



Appeal Decision

Site visit made on 18 January 2023

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 February 2023

Appeal Ref: APP/N1540/W/21/3284423

1-36 Amberry Court, Harlow, CM20 2PX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Can Prop Ltd against the decision of Harlow District Council.
 - The application Ref HW/PANDBF/20/00605, dated 4 December 2020, was refused by notice dated 9 April 2021.
 - The development proposed is additional 2 storeys on each of the three existing blocks to create 30 new flats. 20 x 1 bed studios, 5 x 2 bed flats, 5 x 3 bed flats. New external render applied to each block in its entirety.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Class A of Part 20 of the Order contains a permitted development right for new dwellinghouses on detached blocks of flats subject to several restrictions and conditions.
3. The Council maintains that cycle stores would be situated on land forward of a wall forming the principal elevation of the existing buildings and so would not comply with criterion A.1(n)(ii). However, drawing SO-793-05 Rev C was submitted prior to the determination of the application. This deletes the cycle stores. Therefore, none of the limitations in paragraph A.1 apply and the permitted development right is not prevented for this reason.
4. Development is permitted subject to the condition that application is made for prior approval as to, amongst other things, the external appearance of the building; the transport and highways impacts of the development; the provision of adequate natural light to all habitable rooms and the impact on the amenity of existing buildings and neighbouring premises. The Planning Practice Guidance (ID: 13-122-20210820) indicates that the prior approval process will enable consideration of these issues, so that the development does not significantly affect the neighbourhood.
5. In prior approval cases there is no requirement to have regard to the development plan as there would be for any development requiring planning permission. Nevertheless, the policies referred to in the Harlow Local Development Plan and the Harlow Design Guide Supplementary Planning Document are material considerations. In determining an application, the local planning authority must take any representations made into account. It must also have regard to the National Planning Policy Framework so far as relevant

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

6. A planning application for 54 car parking spaces, 30 cycle spaces, a new playground area and associated landscaping is the subject of another appeal (Ref: APP/N1540/W/21/3287500). Whilst both appeals have been considered separately the potential for further works to be undertaken at Amberry Court is a material consideration.
7. As part of the appeal, the appellant has submitted revised elevations and drawing SO-793-14 which is an amended site plan including parking areas and cycle stores. Whether these should be considered as part of the appeal will be dealt with under the relevant issues.

Main Issues

8. These are:
 - The effect of the proposed development on the external appearance of the building;
 - The transport and highways impacts of the proposed development with reference to parking;
 - Whether the provision of natural light to habitable rooms would be adequate;
 - The impact on the amenity of existing buildings and neighbouring premises at Amberry Court with particular reference to overlooking, privacy and light.

Reasons

External appearance of the building

9. Amberry Court comprises three 3-storey blocks containing a total of 36 flats. The buildings date from the 1960s and are finished in a mixture of brick and render. The original proposal was for the additional storeys to be entirely rendered. Five new stair towers would be finished in a contrasting grey render. Although not part of the development for which prior approval is required, these plans also show the remainder of the building to be rendered. The resulting appearance would be bland and monotone and the solidity provided by the brick end sections and base would be lost.
10. The plans submitted with the appeal show that the extensions would continue the brick surrounds upwards thereby maintaining the current pleasing mixture of materials. The brickwork is also shown to be retained on the lower floors. All parties have had an opportunity to respond to these revisions and therefore no prejudice is caused in considering them as part of the appeal.
11. Consequently the proposal would harmonise visually with the existing blocks and the stair towers would add some articulation. It is also legitimate to consider the external appearance of the building within the context of its surroundings. In this respect, the proportions of Amberry Court would be improved as these would be more balanced than the vertical emphasis of the present elevations. Furthermore, the buildings would not look out of place given the height and style of other development in the vicinity.

12. Therefore the effect of the proposed development on the external appearance of the building would be satisfactory.

Transport and highway impacts

13. There is no allocated parking at Amberry Court but there are 14 unallocated spaces to serve the 36 existing flats. The 15 garages in the north-east corner have been sold off previously. Photographs show that the grassed areas have been used for parking despite the crash barriers erected. However, this was not taking place when I visited and there were no obvious signs of recent occurrences. Nevertheless, there is clear evidence that the paucity of parking provision is a real issue for current residents.
14. The original application did not show an increase in on-site parking. The extra flats would inevitably compound the existing difficulties and encourage indiscriminate overspill parking within the site as well as potentially adding to the pressure on street parking nearby. In this regard, First Avenue is a busy arterial route and there are parking restrictions along Park Lane. The lack of parking would be so significant that residents may be tempted to park illegally in the short-term which would be potentially dangerous. Whilst Regulations can be imposed and enforced, the position would be so bad that future residents would have little choice but to flout them from time-to-time.
15. Based on data from the 2011 census, the car ownership ratio per flat in this area is 0.61. Whilst this information is now somewhat dated, it has not been disputed by the Council and no alternative figure is put forward. Applying this ratio to the existing and proposed flats would equate to a need for 40 spaces plus visitors. This gives a reasonable indication of the shortfall in provision that would occur and the consequent adverse implications.
16. Drawing SO-793-14 submitted with the appeal includes parking areas and is intended to address this issue. However, such additional works and operations are outside of the development described in Class A.(a)–(d) which is covered by the permitted development right. Moreover, this plan represents a significant departure from the application and raises different issues so that it should not be considered as part of this appeal.
17. The appellant anticipates that the parking spaces included in the planning appeal would provide a solution and suggests that the provision of that facility could be linked to the prior approval appeal by condition or by a unilateral undertaking. However, that development has been found to be unacceptable. Therefore, that scheme does overcome the serious parking related issues that would arise from the provision of an extra 30 flats.
18. Paragraph 111 of the Framework establishes that development should only be prevented if there would be an unacceptable impact on highway safety. In the light of the above that would be the case here. Therefore the transport and highways impacts of the proposed development would not be acceptable.

Natural light to habitable rooms

19. The appellant has provided an internal illuminance analysis for the proposed flats. The BRE Guide was comprehensively revised in 2022 and the Average Daylight Factor test has been removed. Nevertheless, this is the only available technical analysis. It shows that some bedrooms and studio flats would be

below the recommended standards, although only marginally so. This is because of the position of the windows in relation to the proposed stair towers.

20. The Framework advocates a flexible approach in applying guidance relating to daylight and sunlight where they would otherwise inhibit making an efficient use of a site. This is provided that the resulting scheme would provide acceptable living standards. In this case, the studios would be lit by multiple windows and all habitable spaces would receive sunlight for at least part of the day. The expectations for natural light in a bedroom are less than for main living areas. Given this and the limited deficiency arising from the calculations undertaken, internal lighting would not be sub-standard.
21. Therefore the provision of natural light to the habitable rooms of the proposed dwellings would be adequate.

Amenity of existing buildings and neighbouring premises

22. The appellant's daylight and sunlight analysis considers the impact on existing flats at Amberry Court based on an overcast sky. For a number of windows the reduction in daylight would be discernible to the human eye and the vertical sky component would be less than 0.8 of its previous value. This is due to the proximity of these windows to the projecting stair towers. The appellant claims that there would be no effect on daylight distribution to the existing occupiers within Block 2 but it is not clear which rooms were being assessed in order to make that finding.
23. Indeed, there is no information about the function of the existing rooms on either side of the proposed staircases or the layout of the affected flats in any of the blocks. The towers would extend out a considerable distance and would be readily apparent in views through the windows as confirmed by the appellant's Waldram diagrams. Consequently, based on the information provided, the proposal would have an adverse effect on the living conditions of the existing occupiers at Amberry Court.
24. Existing upper floor windows afford views across to other units at the site. As a result further fenestration would not lead to overlooking or loss of privacy, including to those flats which have balconies. Nevertheless, although the effect on sunlight has been shown to be limited, the amenity of existing buildings would be prejudiced due to the loss of daylight that would occur.
25. The flats at 37-44 Amberry Court lies outside the appeal site to the west. Although the front and rear facing windows would not be significantly affected by the proposed extension to Block 2 because of their orientation, there are flank windows that would directly face it. There is evidence that the proposal would foul the 25 degree preliminary test line taken from the centre of the adjacent ground floor window by a considerable amount. This and other windows in the side of this block are said to serve habitable rooms.
26. There would therefore be a reduction of daylight and sunlight internally. In these circumstances, the expectation is that a more detailed assessment is made but the appellant's analysis does not include this façade. It is not known whether the windows in question are secondary or the function of the rooms that they serve. However, taking a precautionary approach and due to the height of the resulting building and its juxtaposition with these windows, the consequences would be unsatisfactory.

27. Therefore the impact on the amenity of neighbouring premises at 37-44 Amberry Court would be unacceptable with reference to the loss of light to the side windows that would ensue.

Other Matters

28. The flats would usefully add to housing supply in Harlow and would be well located in relation to the town centre. The appellant indicates that the construction of the additional flats would assist in funding much-needed repairs to Amberry Court. These works would be beneficial in their own right. They would also help defray the costs that would otherwise be passed on to existing residents as service charges. It is also stated that adding a single floor would not be viable. However, none of these matters can be taken into account as part of the prior approval process.
29. Some residents are in favour of the scheme and the associated upgrading of the site. Others raise objections about matters such as the structural ability of the buildings to support extra floors, fire safety concerns, disabled access arrangements and the provision of services. However, these cannot be considered through the prior approval process. The proposal does not include development that might lead to a risk of flooding or any external lighting.

Conclusion

30. Having regard to the reasons given above, prior approval should not be granted and the appeal should be dismissed.

David Smith

INSPECTOR