



Appeal Decision

Site visit made on 6 December 2022

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 APRIL 2023

Appeal Ref: APP/C5690/W/22/3301358

131-135 Lewisham High Street, Lewisham SE13 6AA

- 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 appeal is made by Mr Moshe Baumrind of Smartrose Estates Limited against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/22/125002, dated 9 January 2022, was refused by notice dated 21 April 2022.
 - The development proposed is the erection of a two-storey roof extension to create 4 additional residential units, incorporating the provision of refuse/recycling and cycle storage facilities for occupiers of the additional units.
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Decision

1. The appeal is dismissed.

Procedural and Preliminary Matters

2. No detailed description of the proposed development was provided on the prior approval application form. The description in the banner heading above is taken from the appeal form, although I have omitted the reference to the relevant part of the development order as it is not descriptive of the proposal.
3. Under Article 3(1) and Schedule 2, Part 20, Class AB of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (hereafter "the GPDO"), the construction of up to two additional storeys of new dwellinghouses on a terrace building in commercial or mixed use is permitted development. This permission is subject to the limitations set out in Paragraph AB.1, and it is also contingent upon compliance with the conditions in paragraph AB.2 and the grant of prior approval for a specific proposal. The specified matters for which prior approval must be sought are set out in sub-paragraphs AB.2.(1)(a) to (j); among them, (d) is "flooding risks in relation to the building".
4. Schedule 2, Part 20, Paragraph B sets out the relevant procedure for applications for prior approval under that part of the GPDO. The appeal site is within Flood Zone 2, and the combined effect of sub-paragraphs B.(2)(h) and B.(6) is therefore to require that the application for prior approval is accompanied by a site-specific flood risk assessment ("an SSFRA"); none was submitted with the prior approval application. Sub-paragraph B.(3) provides that a local planning authority may refuse an application where, in its opinion,

- “the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with any conditions, limitations or restrictions specified in [Schedule 2, Part 20] as being applicable to the development in question”. In the absence of an SSFRA, that is what the Council did.
5. The appellant submitted an SSFRA alongside the appeal statement; the Council argued that as this had not been submitted at application stage it should be disregarded and the appeal dismissed. As an alternative, the Council directed me to its officer report for another prior approval application for the appeal site which had been submitted in June 2022¹ (“the June 2022 application”). The June 2022 application had been submitted to the Council with the same description as the scheme before me, and the Council therefore considers the officer report prepared for that application also represents its full assessment of the current appeal scheme.
 6. It appears that the SSFRA provided in this appeal is the same as that which was submitted with the June 2022 application. In respect of the June 2022 application, the Council was satisfied that there are no prohibitive flooding constraints relating to the proposed use of the site, and that “the development would not cause any increase in flood risk either onsite or elsewhere over the lifetime of the development”; in the circumstances, I conclude that the same can be said of the appeal proposal. However, the June 2022 application was refused prior approval on other grounds. As well as a “technical” reason relating to the non-payment of the correct fee (which is not at issue in this appeal), these related to car parking, the proposed appearance of the building, and natural light, in line with sub-paragraphs AB.2.(1)(a), (e) and (f) of Part 20 of the GPDO.
 7. The appellant noted that these putative reasons for refusal had not been cited in the Council’s original decision notice for the application in this appeal and argued that “it is long-established in planning law that an LPA cannot introduce additional reasons for refusal by way of appeal proceedings”. However, sub-paragraphs B.(3) and B.(4) of Part 20 of the GPDO together make it clear that it is not incumbent on the local planning authority to carry out a full assessment of a proposed development when insufficient information has been provided by the developer. The appellant’s assertion that “it is reasonable to conclude, based on the absence of any reason for refusal, other than flood risk grounds, in relation to the specific prior approval application to which this appeal relates, that in all other respects the LPA found the proposals to be acceptable” does not stand up to scrutiny, not least because it was made in response to the Council’s appeal statement setting out the very reasons for which it found the proposal unacceptable.
 8. In determining an appeal “the Secretary of State [...] may deal with the application as if it had been made to him in the first instance”², and in view of the background which I have set out I consider this to be an appropriate way for me to proceed in this appeal. It is apparent that the Council is satisfied that the proposed development complies with the limitations set out in paragraph AB.1, and would be permitted development under Part 20 Class AB of the GPDO; none of the evidence before me indicates that I should take a different view on that point. The relevant question for me to address in this appeal is

¹ LPA Ref: DC/22/127234

² Section 79(1) of the Town and Country Planning Act 1990

therefore whether or not prior approval should be granted, having regard to the conditions in Paragraph AB.2.

9. The GPDO requires that, in determining whether or not to grant prior approval, the decision maker should have regard to the provisions of 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 and related guidance of the development plan to which my attention was drawn only in so far as they are relevant material considerations.

Main Issues

10. Taking all of the above factors into account, I consider the main issues in the appeal to be whether or not prior approval should be granted, having particular regard to:
- The transport and highways impacts of the development;
 - The external appearance of the building; and
 - The provision of adequate natural light in all habitable rooms of the new dwellinghouses.

Reasons

11. The appeal site is a three-storey building at the corner of Lewisham High Street and Albion Way in Lewisham Town Centre. It is in mixed use; the ground floor consists of three commercial units (two Class E shops and a *sui generis* bookmaker), while the first and second floors each contain two flats. There is a small service yard at the rear of the building accessed from Albion Way, while the flats on the upper floors are entered via a staircase at the north-east corner of the building.
12. The proposed development is the addition of two extra storeys to the building. Each new floor would have one one-bedroom (two person) flat and one two-bedroom (four person) flat, making four additional dwellings in total. There would also be additional bicycle and refuse/recycling storage at ground level.

Transport and highways

13. The appeal site is within the Lewisham/Central Controlled Parking Zone ("the CPZ"), which operates between 09.00 and 18.30 from Monday to Saturday. The town centre location is close to bus stops serving numerous routes, and a short distance from Docklands Light Railway and National Rail services from Lewisham Station; the site has a Public Transport Accessibility Level ("PTAL") of 6b, signifying the highest level of public transport connectivity.
14. Given the town centre location and excellent public transport accessibility, future residents of the development would be able to benefit from genuine alternatives to car free travel, in line with the provisions of Chapter 9 of the Framework. At the same time, an increased demand for parking, even from a relatively small number of additional dwellings, would be likely to increase parking pressure within the area. I therefore agree with the Council that a car-free development should be secured.

15. There is no mechanism before me to secure such a scheme. The appellant has suggested that this could be done by way of a condition, which would contemplate the execution of a planning obligation. In my experience, although such conditions are sometimes used, it is generally preferable (not least for certainty) that the obligation is available to be considered by the decision maker.
16. The relevant advice in the Planning Practice Guidance ("the PPG")³ is:
- "...in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate, where there is clear evidence that the delivery of the development would otherwise be at serious risk (this may apply in the case of particularly complex development schemes). In such cases the 6 tests should also be met."*
- There is no evidence before me to suggest either that the appeal scheme is especially complex, or that delivery of development would be at serious risk. I am not therefore persuaded that this appeal demonstrates the exceptional circumstances envisaged by the PPG.
17. In the absence of a mechanism to secure car-free development, the proposal conflicts with the requirements of the Framework which seek to promote sustainable transport, notably the provisions of Paragraphs 104 and 111.
18. To the extent that they are material considerations, I also find that the proposal would conflict with Policy 14 of the 2011 Lewisham Core Strategy ("the LCS), Policy 29 of the 2014 Lewisham Development Management Local Plan ("the DMLP"), and with Policies T6 and T6.1 of the London Plan 2021. Together, and among other things, these policies seek to support the provision of car-free development in locations with good public transport connectivity, and to support the use of sustainable means of transport.

External appearance

19. The appellant has stated that the proposed elevational treatment would reflect that of the existing elevations of the buildings; this implies brick elevations to match the existing walls below. The fenestration within the proposed elevations of the roof extension would align vertically with existing windows, and would be of the same size and design. However, the submitted drawings show that on the Albion Way elevation the two new floors would have "blanked" recesses rather than actual windows. This would create an unusual contrast with the appearance of the genuine, functional windows immediately below on the first and second floors of the existing building, and would result in that elevation of the building taking on a rather odd and incongruous appearance.
20. It also seems, based on my visual assessment of the submitted drawings, that the bands of brickwork between the second floor and new third floor windows would be rather deeper than those between the first and second floor windows. This would give the building an inconsistent appearance, as it is of an age and type in which the horizontal spacing (and height) of windows tends either to decrease or, at very least, remain unchanged as one moves up the building. This result would be a visual disruption of the neat and orderly form of the building in its existing state. The overall impact of these details would be that

³ Paragraph: 010 Reference ID: 21a-010-20190723

the proposed extension would be unsympathetic and jarring; this would be harmful to the external appearance of the building as a whole.

21. It is notable that the Council did not set out any “in principle” objections to the upwards extension of the appeal property, commenting that there are various examples of additional storeys and roof extensions in the surrounding area, and that such a scheme could be justified in townscape terms. The appellant specifically drew my attention to another building nearby, at the corner of Lewis Grove and Mercia Grove around 50m north of the appeal site, where an additional storey has been added to a prominent corner building.
22. I was able to see that extension at the time of my site visit and, while the materials which have been used might be considered to be somewhat stark and unsympathetic, the fact that most of the additional storey is set behind the roof parapet of the original building has somewhat lessened its visual impact on both the host building and the wider streetscene. The particular weaknesses which I have found in respect of the appeal proposal have therefore been avoided in that other case, and it does not add weight in favour of the proposal before me.
23. I conclude that the proposed development would cause significant harm to the external appearance of the building. It would therefore conflict with the requirements of the Framework which seek to achieve well-designed places, notably the provisions of Paragraphs 126 and 130.
24. I have also had regard to the provisions of the development plan to the extent that they are a material consideration and find that the proposal would not comply with the provisions of Policy 15 of the LCS, Policies 30, 31 and 33 of the DMLP, and Policy D3 of the London Plan 2021. Together, and among other things, these policies seek to ensure that new development, including extensions, attain a high standard of design which is sensitive to local context.

Natural light

25. The Council’s officer report for the June 2022 application states that “Flats 1 and 3 [...] appear to be single aspect and the bedrooms are not served by windows”. From the submitted drawings before me it is clear that in this appeal scheme, while those two flats would indeed be single aspect, every habitable room would have at least one window. Nevertheless, the Council remains concerned that the proposed dwellings would not provide a satisfactory level of natural light for future occupiers.
26. The submitted drawings show that the smallest windows (serving the bedroom of the two one-bedroom flats) would measure 1.15m wide by 1.50m high, which the appellant describes as “generously proportioned”. The appellant also comments that “none of the proposed habitable rooms are excessively deep/narrow” and that “the generously proportioned fenestration serving all proposed habitable rooms will ensure a more than adequate provision of natural light”. The submitted drawings show that although the north-west facing combined kitchen/living rooms in Flats 2 and 4 would each have two windows (one measuring 1.27m by 1.5m, the other 1.22 by 1.5m), these would both be towards the same end of the room. There is therefore considerable doubt in my mind as to whether there would be adequate natural light in those rooms for them to support the variety of everyday roles they would be expected to accommodate.

27. The Council indicated that it considered a daylight/sunlight report assessing the development against the Building Research Establishment standards⁴ should have been submitted. I acknowledge that, as the appellant has argued, “there is no express requirement for an applicant to provide a daylight and sunlight assessment as part of a prior approval (or planning) application”. However, where there is some doubt about the matter, as is the case here, a daylight/sunlight report would be an accepted method of establishing whether future occupiers of the development would receive adequate natural daylight or not.
28. The appellant has also taken issue with the Council’s use of the adjective “satisfactory” rather than the GPDO’s “adequate”. The dictionary to hand as I write this decision⁵ in fact includes each word within the definition of the other, and this small difference in terminology has no significant bearing whatsoever on the substance of the matter.
29. The appellant’s statement and the submitted drawings do not provide the degree of certainty which would come from a report prepared in line with the BRE guidance. In the absence of such information, and for the reasons I have just set out, I cannot conclude that all the future occupiers of the development would receive adequate natural daylight. The proposal would therefore conflict with the requirements of the Framework which seek to achieve well-designed places, notably Paragraph 130 which seeks a high standard of amenity for existing and future users.
30. I have again had regard to the provisions of the development plan to the extent that they are a material consideration, and find that the proposal would not comply with the provisions of Policy 15 of the LCS, Policy 32 of the DMLP, and Policy D6 of the London Plan 2021. Together, and among other things, these policies seek to ensure that residential development is well-designed and offers an acceptable standard of accommodation for future occupiers, including through ensuring the provision sufficient daylight.

Conclusion

31. For the reasons given above I find that the proposal does not meet the requirements, conditions and limitations of Schedule 2, Part 20, Class AB paragraphs AB.2.(1)(a), (e) and (f). I conclude that prior approval should not be granted. The appeal is therefore dismissed.

M Cryan

Inspector

⁴ As set out in its publication *Site Layout Planning for Daylight and Sunlight – A Guide to Good Practice*

⁵ *Oxford Paperback Dictionary* Third Edition (1988): Oxford University Press