



Appeal Decision

Site visit made on 25 April 2023

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 June 2023

**Appeal Ref: APP/U5930/W/22/3303967
670–672 High Road, Leytonstone E11 3AA**

- 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 G Gill against the decision of the London Borough of Waltham Forest.
 - The application Ref 221097, dated 11 April 2022, was refused by notice dated 6 June 2022.
 - The development proposed is prior approval for the construction of a roof extension to a terraced building in commercial or mixed-use to create a second and third floor providing 7 self-contained flats (Use Class C3)
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Approval was sought under Schedule 2, Part 20, Class AB of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). For development to be permitted it must satisfy the limitations set out at paragraph AB.1 and the conditions at AB.2.
3. The Council have concluded that the appeal scheme is permitted development because it complies with the limitations set out at paragraph AB.1. From the information provided I have no reason to disagree with that conclusion, and this is not a matter in dispute.
4. The Council's second reason for refusal reflects an unwillingness to give their prior approval in respect of the condition at AB.2(1)(e) (external appearance). However, the reason for refusal also reflects the Council's concerns in relation to the impact of the proposal on the residential occupiers to the rear of the site. For this reason, and as set out below, the condition at AB.2(1)(g) (amenity) is also of relevance.
5. Prior approval appeals should not be determined, expressly or otherwise, on the basis of s38(6) of the Planning and Compulsory Purchase Act 2004 or as though the development plan must be applied. The principle of development is established through the grant of planning permission by the GPDO. The Council has referred to its Waste Management Guidance (2019). I have only considered this insofar as it may be relevant to the context of specific prior approval matters. Therefore, the guidance is not determinative of itself, and the

proposal has been considered on its merits in the confines of the prior approval regime.

6. In making my assessment of the merits of the proposal I have taken into account the judgement made in the Court of Appeal¹ regarding the interpretation of Class AA of Part 1 of the GPDO. This judgement, although specifically relating to development under Class AA, indicates that a wider interpretation of external appearance could be used in the assessment of prior approval applications under Part 20. In particular, it indicates that control of the external appearance is not limited to the impact on the subject property itself, but also includes impacts on neighbouring premises and the locality. It also confirms that potential impacts of development on the amenity of any adjoining premises are not limited merely to “overlooking, privacy and the loss of light” for the occupiers of those premises.

Main Issues

7. 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 effects of the development on the amenity of neighbouring premises;
 - the effects of the development on the external appearance of the building; and
 - whether there are any transport and highways impacts arising from the development.

Reasons

Amenity of neighbouring premises

8. Paragraph AB.2(1)(g) relates to the impact on the amenity of neighbouring premises, including overlooking, privacy and the loss of light. However, the scope of this prior approval matter is not limited solely to those amenity issues which are listed. Given the close proximity to Manderley Mews, consideration of the potential effects on the outlook of neighbouring occupiers is within scope.
9. Whilst there is no formal test identified to assess the impact on outlook, it is a material consideration and during my site visit I was able to view the proposals from properties within Manderley Mews.
10. A number of windows facing the appeal site between ground and second floors supply habitable rooms such as bedrooms, living rooms and studies. Views from these windows would look directly onto the extension’s side and rear elevations with minimal separation distances which, in some cases, would be very close. In addition, there are external amenity areas, notably to Flat 07 and to the ground floor units which look directly onto the appeal site from close proximity.
11. The proposal would increase the height of the building by two storeys. It would have a limited set back at third floor level, and at second floor level it would be built right to the shared boundaries with Manderley Mews. It is noted that the site is within a dense backland urban location, and that a number of existing

¹ CAB Housing Ltd v SSLUHC and Broxbourne BC [2023] EWCA Civ 194).

windows within Manderley Mews already look onto the appeal site's existing elevations. However, as a consequence of its significant additional height and bulk the proposal would have a far greater visual impact than the existing building.

12. I note that many of the residential units within Manderley Mews are dual or triple aspect, and have windows on other elevations which would be unaffected by the proposal. There are also windows facing the appeal site which are obscure glazed and supply non-habitable rooms. However, due to its proximity, limited setback and bulk, the proposal would create a particularly looming presence when viewed from the affected habitable windows which face the appeal site. This would have an unacceptable impact on the living conditions of neighbouring occupiers in terms of a sense of enclosure and thus a loss of outlook. The presence of windows on the proposal's rear elevation, whilst providing limited architectural articulation, would not reduce the extent of additional bulk experienced by neighbouring occupiers.
13. Whilst a condition could be imposed to control the facing materials, the selection of appropriate materials would not in itself be sufficient to mitigate the harm to neighbouring premises which I have identified.
14. It is understood that a potential breach of planning control has been reported to the Council in relation to privacy screens that the appellant states should have been installed at Manderley Mews. Having reviewed the relevant drawings provided by the appellant, given the size and proximity of the proposal, I do not consider that there is compelling evidence that the presence of the privacy screens would satisfactorily mitigate the impact of the significant additional built form on neighbouring occupiers.
15. For the above reasons, I conclude that the proposal would harm the amenity of neighbouring occupiers of properties within Manderley Mews. Consequently, prior approval should not be granted for the proposed development when regard is paid to the requirements of AB.2.(1)(g) of Schedule 2, Part 20, Class AB of the GPDO relating to the impact on the amenity of neighbouring premises.

External appearance

16. The appeal site is a mid terrace property located on a busy high street. There is a noticeable variation in the heights between a number of properties on this part of the High Road. Consequently, blank side elevations are not an uncommon feature in the immediate context. Whilst the proposal's side elevations would be visible in views from the High Road, they would not be uncharacteristic additions and would not appear out of context within the streetscene.
17. I do not share the Council's concern that the additional two storey side and rear elevations would cause harm to the building's external appearance when viewed from the properties to the rear. The blank side elevations would be prominent in private views, however, given Manderley Mews' backland location they would not be unusual features. Furthermore, due to the screening from Manderley Mews itself, the proposal would not appear prominently in public views to the rear and sides of the appeal site.

18. Consequently, I find that the external appearance of the proposal would be acceptable and that it would therefore 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.

Transport and highways impact

19. Based on the Waste Management Guidance (2019) (WMG), the Council calculate that a volume of waste generated by a development involving 7 dwellings would be 1,680 litres in total. The appellant has calculated a slightly lower figure of 1,440 litres. The Council also advise that the WMG suggests that an integrated bin store should be provided for development involving more than 5 households. I have not been provided with a copy of the WMG, however I am mindful that, whilst the SPD is a material consideration, it is guidance and not planning policy.
20. In this instance, a dedicated waste store has not been provided as this is occupied by commercial uses. During my site visit, I noted that this would not be an unusual situation as there are other residential properties located on the upper floors of properties on the High Road, which also do not appear to have dedicated ground floor waste stores.
21. Both parties agree that on this part of the High Road, the Council provides 6 refuse collections per week, which is more frequent than the provisions for other parts of the Borough. There are identified refuse collection points on the High Road, including at least one conveniently located within 10 metres of the appeal site.
22. It seems to me unlikely that waste from all 7 dwellings would be placed on the street by the occupiers of the flats on the same day. Instead, it is probable that waste will be deposited in the collection areas by future occupiers on a variety of days across the week, as their individual needs arise. This would avoid excessive amounts of waste being deposited on the pavement on any particular day, regardless of whether the Council or appellant's waste generation calculation is used. Furthermore, the proposed residential units would have under-counter bin and recycling storage in each kitchen area. This would enable waste to be stored until it is left at a collection point at the appropriate time.
23. It has been put to me that a condition to address waste management and to ensure that only two bags are left on the street at appropriate times would not be enforceable. However, as I have found that the proposal is unlikely to lead to large amounts of waste being left on the street each day, such a condition would be neither reasonable or necessary.
24. I have had regard to the site's location within the Leytonstone District Centre and a primary shopping frontage, and that the footway is generally busy and narrow in places. However, given that waste is likely to be placed on the street at less busy times of the day, in the early morning or late evening, prior to collection, and that it is unlikely that significant amounts of waste will be deposited at any one time, I consider that the through flow of pedestrians and traffic would be maintained.
25. For the above reasons, the proposal would not have a harmful effect on transport and highways. The proposal would therefore comply with the

condition of prior approval set out at paragraph AB.2.(1)(a) of Schedule 2, Part 20, Class AB of the GPDO.

Other Matters

26. 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.
27. A number of neighbours have raised other concerns in relation to the proposal, such as in relation to its effect on the light of occupiers of Manderley Mews. However, given my conclusions on the main issues and that the appeal is dismissed, there is no need for me to address these in further detail.
28. The concerns expressed regarding the Council's conduct during the processing of the application fall outside of the remit of this decision.

Conclusion

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

B Pattison

INSPECTOR