



Appeal Decision

Site visit made on 21 February 2023

by Ann Veevers BA(Hons) DipBCon MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 April 2023

Appeal Ref: APP/U5930/W/22/3297696

Jassal Court, 3a Stocksfield Road, Walthamstow E17 3FF

- 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 A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Rossel on behalf of Rossel Developments Ltd against the decision of Waltham Forest London Borough Council.
 - The application Ref 220271, dated 27 January 2022, was refused by notice dated 24 March 2022.
 - The development proposed is described as 'To add one extra floor of accommodation, providing 1no. studio and 1 no. 1 bed, to Jassal Court, presently containing 8 no. 2-bed flats.'
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1), Schedule 2, Part 20, Class A (e) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) to add one extra floor of accommodation, providing 1no. studio and 1no. 1 bed flat at Jassal Court, 3a Stocksfield Road, Walthamstow E17 3FF in accordance with the terms of the application, Ref: 220271 made on 27 January 2022 and the details submitted with it, subject to the conditions set out in the attached Schedule.

Preliminary Matters

2. The description of development in the banner heading above has been taken from the written statement submitted with the application. The Council's decision notice uses a different wording but there is nothing in writing to indicate that this has been agreed with the appellant. In my decision, I have used the description in the banner heading, omitting wording that is not an act of development.
3. Paragraph B.(15) of Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) requires the local planning authority to take into account any representations made to them as a result of consultation, 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. My determination of this appeal has been made on the same basis. The Council refer to the 2020 Framework, however, this was superseded in 2021. I refer to the 2021 version of the Framework in my assessment.

4. In refusing the application, the Council cited policies of the Waltham Forest Local Plan, Core Strategy (March 2012) (CS) and the Waltham Forest Local Plan, Development Management Policies (October 2013) (DMP). However, the principle of the development is established by the 2015 Order. The prior approval provisions do not require regard to be had to the development plan. I can therefore only have regard to the policies of the development plan insofar as they are material to the matters for which prior approval is sought.
5. During the appeal the Council submitted information regarding details of a Strategic Access Management and Maintenance (SAMM) levy to be imposed on all development involving one or more dwellings granted permission from 23rd January 2023. I deal with this matter in the conditions section below.

Background and Main Issue

6. 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.
7. Development under Class A is not permitted if it would conflict with any of the limitations set out in paragraph A.1. It must also comply with the conditions set out in paragraph A.2. In addition, paragraph B establishes the procedure for applications for prior approval under Part 20. I note a previous appeal decision¹ at the site was dismissed due to the incorrect following of this procedure. In terms of the current appeal, the Council has not identified any conflict with paragraph A.1 or B, such that it would fall within the scope of permitted development rights, subject to the consideration of relevant matters of prior approval set out in paragraph A.2 and I see no reason to find otherwise.
8. The Council refused prior approval only in respect of one matter set out at paragraph A.2, that is (e), the external appearance of the building. As before, I have no evidence to dispute the Council's conclusions in respect of the other sub-sections of paragraph A.2.
9. In making my assessment of the merits of the proposal I have considered the judgement made in the Court of Appeal² 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 where prior approval is required in relation to the effect of development on the external appearance of a building, it will be a matter of planning judgment as to whether consideration is given to the effect in terms of the building's intrinsic design and/or to the effect in terms of the building's relationship with adjoining or nearby properties.
10. Therefore, the main issue is whether prior approval should be granted having regard to the effect of the proposal on the character and appearance of the host property and the area.

¹ APP/U5930/W/20/3266165

² GPDO Class AA and "External Appearance": CAB Housing Ltd v SSLUHC and Broxbourne BC [2023] EWCA Civ 194

Reasons

11. The appeal property is a relatively modern four storey building containing 8 flats. It is set back from Stocksfield Road behind vegetation and residents' car parking and a railway line is located to the rear of the building, separating residential development beyond. Surrounding the appeal site on three sides are substantial sized three and four storey apartment blocks interspersed with parking courts, pedestrian paths, grassed spaces and a fenced multi-use games area.
12. The proposed additional storey would create two residential units and be set in from the sides of the existing building. The design of the proposal would reflect the deep overhanging roof design currently exhibited by the fourth storey. Furthermore, the positions and sizes of the proposed window openings would replicate those already in place to the building's upper floors.
13. Whilst the material proposed for the walls of the additional floor would not be constructed in brick to match that used on the existing building, the proposed grey cladding would offer a lightweight contrast that would assimilate with the surrounding skyline. Notwithstanding the introduction of a new material, the proposed floor is significantly set back from the main front elevation such that it would not be readily apparent when viewed from Stocksfield Road. Although the proposed floor would not be set in from the rear elevation of the existing building, the existing eaves line would be retained and would provide a distinct break between the new materials and the brick elevation. Moreover, potential views of the rear would be from some distance. In addition, the use of different external walling materials to the rest of the building prevents an overly monotonous façade.
14. Seen in the context of the surrounding flatted development of substantial height and size, I find the limited footprint of the existing building and the proposed set back of the additional floor would moderate the perception of scale. The introduction of a modest size additional floor in this location would not appear unacceptably conspicuous or imposing in the street scene having regard to the large scale of other flatted development along Stocksbridge Road.
15. Accordingly, I conclude that the development would assimilate appropriately with the host building and its surroundings without undue prominence, and it would be suitably designed. The proposal would therefore accord with the Framework insofar as it broadly seeks well-designed places and requires, amongst other things, development that is visually attractive and sympathetic to local character.
16. For the same reasons, I find that the proposal would accord with Policy CS15 of the CS and Policy DM29 of the DMP in so far as these policies are material to my considerations and require a high standard of well-designed buildings and places that respond to their context in terms of scale, height and massing. This further supports my conclusion that the external appearance of the development on the character and appearance of the area and the host dwelling would be acceptable.

Other Matters

17. Concerns have been raised by an interested party regarding several issues. Any permission issued under the provisions of Article 3(1), Schedule 2, Part 20,

Class A is subject to a condition relating to construction management. The transport and highway impacts of the development is a relevant consideration under Paragraph A.2.(1)(a). I have no technical evidence to reach a contrary conclusion to the Council that the proposal would not have an adverse impact on the local highway. It is intended that the proposal would be car-free, the requirement of which can be dealt with by the imposition of a condition.

18. A bin store currently serves residents of the existing building. The appellant has provided details of the storage capacity of the existing bins, and the Council considers there is sufficient space within the bin store to accommodate additional waste that would be created by the proposed development, I see no reason to disagree. Matters relating to the structural integrity of the building are outside the scope of the GPDO assessment of this appeal.

Conditions

19. 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 of that Class which specify that:
- the 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 practicable after completion and the notification must be made in writing and include the name of the developer, the address or location of the development and the date of completion; and
 - any new dwellinghouse 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
20. Paragraph B (18) of Part 20, Class A further states that the local planning authority may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. The Council has suggested conditions that the appellant has had the opportunity to comment upon and which I have considered against advice in the Framework and Planning Practice Guidance. As a result, I have made amendments where necessary for clarity and consistency purposes.
21. Given the conditions laid out above, I am not persuaded from the evidence before me that separate conditions to specify the time limit for development to be carried out and to require a Construction Logistics Plan would be necessary in this case. I have not therefore imposed them.
22. The Council's suggested condition in respect of plans is considered necessary for clarity. Since the suggested condition regarding materials is related to the external appearance of the building, it is reasonable and necessary to secure harmonious architectural treatment.

23. In the interests of promoting sustainable travel choices and positively influencing the scheme's transport and highways impact, a condition to secure details of cycle storage provision is necessary, although I have required this prior to occupation of the proposed units for preciseness and removed reference to site investigation, clearance and demolition which is unnecessary in this case.
24. As the site is located within a controlled parking zone, the Council has suggested a condition to prevent future residents, unless they have a disability, from obtaining a car parking permit. Although some off-street parking is provided for existing residents of Jassal Court, insufficient spaces would be provided for additional residents, and I therefore consider the condition necessary. I have re-worded the condition and both parties have had the opportunity to comment.
25. The Council has also suggested a condition to require that a formal agreement is entered into to pay a financial contribution towards SAMM. This is because the appeal site is located within the 6.2km zone of influence of, and has the potential to affect, the Epping Forest Special Area of Conservation, a European protected site.
26. Article 3(1) of the GPDO grants planning permission for Schedule 2 Part 20 Class A development subject to Regulations 75-78 of the Conservation of Habitats and Species Regulations 2017.
27. Regulation 75 provides that it is a condition of the planning permission granted by the GPDO in these cases, that development which is (a) likely to have a significant effect on a European site or offshore marine site, alone or in combination with other plans or projects and (b) not directly connected with or necessary to the management of the site, must not begin until the developer has received written notification of the approval of the LPA under Regulation 77.
28. Under Regulation 78(3)(a), a Regulation 75 approval is to be treated as an approval required by a condition imposed on a grant of planning permission for the purposes of the appeals provisions of the Town and Country Planning Act 1990 (as amended). As such, Article 3(1) effectively imposes a pre-commencement condition on all development that is permitted by the GPDO and would affect a European protected habitat and the proposed development could not be lawfully begun until the process set out in Regulation 77 has been completed. An additional condition in this regard is not therefore required.

Conclusion

29. For the reasons set out above, the appeal is allowed, and prior approval is granted subject to conditions.

Ann Veevers

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
938-CYA-AA-ZZ-DR-A-00001 (Rev C) (Site Location & Block Plan);
938-CYA-AA-ZZ-DR-A-00002 (Rev C) (Existing 3rd Floor Plan & Proposed Roof Extension);
938-CYA-AA-ZZ-DR-A-00003 (Rev C) (Existing Elevations);
938-CYA-AA-ZZ-DR-A-00004 (Rev C) (Proposed West & South/North Elevations);
938-CYA-AA-ZZ-DR-A-00005 (Rev C) (Proposed East Elevation).
- 2) Notwithstanding the indications on the approved plans, details and samples of all materials (including window/door/rooflights/ specification) to be used in the construction of the external surfaces of the development hereby approved, shall be submitted to and approved in writing by the Local Planning Authority before the relevant materials are installed. The development shall thereafter be carried out in accordance with the approved details and retained as such for the lifetime of the development.
- 3) The development hereby approved shall not be occupied until secure and lockable cycle storage facilities have been provided in accordance with details which have first been submitted to and approved in writing by the Local Planning Authority. The cycle storage shall thereafter be retained as approved.
- 4) The development hereby permitted shall not be occupied until:
 - a) The local planning authority has been notified in writing of the full postal addresses of the dwellings.
 - b) The Traffic Regulation Order has been amended by removing the dwellings (other than those occupied by blue badge holders) from the list of dwellings for which Residents Parking Permits can be issued.

END