



Appeal Decisions

Site visit made on 31 January 2023

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 June 2023

Appeal A Ref: APP/U5360/W/21/3287425

Middleton Court, 303 Queensbridge Road, Hackney, E8 3LX

- 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 AM Surveying Holdings Limited against the decision of the Council of the London Borough of Hackney.
- The application Ref 2021/1003, dated 22 March 2021, was refused by notice dated 24 May 2021.
- The development proposed is described as: Two storey extension over existing residential block comprising 2No. one bedroom flats, 1No. two bedroom flat and 1 No. three bedroom flat.

Appeal B Ref: APP/U5360/W/22/3292642

Middleton Court, 303 Queensbridge Road, Hackney E8 3LX

- 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 AM Surveying Holdings Limited against the decision of the Council of the London Borough of Hackney.
- The application Ref 2021/3472, dated 20 November 2021, was refused by notice dated 18 January 2022.
- The development proposed is described as: Two storey upward extension over existing residential block comprising 2No. one bedroom 2 person flats and 2No. One bedroom one person studios each with private amenity space.

Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed.

Preliminary Matters

3. 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), hereinafter referred to as the GPDO, planning permission is granted for works for the construction of up to two additional storeys of new dwelling houses immediately above the existing topmost residential storey on a building which is a purpose-built, detached block of flats. This is subject to limitations and conditions set out in Paragraph A.1., Paragraph A.2., and Paragraph B.

4. Paragraph A.2 of Part 20, Class A of the GPDO requires prior approval to be sought for the matters listed in that paragraph. Amongst these is a requirement for prior approval to be obtained in respect of the transport and highways impacts of the development, the external appearance of the building, and the impact on the amenity of the existing building and neighbouring premises including overlooking, privacy, and the loss of light.
5. As set out above, there are two appeals on this site, both of which relate to an upward extension to the appeal building to provide additional flats. They differ only in the detail of the design of the proposed extensions and the size and configuration of the proposed flats. Prior approval was refused in both cases on the grounds of the effect of the proposal on the character and appearance of the appeal building, and the effect on the amenity of the appeal building and neighbouring premises. Both proposals were also refused prior approval on the grounds that it had not been demonstrated that the proposal would not have a detrimental effect on transport and highways, although in the case of Appeal A this was in respect of car and cycle parking, and in the case of Appeal B, insufficient information in respect of refuse and recycling provision.
6. The proposal which forms the subject of Appeal A was refused prior approval on the additional ground that the proposal does not constitute permitted development under the terms of Schedule 2, Part 20, Class A of the GPDO.
7. I have considered each proposal on its individual merits. However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.
8. In determining prior approval applications, paragraph B (15) 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. I have considered these appeals on the same basis. The prior approval provisions do not require regard to be had to the development plan.
9. Although the appeal form submitted in connection with Appeal Reference: APP/U5360/W/22/3292642 (Appeal B) states that the appeal is made against the Council's refusal to grant planning permission, it is clear from all of the supporting documentation that the application sought prior approval of the scheme as required by Paragraph A.2 of Part 20 of Schedule 2 to the GPDO. I have considered the appeal on that basis.

Main Issues

10. The main issues in these appeals are:

- Whether the proposed development is permitted development under the terms of the GPDO (Appeal A only);
- The effect of the proposed development on the character and appearance of the appeal building and the surrounding area having particular regard to the setting of nearby heritage assets;

- The effect of the proposed development on the amenity of the existing building and neighbouring premises, including overlooking, privacy, and the loss of light; and
- The effect of the proposed development on transport and highways in the vicinity of the appeal site.

Reasons

Whether the proposal is permitted development (Appeal A only)

11. The appeal building is a part four storey, part three storey, modern block of flats. The building has a hipped roof over the four storey element. The building has a nine bay, four storey, frontage with an additional 2 bay, three storey, flat roofed, addition at the west end of the building. To the rear of the building is a further three storey, flat roofed, addition which has a small, single storey, projection at ground floor level.
12. Part 20, Class A of Schedule 2 to the GPDO permits 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. Paragraph A.1. of Part 20 sets out a list of the circumstances in which development is not permitted. These include, amongst other matters, if the additional storeys are to be constructed other than on the principal part of the building.
13. Paragraph C. of Part 20 sets out how the provisions of this part are to be interpreted. It defines the "principal part" of the building as meaning "the main part of the building excluding any front, side or rear extension of a lower height, whether this forms part of the original building or a subsequent addition". It is clear from the submitted drawings that part of the proposed upward extension is over the three storey side addition at the west end of the building.
14. Whilst this side addition may have been constructed at the same time as the four storey elements of the building, it is undoubtedly at a lower height. The side addition is also set back behind the line of the four storey frontage and considerably narrower than the four storey element.
15. Having regard to the definition in Paragraph C, this side addition is consequently not a principal part of the building as defined by the GPDO. For this reason, Appeal A must fail because the proposal would not be permitted development.
16. It is not in dispute that the proposal which forms the subject of Appeal B would fall within the scope of permitted development as set out in Part 20, Class A.
17. I therefore conclude that the proposed development which forms the subject of Appeal A would not be permitted development within the terms of Part 20, Class A of Schedule 2 to the GPDO. Although the Council have cited other reasons for refusal in respect of this proposal, as I have found that it would not be permitted development, it is not necessary for me to consider these matters further in respect of Appeal A.

Character and appearance (Appeal B only)

18. The appeal building is located at the junction of Middleton Road and Queensbridge Road. As set out above, it is a part four and part three storey structure with a hipped roof over the principal four storey element. The flat roof to the three storey rear addition is utilised as a roof terrace. The building is faced in a buff coloured brick with a rusticated ground floor level finished in white render. Blue brick string courses are located above the first and second floor windows.
19. The surrounding area is predominantly residential in character, although there are a few small, local, shops on Queensbridge Road. To the south of the appeal site is Queensbridge Primary School, an imposing, four storey, late nineteenth or early twentieth century building with a more recent two storey annex located between the main building and the appeal site. Attached to the southern end of the school building is a small, modern, four storey conference centre. Queensbridge Primary School is a locally listed building and as such is a non-designated heritage asset.
20. The residential properties in the area are a mix of two, three, and four storey buildings, with some older properties also having semi-basement areas. The built form is primarily a mix of terraces, large semi-detached villas, and modern purpose built blocks of flats. Roof forms are generally either hipped or pitched roofs, with some older buildings having the roof form largely concealed by a parapet. The building materials are predominantly buff coloured brick, with stucco details on some older properties, under slate, or dark tiled, roofs. There are some exceptions, with red brick being used extensively for detailing on Queensbridge Primary School and for the main walls of the adjacent conference centre. This latter also features an area of metal cladding.
21. It was evident from the site visit that the area has undergone redevelopment in the later twentieth and early twenty first century with more recent buildings inserted into the older built fabric and historic street pattern. Much of the north side of the stretch of Middleton Street in which the appeal building is located is comprised of modern buildings, as is the west side of Queensbridge Road to the north of the appeal site. These are juxtaposed with nineteenth century houses opposite. Nevertheless, the more modern buildings echo the regular pattern of fenestration of their older neighbours and this, together with the use of similar materials and similar building heights, gives the surrounding area a consistent and homogeneous appearance.
22. The appeal site is adjacent to, but outside, the Queensbridge Road Conservation Area and the Albion Square Conservation Area. Neither party has submitted any substantive evidence in respect of the significance of either of the conservation areas, or the locally listed building, Queensbridge Primary School. Nor has any evidence been submitted regarding the contribution that the setting of the conservation areas makes to the understanding of their significance.
23. The Queensbridge Road Conservation Area is a long, linear, area encompassing the frontage buildings on the east side of Queensbridge Road. From what I saw when I visited the site, the significance of this conservation area, in so far as it is relevant to this appeal, is derived from it being an attractive group of, well preserved, nineteenth century semi-detached villas and terraced houses. It has evidential value of the architectural styles and taste of the time together

- with the building techniques used to realise these. It also has aesthetic value derived from the appearance and grouping of the buildings.
24. The Albion Square Conservation Area, focussed on Albion Square, is similarly an attractive grouping of nineteenth century, Italianate style, buildings. Its significance, in so far as relevant to this appeal, lies in illustrating both the architectural values and the approach to town planning at the time, and it also has a high aesthetic value derived from the grouping and arrangement of the buildings.
25. Queensbridge Primary School has evidential and historical value in illustrating the approach to school architecture and design in the late nineteenth and early twentieth century, and also an aesthetic value in its design and external appearance combined with its imposing size. Its size and height make it a landmark feature on Queensbridge Road.
26. The appeal scheme comprises the construction of two additional floors of residential accommodation above the principal four storey element of the building, resulting in a six storey structure. The new fifth floor would be inset from the main front, rear, and side walls and would have a smaller footprint than the floors below. It would be faced in buff coloured brick slips to match the brickwork below. The new sixth storey would be set back from the front elevation of the floor below but level with the rear wall. It would be inset from the sides of the fifth floor to create a roof terrace at each end for the top floor flats. This storey would be clad in grey standing seam zinc cladding and would have a flat roof. A glass balustrade would run around the edge of the front and side elevations. The existing stairwell to the rear of the building would be extended upwards to serve the new floors terminating in a sloping monopitch roof at sixth floor level.
27. The proposed development would result in the appeal building appearing significantly taller than the buildings in the surrounding area, which would be exacerbated by its prominent corner location and the choice of materials for the topmost floor. The use of metal cladding is not common on domestic buildings in the surrounding area and whilst I did see that it has been used on some more recent buildings further north on Queensbridge Road, these are some considerable distance from the appeal site and would not be seen in conjunction with it.
28. The fenestration on the front elevation of proposed extension would not relate in placing or style to the floors below and is inconsistent with itself and also with the regular pattern of fenestration across the frontages of surrounding buildings, which is characteristic of the area. This would result in an unbalanced façade to the appeal building that would fail to read as a coherent architectural composition. The roof profile of the upward extension of the stairwell combined with the progressive reduction in size of the proposed fifth and sixth floors would result in the appeal building having an irregular and incongruous roof profile which would be visible in long views from Middleton Street from both directions. In combination, these features would be harmful to the appearance of the building and undermine its visual form.
29. In its present form the appeal building sits comfortably alongside its neighbours. However, the proposed alterations would serve to dissociate it from these due to the increased height and inconsistent materials and window detailing. This would be harmful to the appearance of the surrounding area.

30. From my observations at the site the appeal building, as a modern insertion, makes little or no contribution to the setting of the conservation areas or the understanding and appreciation of their significance. Whilst the proposed development would change the appearance of the building in a manner that would be harmful to the building itself, the effect on the setting of the conservation areas and their significance would be broadly neutral.
31. The appeal building is, however, within the setting of the locally listed Queensbridge Primary School. At present, the appeal building is lower than the neighbouring school building which reinforces the prominence and landmark nature of the school. The appeal proposal would result in the appeal building being as tall, if not higher than, the school and due to its corner location and incongruous appearance would compete visually with the school and diminish the ability to appreciate its significance. Consequently, I find that the appeal proposal would be harmful to the setting of the adjacent non-designated heritage asset.
32. Although the appellant asserts that the proposed development in its design, treatment, and external appearance are in-keeping with and sympathetic to the host building and the surrounding street scene, this is not supported by any objective analysis of either the existing building or its surroundings in the appellant's statement of case. Nor have any arguments been put forward in respect of significance of the locally listed building which would lead me to a different conclusion.
33. The Framework expects new development to be of a high standard of design that adds to the overall quality of an area and is visually attractive as a result of good architecture. It also seeks to ensure that new development is sympathetic to local character and history and established or maintains a strong sense of place. As I have found that the proposed development would cause harm to the external appearance of the appeal building and the setting of the adjacent non-designated heritage asset, the proposal would conflict with these requirements of the Framework.
34. Whilst the Framework does seek to optimise the potential of sites to accommodate an appropriate amount of development, this should not be conflated with maximising, nor should it be an end in itself to the exclusion of other factors. The Framework also seeks to increase the supply of housing, but this also does not override the need to secure good design and to preserve heritage assets. I do not have any evidence before me in respect of housing land supply in the Borough, nor of the need for the type and size of dwellings proposed. Within this context, the harm that I have found is greater than any potential benefit from the additional dwellings.
35. I therefore conclude that the proposed development would cause harm to character and appearance of the appeal building and to the setting of the nearby non-designated heritage asset. It would not comply with the relevant requirements of the Framework.

The effect on neighbouring properties (Appeal B only)

36. The Framework requires that new development provides a high standard of amenity for existing and future users. The Council have not raised any concerns in respect of the effect of the proposed development on the occupiers

of the existing building. From what I have read and from what I saw on the site visit, I have no reason to find differently.

37. The application was accompanied by a Daylight and Sunlight Report which concluded that the appeal proposal would not cause a significant loss of sunlight or daylight to neighbouring buildings including Astoria Court, Middleton House, 67-71 Middleton Road, and the Annex to Queensbridge Primary School. Whilst this has been carried out using a previous version of the Building Research Establishment methodology, which has been updated following the publication of a new British Standard, it nonetheless still provides a useful assessment on the effects of the proposal. The Council has not submitted any technical evidence to the contrary but contends that the proposal would result in a loss of light to neighbouring properties.
38. From what I saw when I visited the site, and in the absence of any contradictory technical evidence, I have no reason to doubt the accuracy of the findings of the Daylight and Sunlight report.
39. The appeal proposal would increase the number of windows looking towards Astoria Court to the north of the appeal site and would introduce further windows and roof terraces to the rear of the building facing towards Queensbridge Primary School. With regard to Astoria Court, Middleton Road is a wide road and the building at Astoria Court is further set back behind a landscaped area to the front. As a result, the two buildings, which are currently of a similar height and have the same number of floors, are sufficiently separated that there are limited opportunities for casual overlooking. The proposed development, whilst it would increase the height of the appeal building, would not result in a significantly greater degree of casual overlooking than presently exists.
40. I saw when I visited the site that the end wall of Queensbridge Primary School which faces towards the appeal building is separated by some distance from the appeal building, with a lower, two storey, building intervening. As a result of this degree of separation, there would be limited opportunities for mutual overlooking. The proposed additional storeys would not affect the multi-use games area at the school as this is located between the main building and the two storey annex. The proposal would result in additional windows and balconies on the rear elevation of the appeal building. Nonetheless, due to the resulting from height difference restricting the angle of downward visibility, these would not look into the adjacent two storey annex. Overall, from the evidence before me and from my observations at the site visit, I do not find that the proposed development would have a detrimental effect on Queensbridge Primary School.
41. There are no windows to habitable rooms in the side elevation of number 78 Middleton Street, to the immediate west of the appeal site and, consequently, the window and roof terrace of the proposed flat 17 would not directly overlook the interior of this house. Whilst this terrace and that of the proposed flat at the west end of the appeal building on the floor below may result in a small degree of casual overlooking of the rear part of the garden of Middleton House, it is not uncommon in urban areas for garden areas to be overlooked. This factor of itself would not be sufficient to withhold prior approval on this ground.

42. I therefore conclude that the proposed development would not cause harm to amenity of the neighbouring premises. It would comply with the relevant requirements of the Framework.

The effect on transport and highways (Appeal B only)

43. It is not in dispute that the proposed arrangements for the parking of vehicles and cycles are appropriate. The reason for refusal on this ground relates to the adequacy of refuse storage for the proposed development. This could potentially impact on the operation of the highway if it were to result in refuse containers being stored on the footway or carriageway or if there were to be inadequate access for refuse collection vehicles.
44. The submitted drawings illustrate that there is an existing, enclosed, refuse store on the ground floor of the building that is accessed via the footway on Middleton Road. The Hackney Refuse and Recycling Storage Guidance 2017 (the RRCG) sets out various requirements for the type and capacity of refuse and recycling storage required. For buildings with more than 6 dwellings the RRCG specifies that communal recycling and refuse facilities must be provided, sets out the required storage capacity per dwelling based on the number of bedrooms, and requires development to provide for 50% of refuse storage for recycling.
45. The details originally provided with the application for prior approval in respect of refuse storage are scant and it is perhaps understandable that the Council had concerns. As part of their appeal submissions the appellant has provided a drawing and specification, Drawing Number P21-06 30, which provides greater detail of the refuse store. Whilst this drawing does not appear to have been before the Council when it made its decision on the application, it had the opportunity to comment on it as part of its appeal submissions. However, the Council has not submitted a further appeal statement.
46. The refuse storage arrangements shown on drawing number P21-06 30 illustrate that this requirements of the RRCG in terms of storage capacity and types of storage could be met and accommodated within the existing bin storage area at the appeal building. This would not require any significant alterations to the current arrangements for collection and access by refuse vehicles, and there is nothing in the evidence to indicate that the increased number of dwellings would necessitate additional journeys by refuse vehicles. As such the proposed development would not result in a material increase or a material change in the character of traffic in the vicinity of the site.
47. The Framework sets out that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety or the residual cumulative impacts on the road network would be severe. I therefore conclude that the proposed development would not have a detrimental effect on transport and highways in the vicinity of the appeal site and would comply with the Framework.

Conclusion

48. I have found that the proposed development that forms the subject of Appeal A would not be permitted development under the terms of the GPDO, and therefore that appeal must fail.

49. I have found that the proposed development which is the subject of Appeal B would cause harm to the character and appearance of the existing building and the surrounding area, including the setting of a non-designated heritage asset. In order to benefit from the permitted development rights, the proposed development must meet all the conditions and limitations set out in the GPDO and satisfy all of the prior approval matters, which includes the external appearance of the building. For this reason, Appeal B must also fail notwithstanding that I have not found harm to the amenity of neighbouring buildings, or that there would be a detrimental effect on highways and transport in the vicinity of the appeal site.
50. For the above reasons, I conclude that both Appeal A and Appeal B should be dismissed.

John Dowsett

INSPECTOR