



Appeal Decision

Site visit made on 23 January 2023

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 February 2023

Appeal Ref: APP/E5330/W/22/3297798

141-147 Swingate Lane, London SE18 2BZ

- 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 AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Kultar Vagha of Platinum Gold Homes against the decision of the Council of the Royal Borough of Greenwich.
 - The application Ref 21/3258/PN5, dated 6 September 2021, was refused by notice dated 1 November 2021.
 - The development proposed is the construction of 2 additional storeys to provide 8 new dwellinghouses (8 x 1 bed) with ancillary refuse and cycle storage within the existing outbuildings to the rear of the property.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have amended the description of development from the application form to remove superfluous words, in the banner heading above.
3. At Section F of their appeal form the appellant has indicated that the appeal is against a refusal of planning permission by the Council. This is manifestly incorrect; the appeal is against the refusal of the prior approval of permitted development rights. Also on their appeal form, the appellant has not used the Council's application reference number, listed on the Decision Notice refusing Prior Approval. I have used the Council's reference number in the banner heading above.
4. When I visited the appeal site at the arranged time there was no one there to provide me with access to the rear of the building. The appellant subsequently advised that their representative was delayed by a traffic accident.
5. I viewed the appeal site from publicly accessible land and sought the views of both main parties as to whether they considered access to the rear was essential for me to determine the appeal. I have had regard to the responses of the parties and I am satisfied that in this case my observations from public land are sufficient.

Main Issue

6. The main issue is whether the proposal is permitted development under Schedule 2, Part 20, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).

Reasons

7. The proposed development would entail the construction of two additional storeys onto an existing building, which contains retail and similar High Street uses facing onto Swingate Lane.
8. Paragraph AA.1.(a) of Schedule 2, Part 20, Class AA of the GPDO states that 'Development is not permitted by Class AA if above ground level, the building is less than three storeys in height.'
9. The terrain of the area means the ground level is significantly lower at the rear of the building, than it is at the front by Swingate Lane. Article 2(2) of the GPDO states that '...any reference in this Order to the height of a building...is to be construed as a reference to its height when measured from ground level; and for the purposes of this paragraph "ground level" means the level of the surface of the ground immediately adjacent to the building...in question or, where the level of the surface of the ground on which it is situated...is not uniform, the level of the highest part of the surface of the ground adjacent to it.'
10. It is clear that Article 2(2) is engaged in Paragraph AA.1.(a) by the reference to the height of the building. Consequently, the ground level in this case is taken to be at the front of the building, by Swingate Lane, which is manifestly higher than the level to the rear.
11. Furthermore, Paragraph C.(2)(a) and (b) of Schedule 2, Part 20, Class A of the GPDO states that 'In Part 20 references to a "storey" do not include any storey below ground level; or any accommodation within the roof of a building'.
12. The submitted drawings include the *existing ground floor plan*¹, which shows pedestrian access to and from Swingate Lane, and the *existing lower ground floor plan*², which is manifestly beneath it; this situation is also clearly evident from the various elevation drawings, some of which include annotations of the ground floor level.
13. With reference to the GPDO and the submitted drawings, it is clear that above ground level, the appeal building is less than three storeys in height. For these reasons, the proposed development would not be permitted under Schedule 2, Part 20, Class AA of the GPDO.

Other Matters

14. As the proposal is not permitted development there is no need for me to consider the Council's other reasons for refusal. Even if I found the other reasons for refusal to be acceptable – and I make no comment in this regard – this would not allow prior approval to be granted because the proposal is not permitted development under the GPDO.

Conclusion

15. For the reasons given above, and taking into account all relevant matters, I conclude the appeal is dismissed.

Andrew Parkin

INSPECTOR

¹ Ref. 3319 / P / 303

² Ref. 3319 / P / 302