



# Appeal Decision

Site visit made on 3 March 2023

**by K Savage BA(Hons) MPlan MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 14 April 2023**

**Appeal Ref: APP/J1915/D/22/3309331**

**28 Chapel Lane, Letty Green, Hertfordshire SG14 2PA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under required under Schedule 2, Part 1, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
- The appeal is made by Ms H Melcon Sharker against the decision of East Hertfordshire District Council.
- The application Ref 3/22/1476/ASDPN, dated 8 July 2022, was refused by notice dated 5 September 2022.
- The development proposed is removal of roof and construction of an additional storey, to increase the height of the dwelling from 5.3 metres to 7.98 metres.

## Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 1, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for removal of roof and construction of an additional storey, to increase the height of the dwelling from 5.3 metres to 7.98 metres, at 28 Chapel Lane, Letty Green, Hertfordshire SG14 2PA in accordance with the application, Ref 3/22/1476/ASDPN, dated 11 July 2022 and details submitted with it, including the plans 5347-OS1; 5347-E01 Rev C; 5347-P02-PR-APP Rev G and 5347-P03 (Cross Section), and subject to the standard conditions set out in sub-paragraphs AA.2.(2) and AA.2.(3) of Schedule 2, Part 1, Class AA.

## Preliminary Matters

2. During the course of the appeal the Court of Appeal judgment in the *CAB Housing Ltd*<sup>1</sup> case was issued, which relates to the interpretation of Class AA. The main parties have been able to comment on the relevance of this judgment to the appeal and I have had regard to the responses received.
3. The appellant has submitted revised plans at appeal stage to address the first and third reasons for refusal relating to the internal floor-to-ceiling height and the roof pitch. The appellant points to the plans confirming details on the application form that the internal floor to ceiling height would be 2.2 metres and that the roof pitch would match that of the existing dwellinghouse, the difference in angle on the original plans being an error.
4. In this case, the amended plans seek to clarify matters of technical compliance with the requirements of the GPDO, to which the comments of third parties are not decisive. I have noted the Council's comments on accepting the revised plans, but in the circumstances, the changes seek only to clarify rather than

<sup>1</sup> CAB Housing Ltd v SSLUHC and Broxbourne BC [2023] EWCA Civ 194

materially alter the appeal scheme and have been submitted specifically to address reasons for refusal. Therefore, having regard to the principles of *Wheatcroft*,<sup>2</sup> I am satisfied that no party would be prejudiced by my taking them into account.

5. I am also considering a separate appeal<sup>3</sup> related to an application for planning permission at the same site. The other appeal relates to different works and with different material considerations, namely Green Belt, which are not relevant to a prior approval appeal. I have limited my consideration of this appeal to the relevant parts of the GPDO, but for the avoidance of doubt, I am satisfied that the proposals under the other appeal, if allowed, would not have a material bearing on the consideration of this appeal.

## **Background and Main Issues**

6. Schedule 2, Part 1, Class AA of the GPDO permits development involving the enlargement of a dwellinghouse by construction of additional storeys, subject to specified limitations and conditions.
7. The Council refused the application for three reasons. Firstly, that the proposal did not demonstrate compliance with the limitation at AA.1.(h) which relates to the floor to ceiling height of the additional storey. Secondly, that the proposed roof pitch would not match that of the existing dwellinghouse, as required by Condition AA.2.(c). Thirdly, that the proposal would conflict with the prior approval matter at Condition AA.2.(3)(a)(ii) relating to the external appearance of the dwellinghouse.
8. The main issues, therefore, are whether the proposal amounts to permitted development, with particular reference to the limitation at AA.1.(h) and the condition at AA.2(c), and if so, whether prior approval should be given, having particular regard to the resulting external appearance of the dwellinghouse.

## **Reasons**

### *Whether Permitted Development*

#### *AA.1.(h) – Internal Floor-to-Ceiling Height*

9. The Council considered that insufficient information was submitted to assess whether the proposed internal ceiling heights would accord with the limitations at AA.1(h), which require them to be the lower of three metres or the internal floor to ceiling height of any storey in the principal part of the dwellinghouse. As indicated, the appellant has provided an additional plan at the appeal stage showing the proposed internal floor-to-ceiling height of the additional storey would be 2.2 metres, less than the 2.45 metre height of the existing ground floor below. Therefore, the proposal would satisfy the limitation at AA.1.(h).

#### *AA.2.(c) – Roof Pitch*

10. The Council measured the existing roof pitch at 37 degrees and the proposed at 41 degrees, which would conflict with the requirements of Condition AA.2.(c) that the pitch of the existing and proposed roofs are the same. The appellant's revised drawing confirms what was indicated on the application form, and I am

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<sup>2</sup> *Wheatcroft (Bernard) Ltd v Secretary of State for the Environment* (1982) JLP 37

<sup>3</sup> Appeal Ref: APP/J1915/D/22/3297566

satisfied that this was no more than an inadvertent drawing error. Therefore, the proposal would accord with Condition AA.2.(c).

11. In light of these findings and given that the Council has not found conflict with any other condition or limitation of sub-sections AA.1. or AA.2, the proposal would amount to permitted development under Class AA. Therefore, it falls to determine whether prior approval should be granted.

#### *Prior Approval – External Appearance*

12. Condition AA.2.(3)(a)(ii) sets out that before beginning the development, the developer must apply to the local planning authority for prior approval as to the external appearance of the dwellinghouse, including the design and architectural features of (aa) the principal elevation of the dwellinghouse, and (bb) any side elevation of the dwellinghouse that fronts a highway.
13. The judgment in *CAB Housing* held that the assessment of external appearance within the context of the parts of the GPDO relating to additional storeys is not confined to an assessment of the impact of that appearance on the building itself but can also include the impact on neighbouring premises and the locality. It is a matter of planning judgement for the decision maker as to whether the assessment is limited to the design of the building itself or its relationship with its surroundings.
14. The appeal dwelling is one of four consecutive bungalows on the southern side of Chapel Lane, a road mainly characterised by detached, two storey dwellings, some quite large in size and all of individual design. The bungalows share a consistent overall height, but also differ in design, with varying roof forms and footprints. I appreciate the Council's position that the four bungalows offer an element of consistency within the street scene, but this is limited to their height, and nothing in evidence suggests that the group otherwise has specific distinctive qualities which contribute meaningfully to the character of the area, such as being an example of an historic form or pattern of development.
15. Instead, the bungalows sit within a context of taller and often more substantial dwellings adjacent and opposite. From both directions along Chapel Lane, views of the bungalows are also filtered by trees which reduces the prominence of the group in the street scene. I recognise that an additional storey to the appeal dwelling would erode the consistent height of the four bungalows. However, it would reflect the two storey scale which otherwise prevails along Chapel Lane. The design of the additional storey would also reflect that of the existing dwelling, using appropriate materials and a matching roof form.
16. Taking these factors together, I find that the proposal would have an acceptable effect in terms of external appearance of the dwelling itself and that of the surrounding area.

#### **Conditions**

17. The Council's suggested conditions replicate those set out within Paragraphs AA.2.(2) and AA.2.(3) to which all development under Class AA must adhere. Therefore, it is not necessary to repeat these in this decision, but I have made it clear in the formal decision that prior approval is granted subject to these conditions, and that the scheme shall be carried out in accordance with the details submitted including the listed plans.

## **Conclusion**

18. For the reasons set out, I conclude that the proposal would amount to permitted development under Schedule 2, Part 1, Class AA of the GPDO and that prior approval should be given.

*K Savage*

INSPECTOR