



Appeal Decision

Site visit made on 16 February 2023

by David English BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 April 2023

Appeal Ref: APP/Z5630/W/22/3299992

1 The Broadway, Tolworth, Surbiton KT6 7DQ

- 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 AB of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
 - The appeal is made by Headmasters Operations Ltd against the decision of the Council of the Royal Borough of Kingston Upon Thames.
 - The application Ref 21/03779/PACND, dated 25 November 2021, was refused by notice dated 20 January 2022.
 - The development proposed is the erection of two-storey extension above existing building to provide 4no. residential units comprising 3no. three-bedroom and 1no. two-bedroom units.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The name of the applicant on the prior approval application form is 'Headmasters Operations Ltd'. The name given on the appeal form is 'Headmasters Partnership Ltd'. Paragraph 2.3.1 of the Procedural Guide: Planning Appeals – England (December 2022) makes it clear that '*Only the person who made the planning application can make an appeal*'. Accordingly, to meet the guidance, I have used the name given on the application form in the banner heading above.
3. The appellant states that the description of development was modified by the Council but does not directly raise objection to this matter. No specific description of development was given in the original application. Instead, this directs the reader to various other documents. I have used the description provided by the Council in the banner heading above since this was used in the publicity about the application for prior approval and accurately describes it.
4. Under Article 3(1) and Schedule 2, Part 20, Class AB of the GPDO planning permission is granted for the construction of up to two additional storeys of new dwellinghouses immediately above the topmost storey on terrace buildings in commercial or mixed use, subject to relevant exceptions, limitations, and conditions, including the need for an application for prior approval. The requirement for prior approval, the various prior approval matters, and the relevant conditions are set out at Paragraph AB.2.
5. The Council have concluded that the appeal scheme is permitted development because it complies with the limitations set out at Part 20, Class AB, Paragraph

AB.1 of the GPDO. From the information provided I have no reason to disagree with that conclusion, and this is not a matter in dispute.

6. The appellant has provided brief extracts from the Tolworth Area Plan (February 2018) (the TAP) which is described in their statement of case as forming part of the evidence base for an emerging Local Plan. However, no information has been provided to confirm the status of the TAP and it does not appear to form part of the development plan. The appellant also refers to planning policies other than those referred to by the Council in the reasons for refusal. I have not been provided with details of those further policies and therefore I am not able to comment on them. In any event, the prior approval provisions do not require regard to be had to the development plan. I have therefore only had regard to the policies of the development plan for which details have been provided insofar as they may assist in assessing the matters for which prior approval is sought.
7. In determining applications for prior approval, paragraph B(15) of Part 20 of the GPDO requires the local planning authority to take into account any representations made to them as a result of any consultation or publicity, and to have regard to the National Planning Policy Framework (the Framework) so far as relevant to the subject matter of the prior approval, as if the application were a planning application. I have considered the appeal on the same basis.
8. The Council's reasons for refusal express their objection to the proposed external appearance of the building, and to the transport and highways impacts of the development, specifically the appellant's failure to provide a legal agreement concerning future car parking controls. These are relevant prior approval matters and the main issues I have identified relate only to them.

Main Issues

9. Having regard to the objections raised by the Council in relation to the prior approval matters, the main issues are whether prior approval should be granted having regard to:
 - the proposed external appearance of the building; and
 - car parking and the associated effects on highway safety.

Reasons

External appearance

10. In my assessment of the merit of the proposal I have had regard to a wider application of the judgement in *Cab Housing Ltd & Ors v Secretary of State for Levelling Up, Housing and Communities & Ors* [2022] EWHC 208 (Admin) in respect of considerations regarding external appearance. I am satisfied that, in this case, proper consideration of the appearance of the building as a prior approval matter must take account of the effect of the proposal on the appearance of at least the immediate vicinity of the appeal site.
11. The existing building, while located in a prominent position adjacent to the junction of Ewell Road and Tolworth Broadway, has a simple, unassuming form. Fenestration to the elevation facing that road junction creates a regular visual rhythm, similar to that found in the front elevations of the nearby older three-storey buildings along The Broadway and Ewell Road. These features, along

with its height, mass and facing materials have created a building that sits comfortably in its setting. The appeal building is consistent in scale with the nearby and adjoining building blocks with which it is experienced, and, notwithstanding their variety in age and design, the buildings collectively create a distinctive, unified character to the immediate area in this part of the commercial centre of Tolworth.

12. The proposal would create two floors of residential accommodation above the existing offices. The resultant increase in height would alter the relationship of the appeal building with its surroundings. The extension would increase the height of the brickwork to the front and sides, creating a wide, tall, and visually dominant building. Despite the set-back of the fourth floor of the proposed extension which would partially limit its visibility from positions close to the building, when viewed from distance the arrangement of windows on the fourth floor would appear awkward in comparison to the regular alignment on other floors and in the neighbouring buildings. The additional height, bulk and massing would be clearly visible and out of keeping with adjoining and nearby buildings, making it more dominant than its neighbours and noticeably different. The addition in height would also disrupt the unified heights of the wider streetscape, thereby making it an incongruous feature.
13. The absence of nearby heritage designations does not weigh in favour of the proposal, and I am not convinced that the existing townscape is not sensitive to change. I must consider the proposal before me on its merit, and I am not convinced it would result in the introduction of a positive change in urban built form. Rather, it would create an uncharacteristically tall and bulky structure which would appear out of place when seen in context with the pleasant, almost exclusively three-storey street scene in which it would be seen. The outcome overall would therefore be harmful to the appearance of the building and the area.
14. I recognise that the Framework supports upward extensions. However, the Framework caveats this by stating that such development should be consistent with the prevailing height and form of neighbouring properties and the overall street scene and should be well-designed. The Framework establishes that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve; and at paragraph 8, identifies within the social objectives of national planning policy the need to foster well-designed, beautiful places. For the reasons I have set out, the development would not accord with the Framework in these respects.
15. I therefore conclude on this main issue that the proposal would not be consistent with the prevailing height and form of the surrounding area and would have a harmful effect on the external appearance of the building. In so far as they support my findings above, the proposal would conflict with Policies CS 8 and DM 10 of the Royal Borough of Kingston Upon Thames Local Development Framework Core Strategy (April 2012) which require development to relate well and connect to its surroundings, and through good design, to respect the most essential elements that contribute to local character and distinctiveness including the scale, height, form and massing of proposals. The proposal would therefore fail to comply with the condition of prior approval set out at paragraph AB.2.(1)(e) of Schedule 2, Part 20, Class AB of the GPDO.

Car parking

16. The Council's Officer Report concludes that the proposed development would not be expected to give rise to an adverse highway impact. While I note neighbours' objections in this respect, transport and highways impact of the development are not a matter in dispute between the main parties, only the lack of a legal agreement to control resident and visitor parking permits. The appellant has submitted a legal agreement with their appeal, and I am satisfied that, had I been minded to allow the appeal, this matter could have been resolved. However, I have dismissed the appeal for other reasons, and I therefore need not consider this matter in any further detail.

Other Matters

17. Matters regarding the efficient use of land and housing land supply are policies from the Framework not related to the prior approval matters. The appeal falls to be assessed only against the requirements of the GPDO, and this does not require other factors to be considered in balancing the impacts of development.

Conclusion

18. For the reasons given above I conclude that the appeal should be dismissed.

David English

INSPECTOR