



Appeal Decision

Site visit made on 10 January 2022

by John Gunn DipTP, DipDBE, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 February 2023

Appeal Ref: APP/N5090/W/22/3300100

Sharon Court, 14 Alexandra Grove, London N12 8NX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under 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 Geoffrey Gay, 89 to 95 Elgin Avenue Ltd against the decision of the London Borough of Barnet.
 - The application Ref 22/1123/PNV, dated 28 February 2022, was refused by notice dated 22 April 2022.
 - The development proposed is described on the application form as 'The construction of an additional storey at 3rd floor level comprising 1no self-contained 2 bedroom flat and 1no self-contained studio flat'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) permits development consisting of the construction of up to two additional storeys of new dwellinghouses immediately above the topmost storey on a building which is a purpose-built, detached block of flats. The Council have concluded that the appeal scheme meets the criteria in Paragraph A.1 of the GPDO. I have no reason to disagree. That said, development under Class A is permitted subject to conditions that the developer must apply to the Local Planning Authority for prior approval as to, amongst other matters, the external appearance of the building and the impact on the amenity of the existing building and neighbouring premises.
3. In making my assessment of the merits of the proposal I have taken into account the judgement made in the High Court¹ regarding the interpretation of Class AA of Part 1 of the GPDO. This judgement, although specifically relating to development under Part 1 Class AA, indicates that a wider interpretation of external appearance could be used in the assessment of Prior Approval applications under Part 20. In particular it indicates that control of the external appearance is not limited to the impact on the subject property itself, but also includes impacts on neighbouring premises and the locality. In this regard I note that previous appeal decisions² relating to the property predated the

¹ GPDO Class AA and "External Appearance": CAB Housing Ltd, Beis Noeh Ltd & Mati Rotenberg v SSLUHC [2022] EWHC 208 (Admin)

² APP/N5090/W/21/3278632 and APP/N5090/W/21/3278639

judgement and took a narrow assessment as to the external appearance of the proposal itself, including the design and architectural features, rather than its effect on the wider area.

4. The Council, in their decision notice, refer to the 2019 National Planning Policy Framework (the Framework). This was superseded in 2021. I will refer to the 2021 version of the Framework in my assessment.

Main Issue

5. The main issue in this appeal is whether prior approval should be granted having regard to the external appearance of the building and the impact of the proposal on the amenity of 16 Alexandra Grove.

Reasons

External appearance

6. The appeal property is a relatively modern three storey building containing 9 flats located close to the junction of Alexandra Grove and Thyra Grove. It is situated in an established residential area characterised predominantly by traditional two storey semi-detached properties constructed using a limited pallet of materials, albeit Lydia Court, which occupies an adjoining site, has similar characteristics to the appeal property. The properties are typically set a modest distance back from the road and have landscaped front gardens, some incorporating off street parking facilities.
7. The appeal proposal would be visible forward of, and above the roof of, 16 Alexandra Grove when viewed from the north west. As a result of its design and form it would contrast markedly with No 16 in terms of its height and as a result would appear as a significant and discordant addition to the streetscene. Moreover, it would appear as a prominent and incongruous feature when viewed from the junction of Alexandra Grove and Thyra Grove, introducing a development that would be inconsistent in height when compared with other properties within the street.
8. The proposal would introduce an additional storey, set in from the front and side elevations. The walls would be constructed using standing seam zinc and incorporate architectural detailing similar to the floors beneath it. Notwithstanding the introduction of a new material the proposed development would respect the design and architectural features of the existing elevations and the character and form of the building when viewed in isolation. However, this is a neutral matter and does not outweigh the significant harm to the appearance of the area that I have identified above.
9. The presence of existing trees at the front of the appeal site would soften the appearance of the proposal when viewed from Alexandra Grove and the surrounding area, but they would not hide or extinguish the impact. Moreover, there is no certainty that the trees would be retained in the long term.
10. The appellant has drawn my attention to decisions made by the Council with regards to developments at Tokyngton Court and Paul Court. These decisions were made on 3 December 2020 and 28 May 2021 respectively, and consequently predate the High Court judgement referred to above. Accordingly, whilst the developments may have some similarities to the appeal proposals, I am not persuaded that the circumstances under which the decisions were made

are comparable with the scheme before me. In any event, every appeal must be considered on its own merits, as I have done. As such, I have given these examples limited weight in coming to my decision.

11. I acknowledge that the cases referred to in the High Court judgement related to developments that were different in terms of context and design. That said, the judgement related primarily to the interpretation of external appearance and was intended to clarify the broad approach that should be adopted in the determination of prior approval cases. Consequently, I have considered the appeal scheme with that in mind.
12. I accept that one of the purposes of the GPDO is to enable the building of more homes, including by the use of airspace above existing developments, however this must be balanced against other environmental factors. I also accept that it is to be expected that there will be some variation in both height and design of individual buildings, however given the particular circumstances of the case before me, and when taken in the context of other properties in the locality, I find that the proposal would significantly harm the character and appearance of the area.
13. Accordingly, on this main issue, I find the proposal would not be acceptable in terms of its external appearance. As a result, it would not accord with Part 20, paragraph A.2 (1)(e) of the GPDO, and insofar as it is relevant to the subject matter of the prior approval, would conflict with the objectives of paragraphs 120 e) and 130 of the National Planning Policy Framework 2021. These policies, amongst other things, support upward extensions where the development would be consistent with the prevailing height and form of neighbouring properties and the overall street scene, and seek high quality, beautiful and sustainable buildings that add to the overall quality of the area.

Amenity of neighbouring premises

14. 16 Alexandra Grove is a two storey dwelling that has been extended to the rear and has a common boundary with Sharon Court. It sits at an angle to the appeal property and has a long rear garden. Given the proximity and the orientation of the properties there is already a degree of mutual overlooking, from the upper floors of the respective properties.
15. The additional storey would be set in from the rear wall of Sharon Court by a short distance. Terraces, accessible from the proposed flats would be set in from the rear wall, and the side wall adjacent to No 16, and would be enclosed by a 1.7m high obscure glass balustrade. A window serving the kitchen part of the living room would be located within the rear wall with obscure glass below 1.7m. There would be a direct line of sight between the proposed terraces, and the 'kitchen' window, and the garden that lies to the rear of No 16. The northern end of the garden to No 16 would lie a considerable distance from the proposed development, and any actual overlooking would be considerably reduced by the use of obscure glazing as proposed. Moreover, in built up areas it would be expected that some overlooking of garden space would occur. Accordingly, the occupiers of No 16 would not be subjected to a significant or unacceptable loss of privacy in their garden space.
16. Furthermore, given the set back of the proposal from the rear wall of Sharon Court, its relationship with No 16, and having particular regard to the absence

of habitable opening in its south east flank elevation, I find that the additional storey would not have an overbearing impact on the occupiers of the property.

17. I have had regard to the policies of the development plan in so far as they are material to this main issue. In light of the above, I find that the proposal would not conflict with Policy DM01 of Barnet's Development Management Policies Document which, amongst other things, seeks developments that allow for adequate daylight, sunlight, privacy and outlook for adjoining and potential occupiers and users. There would also be no conflict with the guidance contained within Barnet's Residential Design Guidance Supplementary Planning Document which, amongst other things, seeks design solutions through layout of habitable rooms, window placement and building orientation to address privacy and overlooking issues.
18. Accordingly, on this main issue, I conclude that the proposal would not adversely affect the amenity of No 16. This would accord with Part 20, paragraph A.2 (1)(g) of the GPDO, and insofar as it is relevant to the subject matter of the prior approval, would not conflict with the objectives of paragraph 130 f) of the National Planning Policy Framework, which amongst other things, seeks to create places with a high standard of amenity for existing and future users.

Other Matters

19. I accept that the proposed flats would benefit from good levels of natural light to habitable rooms. Furthermore, I note that the daylight analysis indicates that habitable spaces within Lydia court would exceed Building Research Establishment criteria and No 16 would retain 100% of the existing sunlight exposure if the proposal was to be allowed. From what I have seen and read I do not disagree with the Council's view on these matters. However, they are neutral matters in my consideration.
20. I note that representations were made by local residents raising other issues. However, given my findings, it is not necessary to consider these matters in detail.

Conclusion

21. For the reasons given above, the appeal is dismissed.

John Gunn

INSPECTOR