than substantial.
16. The appellant comments that an increase in height is an inevitable consequence of implementing the permitted development right under Class A. Nevertheless, the right is subject to prior approval procedures, and to my mind does not therefore establish that such development would inevitably always be acceptable. Instead, height is a factor of the external appearance of the building which will need to be considered having regard to the particular circumstances of a proposal, and which will require a judgement to be made. That is what I have done here. Similarly, the development permitted under Class A is 'up to' two additional stories. The fact that prior approval could potentially have been sought for development of greater height, is not in my view compelling evidence demonstrating that the single storey applied for would result in an acceptable external appearance.
17. In this case, I find for the reasons above that the proposal would harm the external appearance of the building. Within the context of the permitted development right at Class A, it would therefore be contrary to the Framework insofar as it seeks good design that improves the character and quality of an area, development that is visually attractive and sympathetic to local character, and the conservation of heritage assets. I therefore conclude that the external appearance of the building would be unacceptable.
18. The Council has referred to Policies D3 and HC1 of the London Plan 2021, Policy CS5 of the Core Strategy 2012 and Policies DM01 and DM06 of the Development Management Policies Development Plan Document 2012. The prior approval provisions do not require regard to be had to the development plan. Insofar as they are material to the prior approval matter though, the proposal would also be contrary to requirements within these policies broadly seeking high-quality design; development that respects and responds positively to local context and character including with regard to the appearance, scale, mass and height of surrounding buildings; and that the significance of heritage assets is conserved. This further supports my conclusion that the external appearance of the development would be unacceptable.

Other Matters

19. The Council's statement includes comments that the existing building has a shallow pitched roof, and suggests that there would be a new and steeper roof form to the development. These comments do not reflect the existing and proposed flat roof form to the appeal building. However, the inconsistencies do not alter my assessment of the proposal, nor my conclusions above.
20. The proposal would add one dwelling to the housing supply locally. This would accord with objectives in the Framework and in the development plan highlighted by the appellant seeking to significantly boost the supply of homes and make effective use of land, and I have no firm reason to doubt that the quality of the accommodation would be suitably high. However, this benefit of the proposal does not alter my conclusion that the external appearance of the building would be unacceptable.

Conclusion

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

J Bowyer

INSPECTOR