



Appeal Decision

Site visit made on 7 March 2023

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 May 2023

Appeal Ref: APP/G5750/W/22/3305679

Star House, 30 Snowhill Road, Manor Park, London E12 6BF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant prior 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 Westlake Estates Ltd against the decision of the Council for the London Borough of Newham.
 - The application Ref 22/00354/PREA, dated 14 December 2020, was refused by notice dated 4 May 2022.
 - The development proposed is for prior approval for the upwards extension of 30 Snowhill Road, Manor Park, London E12 6BF to add 6 new flats.
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) for prior approval for the upwards extension of 30 Snowhill Road, Manor Park, London E12 6BF to add 6 new flats in accordance with the application 22/00354/PREA made on 14 December 2020 and the details submitted with it, including Drawing Nos 20-626-P100; 20-626-P12; 20-626-P13; 20-626-P14; 20-626-P15; 20-626-P16; 20-626-P17; 20-626-P18; 20-626-P19; 20-626-P20; 20-626-P21; 20-626-P22; 20-626-P23 and 20-626-P24 subject to the following additional conditions:
 - 1) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those proposed in the submitted drawings.
 - 2) The development hereby approved shall not be first occupied until full details of the cycle storage facilities for all new residential units have been submitted to and approved in writing by the Local Planning Authority, and the cycle storage shall thereafter be retained as approved.
 - 3) The development hereby approved shall not be first occupied until full details of the external refuse and recycling storage facilities have been submitted to and approved in writing by the Local Planning Authority. The approved refuse storage provisions shall be permanently retained thereafter.

Preliminary Matters

2. Schedule 2, Part 20, Class A of the GPDO provides for new dwellinghouses on detached blocks of flats. It is common ground that the appeal scheme meets the requirements of part 20, Class A, paragraph A.1 of the GPDO such that it

would constitute development permitted under Class A, subject to the prior approval of certain matters, set out in paragraph A.2

3. Paragraph A.2 sets out a number of conditions including the requirement to apply for prior approval from the local planning authority relating to a number of matters. The Council refused to grant prior approval on the basis of harm to A.2(g) regarding the impact on the amenity of the existing building and neighbouring premises.
4. The appellant has submitted a unilateral undertaking (UU) restricting any future occupiers of the site from attaining parking permits for the surrounding controlled parking zone (CPZ). The UU would prevent any undue burden upon parking stress in the area as a result of any additional demand for on street parking due to the proposal. Having assessed the application and subject to the provisions of a signed UU, the Council is content that the development meets all of the matters other than that relating to the impact on the amenity of the surrounding premises. I have no evidence to disagree with that assessment and have focused on just that matter in dispute.
5. 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 have therefore only had regard to the policies of the development plan in so far as they are material to the matters for which prior approval is sought.

Main Issue

6. The main issue is whether the development would accord with the provisions of Part 20, Class A of the GPDO with regard to the impact on the amenity of the neighbouring properties including effects on daylight and sunlight, sense of enclosure, overbearing impacts, and privacy.

Reasons

7. The appeal site is a five-storey building known as Star House, located at the junction of Snowhill Road and Church Road. Adjoining the site to the north is an elongated four-storey flatted development, with smaller two-storey residential buildings on the east flank (Nine Acres Close) and a two-storey building in community use on the south flank. The proposal would provide for an additional two-storey extension above the current development comprising of six additional units.
8. The proposal would be roughly to the southwest of the dwellings at Nine Acres Close and the proposal would be higher than the existing development. As such, the building would cast a longer shadow towards these neighbouring properties and their garden areas. It was clear from my visit to the site, that these properties already experience some overshadowing from the appeal site and the large flatted development in Snowhill Road to the north. However, given the orientation of the appeal site and the surrounding properties it is unlikely to have a significant increase in loss of light through overshadowing above that currently experienced.
9. Nevertheless, the appellants have submitted a Sunlight and Daylight Assessment as part of the application which assessed the impact of the proposal against the neighbouring properties. The assessment identified 18 sensitive impact receptors, which included properties located in Snowhill Road, Church Road and Nine Acres Close. These properties were assessed against the

British Research Establishment (BRE)¹ Guidance in respect to the Vertical Sky Component (VSC) for daylight, and levels of Annual Probable Sunlight Hours (APSH) and overshadowing of amenity spaces for sunlight.

10. In relation to daylight, the assessment highlights that all of the windows identified on the neighbouring properties meet the BRE requirement of being less than 0.8 times of their former VSC value. In respect to sunlight, the APSH figure also highlighted that all the windows tested meet the BRE requirement of being less than 0.8 times the former APSH value. The assessment also indicated that all the amenity areas tested would meet the BRE guidelines in respect to overshadowing, as at least 50% of the garden space would receive 2 hours or more direct sunlight on 21 March.
11. The Council has not submitted any evidence to counter the findings of this study. Given the appellants assessment confirms that the combined impact on loss of light from the proposal on neighbouring premises would be acceptable, this reinforces my view that any loss of light or overshadowing caused by the proposal would not be significant.
12. In regard to enclosure, the surrounding area has an urban feel, with a variety of buildings located within a tight street pattern, providing an existing sense of enclosure. The proposal would create a seven-storey building set alongside the existing four-storey flatted development fronting Snowhill Road. As such, the proposed upper stories would be viewed together within the existing built environment context, where a degree of enclosure is already experienced.
13. Whilst the proposal would be noticeably taller than the existing property, given its sympathetic design approach it would not appear jarring, as there is a lack of a consistent and coherent built form in the vicinity. In this regard, whilst the degree of change would be noticeable, it would be contextual, and therefore it would not be overbearing or represent any significant increase in enclosure, from that currently experienced in the area.
14. In terms of privacy, the scheme would provide additional windows and openings at the new fifth and sixth floors. These coupled with the provision of the balconies at the top floor could create a perception of additional overlooking and loss of privacy to neighbouring properties. However, upper floor windows and balconies are a common feature within this urban location. Indeed, the existing development already contains similar balconies and openings, albeit at a lower level. Given that a degree of overlooking is characteristic in built-up areas, the additional floors would not unduly harm the neighbours' enjoyment of their properties due to an unacceptable increase in loss of privacy.
15. For the above reasons, I conclude that the impact of the proposal on the amenity of existing neighbouring properties in relation to daylight and sunlight, enclosure, overbearing impacts, and privacy would be limited and acceptable. The proposal would be consistent with Paragraph 130(f) of the National Planning Policy Framework (the Framework) which, amongst other things, seeks a good standard of amenity for all existing and future occupants of buildings, in so far as it is a material consideration relevant to the impact on the amenity of the existing building and neighbouring premises as contained at Paragraph A.2(g) of the GDPO.

¹ Site Layout Planning for Daylight and Sunlight; a guide to good practice (BR 209) 2022

Other Matters

16. I have taken into account all other matters raised by interested parties including concerns about highway safety, traffic and parking. However, the Council comments that the site is within an area of good accessibility with a Public Transport Access Level of 4 which is good. The site is also within walking distance of a town centre and close to local amenities. Furthermore, the signed UU would restrict any future occupants from obtaining parking permits within the surrounding CPZ. As such, I am satisfied that the existing parking pressure would not be harmfully exacerbated by the proposal, nor that additional on-street parking would harm highway safety or cause congestion.
17. Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended), specifies that a planning obligation may only constitute a reason for permitting the development if it is necessary, directly related and fairly and reasonably related in scale and kind, although this does not necessarily apply to prior approval determinations. However, a planning obligation may be submitted in mitigation of the matters that are the subject of the prior approval. In this case, the provision of the UU is considered necessary to mitigate any harm to highway safety.
18. Interested parties have also raised concerns regarding construction impacts, including service supplies. However, requirements to agree the management of the construction would be controlled by an appropriate condition. This would allow impacts from construction on occupiers of the building and adjoining owners or occupiers to be appropriately mitigated.
19. The appeal site lies within the Epping Forest Special Area of Conservation (SAC). The SAC is a large ancient wood pasture with habitats of high nature conservation value including ancient semi-natural woodland, old grassland plains, wet and dry heathland and scattered wetland. As the Epping Forest also serves a strategic regional need in terms of its open space amenity value, the impacts of recreational activities must be mitigated in order to avoid harm to the protected site.
20. The grant of planning permission under Article 3(1) of the GPDO is subject to the provisions of the GPDO for each class of development and compliance with regulations 75 to 78 of the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats Regulations). Effectively, Article 3(1) provides a pre-commencement condition which must be met, where the development would affect a European protected habitat, such as a SAC, before the works can be undertaken as permitted development. This includes a separate application to the Council under regulation 77 of the Habitats Regulations to allow the Council to undertake an appropriate assessment and, depending on the outcome, this would determine whether, in terms of that matter, the scheme could be undertaken as permitted development under the GPDO.
21. Based on the evidence before me, it does not appear that an application to the Council under regulation 77 has been made. However, as the regulation 77 application can be submitted and potentially approved after the grant of prior approval, it is not determinative in respect of the main issues that I have examined and, therefore, I do not need to consider this matter further as part of this appeal.

22. Accordingly, with Article 3(1) and Regulations 75-78 securing a separate process by which such development only proceeds where it has been confirmed via a Regulation 77 approval from the Council that there would be no adverse effect on the integrity of designated sites, it is not necessary to secure the financial mitigation as part of this appeal.
23. The process in this instance nevertheless still requires the developer to submit a Regulation 77 application and receive written notification of the approval from the Council prior to commencement of development. This process also allows me to be satisfied that the appeal proposal would not adversely affect the integrity of the Epping Forest SAC.

Conditions

24. 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:
- Any development under Class A is permitted subject to the condition that it must be completed within a period of 3 years starting with the date prior approval is granted;
 - Any development under Class A is permitted subject to the condition that 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.
25. 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. I have considered the Council's suggested conditions having regard to the tests set out at paragraph 56 of the Framework. As a result, I have amended some where necessary, or for the sake of consistency or clarity and to ensure that they meet the tests in the Framework.
26. Given the conditions laid out at Paragraph A.2 to Part 20 of the GPDO, 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 Demolition and Construction Management Plan would be necessary in this case. I have not therefore imposed them, nor a condition listing the approved plans which are instead recorded within my formal decision.

27. I have attached a condition to require further details of the materials proposed to the exterior of the building which is necessary in the interests of ensuring that the external appearance of the building would be acceptable.
28. 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. I have also included a condition to secure refuse and recycling storage in the interests of managing the impact of the development on the amenity of the occupiers of the existing and neighbouring buildings.
29. I have not included the suggested condition relating to dust control measures and emissions from construction as these matters can be incorporated in the conditions laid out at Paragraph A.2 to Part 20 of the GPDO in so far, as they relate to the report for the management of the construction of the development.

Conclusion

30. For the reasons given above, I conclude that the appeal should be allowed, and prior approval should be granted.

Robert Naylor

INSPECTOR