



Appeal Decision

Site visit made on 22 November 2022

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 March 2023

Appeal Ref: APP/G5180/W/21/3286208

Clarendon House, Anerley Road, London SE20 8BA

- 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 Mihai Schiop against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/21/02698/NDFLAT, dated 18 June 2021, was refused by notice dated 9 August 2021.
 - The development proposed is a two-storey upward extension to create 2 new flats.
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Schedule 2, Part 20, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the GPDO") for a two-storey upward extension to create 2 new flats at Clarendon House, Anerley Road, London SE20 8BA in accordance with the terms of the application, Ref DC/21/02698/NDFLAT, dated 18 June 2021, and the plans submitted with it, subject to the conditions set out in Paragraph A.2 of Schedule 2, Part 20, Class A of the GPDO and the following additional conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans and supporting information:
 - Drawing A1-01 – Existing building and location
 - Drawing A1-02 – Proposed Visual Finishes
 - Drawing A1-04 – Proposed floor layouts
 - Permitted Development Proposal (MH Qualters & Associates, dated 16 June 2021)
 - 2) The materials to be used in the construction of the external surfaces of the development hereby permitted shall be as specified in Drawing A1-02 – Proposed Visual Finishes.
 - 3) Notwithstanding the detail shown on the approved drawings, the additional flats hereby permitted shall not be first occupied until full details of the privacy screens to the roof terrace depicted upon approved drawing A1-02 have been submitted to and approved in writing by the Local Planning Authority. The privacy screens shall be installed in

accordance with the approved details prior to the first occupation of the development and shall be maintained and retained in the approved form thereafter.

Procedural and Preliminary Matters

2. The original application was submitted with the appellant's name given as Mr Micheal [sic] Schiop. On the appeal form and other appeal submissions it was given as Mr Mihai Schiop, and I have used that version of the name in the banner heading above.
3. The description of development in the banner heading and my formal decision is based on that used on the appeal form (and the Council's decision notice before that), although I have omitted text relating to the site address, the relevant part of the GPDO and the prior approval matters, which was not descriptive of the scheme. I have used it in preference to the wording used on the prior approval application form as it provides a more concise description of the proposal.
4. Schedule 2, Part 20, Class A of the GPDO permits development consisting of works 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, as well as certain associated works. While the principle of development is established by the provisions of the GPDO, it is subject to limitations and is contingent upon the grant of prior approval for a specific proposal.
5. The Council was satisfied that the proposed development complied with the limitations set out in Paragraph A.1. Among the conditions set out in Paragraph A.2 is the requirement to seek prior approval of various matters including, of greatest relevance in this appeal, the external appearance of the building, and the impact on the amenity of the existing building and neighbouring premises including overlooking, privacy and the loss of light.
6. Schedule 2, Part 20, Paragraph B.(15)(b) of the GPDO requires the prior approval application to be determined with regard to the National Planning Policy Framework ("the Framework"). The provisions of the GPDO do *not* require regard be had to the development plan in this case. I have therefore had regard to the policies of the development plan to which the Council referred only insofar as they are material to the matters for which prior approval is sought.

Main Issues

7. Having taken account of the reasons for which the Council refused to grant prior approval, and all the other evidence before me (including submissions made by interested parties), I consider the main issues to be whether or not prior approval should be granted having particular regard to:
 - The external appearance of the building; and
 - The amenity of neighbouring premises including overlooking and privacy, and loss of light.

Reasons

External appearance

8. Clarendon House is a three-storey residential block dating from the 1950s; it contains six flats, two on each floor. It is on a corner site at the junction of Anerley Road and Madeline Road, and the surrounding area is primarily residential. The proposed development would see two additional storeys added to the top of the existing building to provide a further two flats: a four-bedroom, six-person maisonette across the new third and fourth floors, and a one-bedroom, one person flat on the fourth floor.
9. The proposed third floor would be aligned with the building below, and finished in facing brickwork with inset rendered panels on the Anerley Road frontage to match the existing building. The proposed fourth (top) floor would be set back from the floors below, and the surrounding space bordered by a glazed balustrade to form a rooftop terrace; the fourth floor would have angled side elevations and a shallow-pitched roof clad in grey slate-effect tiles giving it what the appellant describes as a “mansard style” appearance. While the proposed top storey would alter the flat-roofed appearance of the building, overall I find that the materials, vertical rhythm, fenestration and storey heights would be sympathetic to what is already there.
10. I am therefore satisfied that the proposed development would be appropriately assimilated with the host building. The Council appears to agree; in its appeal statement it commented that its concern “is less about the external appearance of the building in isolation, but [...] the additional height making the resultant building appear as a dominant and intrusive feature in the street scene”.
11. The appellant objected to the Council’s interpretation of the GPDO’s requirement to assess the external appearance of the building, and argued that the impact on the wider area was not a relevant consideration. My attention was drawn to caselaw and other appeal decisions in this respect. For its part, the Council drew my attention to the judgment of the High Court in *CAB Housing*¹, which confirmed that consideration is not necessarily limited to the effect of the proposal on the external appearance of the host building alone but can also include the effect on the wider area. The High Court’s judgment was recently upheld in the Court of Appeal².
12. The area immediately surrounding the appeal site is mainly characterised by buildings of two or three storeys. Nos 1 and 3 Madeline Road are a pair of two-storey semi-detached houses with a traditional pitched gable roof, adjoining the south-west side of the appeal site. South-east of the appeal site a modern two-storey cluster house with a high and distinctive pitched roof contains four dwellings, Nos 166, 166A, 168 and 168A Anerley Road. Other buildings on this part of Anerley Road are mostly two or three storeys high (with the occasional four-storey building), though even then there is some variety in height, bulk and massing; because of their steeply pitched roofs, generally greater floor to ceiling heights and, in some cases, raised ground floors, many of the three-storey (plus basement) Victorian buildings are taller and have considerably greater “street presence” than more modern four-storey buildings.

¹ *CAB Housing Ltd, Beis Noeh Ltd & Mati Rotenberg v SSLUHC and others* [2022] EWHC 208 (Admin)

² *CAB Housing Ltd v SSLUHC and Broxbourne Borough Council* [2023] EWCA Civ 194 – as this judgment did not alter the earlier decision of the High Court it was not necessary for me to seek further comments from the main parties on this point.

13. To the north-east of the appeal site, across Madeline Road and facing Anerley Road, is Brooklyn House, a large eight- and nine-storey block of 52 flats with an H-shaped footprint. While the height and scale of Brooklyn House may make it something of an outlier on this part of Anerley Road, it nevertheless forms a significant part of the setting of the appeal site.
14. Other relatively tall buildings nearby which I saw on my site visit included Scholars Court at the south-west end of Madeline Road, which has three- and four-storey (plus loft level) blocks of flats, as well as the four- to six-storey Apple Yard development off William Booth Road to which the appellant drew my attention. Although it is not far away “as the crow flies”, the Apple Yard scheme is several minutes’ walk from the appeal site and does not form part of its immediate setting; all the same, it helps to illustrate the diversity of built form – and the height of buildings – within the neighbourhood.
15. For the reasons I have set out in paragraph 9 I find that the appearance of the appeal property would not be unacceptable when considered in isolation. While the proposed development would make the appeal property notably taller than its immediate neighbours, 1-3 Madeline Road and 166/A-168/A Anerley Road, for the reasons set out in paragraphs 12 to 14 I consider that it would not be dramatically at odds with the locality more generally. I therefore also find that the appearance would be acceptable in the context of the wider surroundings.
16. I conclude on this main issue that the external appearance of the building would be acceptable, and would not result in harm within the context of Schedule 2, Part 20, Class A, Paragraph A.2(1)(e) of the GPDO. I also find that there would be no conflict with Policies 4 and 37 of the 2019 Bromley Local Plan (“the BLP”), which are of material relevance in that they seek to ensure that development, including housing development, is well-designed and respects the character and context of the surrounding area.

Amenity of neighbouring premises

17. The Clarendon House building is located towards the corner of its plot, close to the boundary with the rear gardens of No 1 Madeline Road and No 166 Anerley Road. There would be likely to be some increase in possible overlooking of the gardens from windows on the additional two storeys proposed. However, on the third floor the main living rooms would be towards the Anerley Road end of the building rather than the neighbouring properties, while on the fourth floor the distance by which the windows would be set back from the edge of the building would limit direct overlooking. In my view this means that any loss of privacy would not be so great that it would cause significant harm to neighbours, given the context of an urban area with a range of closely-set buildings of various heights as I have previously described.
18. The use of the rooftop area as an external terrace would also increase the potential for overlooking of the same neighbouring gardens. I agree with the appellant that a privacy screen at the corner of the south-west- and south-east-facing sides of the balcony area would prevent direct overlooking of the gardens of No 1 and No 166 from the roof terrace. Although such screening was referred to within the prior approval application and shown on some of the plans, the submitted drawings do not provide sufficient detail about the siting and form of the screens to provide certainty that they would do the job for which they are intended. However, this is a matter which I am satisfied can be addressed by use of an appropriately worded condition.

19. The upwards extension of Clarendon House would increase the mass and height of building on the appeal site. Again, this would be close to the neighbouring rear gardens of No 1 Madeline Road and No 166 Anerley Road. However, from close range only the proposed third floor (plus balustrade and corner privacy screen) would be seen; this would not be a dominant addition to the building. Furthermore, No 1 would still have the same open outlook to the south and south-east as at present, while No 166 would retain the same outlook to the south and south-west. The proposed extension would therefore not be significantly harmfully overbearing.
20. In response to interested parties' concerns about overshadowing and effects on daylight, the appellant submitted a Daylight, Sunlight and Overshadowing Assessment ("the DSOA"), prepared in accordance with the Building Research Establishment's guidance in *Site Layout Planning for Daylight and Sunlight – A Guide to Good Practice* ("the BRE guidance"). This showed that more than 50% of each assessed neighbouring garden would continue to receive more than 2 hours of sunlight on 21 March, in line with the BRE guidance.
21. The DSOA also showed that the proposed development would have no or negligible impact on the Vertical Sky Component ("VSC") values of – and therefore the daylight reaching – windows on adjoining properties. In respect of windows on the side elevation of No 1 Madeline Road facing the appeal property, the VSC would change from 3.5% to 2.8% on the ground floor, and from 3.8% to 3.2% on the first floor. I do not know the function of the spaces they serve within No 1, but I saw on my site visit that the two windows are north-east facing, obscurely-glazed and set in a deep recess at the side of the building. Given the existing severe lack of daylight reaching those windows, the effect of the proposed development is not likely to cause further significant harm to neighbouring occupiers.
22. I conclude on this main issue that the proposal would not cause significant harm to the amenity of neighbouring premises, within the context of Schedule 2, Part 20, Class A, Paragraph A.2(1)(g) of the GPDO. I also find that there would be no conflict with Policies 4 and 37 of the 2019 Bromley Local Plan ("the BLP"), which are of material relevance in that they seek to ensure that development, including housing development, is well-designed and respects the amenity of occupiers of neighbouring buildings, including in respect of daylight, privacy and overshadowing.

Conditions

23. Planning permission granted for development under Article 3(1) and Schedule 2, Part 20, Class A of the GPDO is subject to conditions set out in paragraph A.2. These specify that:
 - Development must be completed within a period of 3 years starting with the date prior approval is granted.
 - Before beginning the development, the developer must provide the local planning authority with a report for the management of the construction of the development, which sets out the proposed development hours of operation and how any adverse impact of noise, dust, vibration and traffic on occupiers of the building and adjoining owners or occupiers will be mitigated.

- The developer must notify the local planning authority of the completion of the development as soon as reasonably practicable after completion, and this notification must be in writing and include:
 - a) the name of the developer;
 - b) the address or location of the development; and
 - c) the date of completion.
 - Any new dwellinghouse created under Class A is to remain in use as a dwellinghouse within the meaning of Class C3 of the Schedule to the Use Classes Order and for no other purpose, except to the extent that the other purpose is ancillary to the primary use as a dwellinghouse.
24. Schedule 2, Part 20, Paragraph B.(18) of the GPDO also allows for the imposition of conditions reasonably related to the subject matter of the prior approval. In the interests of certainty, a condition setting out the approved plans is required. For the same reason, and also in the interest of protecting the character and appearance of the area, a condition requiring the materials used to be as specified in the submitted information is also necessary.
25. In the interests of protecting neighbours' living conditions, and for the reasons which I have set out in paragraph 18 above, a condition requiring the submission and approval of details of the roof terrace privacy screen, as well as the maintenance and retention of the screen for the lifetime of the development thereafter, is also necessary.

Conclusion

26. For the reasons given above the appeal is allowed, and prior approval granted subject to conditions.

M Cryan

Inspector